

SUBJECT: Drug Testing of Employees in Designated
Job Profiles

NUMBER: 50.000.02

DIVISION: Chief Human Resources Office

EFFECTIVE DATE: 2/01/2019

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT: Oregon state government as an employer is committed to providing the public with a drug-free service environment and employees with a drug-free workplace.

AUTHORITY: ORS 240.145(3); 240.250; 240.321(2); Drug Free Workplace Act of 1988 (Public Law 100-690) and implementing regulations

APPLICABILITY: Classified, management service, Unclassified (executive) service, and temporary employees in agencies providing public safety and/or mental health services

ATTACHMENTS: None

DEFINITIONS: Also refer to State HR Policy 10.000.01, Definitions

POLICY:

- (1) It is the policy of the Executive Branch of Oregon state government to provide the public with a drug-free service environment and employees with a drug-free workplace.
 - (a) An appointing authority of an agency may institute a drug testing program for employees in those classifications and/or positions designated by the appointing authority.
 - (b) Prior to implementing the drug testing program the appointing authority shall develop an agency drug testing policy which shall include:
 - (A) a description of the agency's drug education program which incorporates a drug-free workplace as an agency value and integral part of the agency's culture;
 - (B) a description of the circumstances under which the appointing authority shall require an employee to take a drug test to determine if the employee is using a prohibited drug/controlled substance, i.e., reasonable suspicion, random and periodic drug testing;
 - (C) a list of and rationale for the designated job profiles and/or positions which shall be subject to drug testing;
 - (D) a list of prohibited drugs/controlled substances for which an employee shall be tested;
 - (E) a provision, available on a onetime basis only, for employees, who prior to a verified positive drug test, notify agency management (supervisor/personnel office) in writing that they have a drug use/dependency problem that no disciplinary action shall be taken but that they shall be referred to and actively participate in an assessment and treatment program and either remain on the job or use accrued leave or leave without pay as appropriate.

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- (F) a statement that the drug testing shall be conducted by a laboratory which is licensed and operated in accordance with ORS 438.010 and OAR 333-24-0305 through 0365;
 - (G) a description of the drug testing protocol, i.e., how and when the drug testing shall be carried out;
 - (H) a description of the consistent and appropriate action(s) the agency shall take with regard to an employee who tests positive for a prohibited drug/controlled substance, e.g., requiring participation in an approved drug abuse assistance or rehabilitation program, last chance agreements, reassigning of duties, discipline up to and including termination, etc. A model component for agencies' use in their drug testing policy development is attached to this policy.
- (c) Once implemented the appointing authority shall ensure that the drug testing policy is administered uniformly and consistently.
 - (d) Drug tests shall be paid for by the employing agency and conducted according to the agency policy.
 - (e) At the time of implementation, an appointing authority shall submit a copy of the agency drug testing policy to the CHRO for filing.
 - (f) An appointing authority shall maintain records of drug testing, stating the number of employees tested, the number of confirmed positive tests and the job profiles involved.
 - (g) An appointing authority shall provide written notice of the agency's drug testing policy to each employee whose classification and/or position is subject to testing, making copies of the drug testing policy available upon request.
 - (h) An agency's administration of its drug policy and drug testing records shall be subject to audit by the CHRO.
- (2) Policy Clarification:
- (a) Basis for reasonable suspicion of prohibited drug use, possession, manufacture, distribution, or selling include:
 - (A) Direct observation of abnormal behavior or impairment to mental or physical behavior/performance, e.g., slurred speech, difficulty in walking or performing job activities;
 - (B) direct observation of use, possession, etc.
 - (C) the opinion of a medical professional (doctor, nurse or other related professional practitioner qualified by education or experience) employed at the work site that an employee is using a prohibited drug;
 - (D) documented or verified information concerning the workplace manufacture, distribution, selling, possession or use of a prohibited drug;
 - (E) a work-related accident in conjunction with an above basis for a reasonable suspicion.
 - (b) Periodic drug testing is testing carried out on a recurrent, cyclic or intermittent basis, e.g., at the

time of physical examinations.

- (c) Prohibited drugs/controlled substances are marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and substances specified in schedules I through V of Section 202 of the Controlled Substances Act, 21 USC 811, 812 and as defined in 21 CFR 1300.11 through 1300.15 unless authorized by a legal prescription or are exempt from federal or State law.
- (d) Random drug testing is testing done using a random number table or a computer-based number generator that is matched to a payroll or employee identification number.
- (e) The notification by an employee of drug use/dependency as described in (1)(b)(E) does not preclude an appointing authority from taking disciplinary action against the employee for other work-related problems.

MODEL POLICY COMPONENT

DEALING WITH EMPLOYEES WHO TEST POSITIVE FOR PROHIBITED DRUGS/CONTROLLED SUBSTANCES

It is the policy of (agency) to treat employees who test positive for a prohibited drug or controlled substance in a consistent and appropriate manner but which does not preclude imposing discipline up to and including dismissal.

- (1) Upon receiving the report of an employee's testing positive for a prohibited drug or controlled substance, the appointing authority shall conduct a pre-dismissal hearing which shall have for it purposes:
 - (a) the assessment of the employee's work history and the circumstances surrounding the drug use;
 - (b) the opportunity for the employee to provide information/mitigating circumstances surrounding the use of drugs;
 - (c) the basis upon which the agency takes action regarding the employee.
- (2) As a result of the assessment and discovery conducted at the pre-dismissal hearing, the agency appointing authority shall decide on the appropriate action(s) to be taken with regard to the employee which may include:
 - (a) the signing of a last chance agreement that the employee will stay free from drugs and will include:
 - (A) referral to a substance abuse professional for assessment;
 - (B) referral to the EAP or other appropriate treatment or rehabilitation program;
 - (C) a plan for verification of continued or successful completion of the treatment or rehabilitation program;
 - (b) the assigning of the employee to an alternative work/job assignment if appropriate;
 - (c) appropriate disciplinary action up to and including dismissal.

LAST CHANCE DRUG REHABILITATION AGREEMENT

The following agreement is entered into between the (agency name) and (employee name) henceforward to be referred to as employer and employee. This agreement serves as notice to the employee of what is expected for continued employment with the employer.

- (1) I agree to be evaluated by a qualified substance abuse counselor, and if required, I shall immediately enroll and continue in a bone fide drug inpatient or outpatient rehabilitation program recommended by the Substance Abuse Professional (SAP). I understand that should I fail to successfully complete either the recommended inpatient or outpatient program, my employment with the employer will be terminated.
- (2) I agree to comply with, and complete the conditions of any "aftercare plan" as recommended by my treatment counselor. If I must be absent from any aftercare session, I must notify the employer. The employer has my permission to verify attendance at required meetings. If I do not continue the aftercare program, I understand that my employment is terminated.
- (3) I agree that the signing of this agreement shall allow my employer to contact treatment or health care providers who may have information about my drug condition, my compliance with SAP recommended treatment and terms of this agreement. I authorize these providers to furnish information to my employer.
- (4) I agree to return to work immediately upon successful completion of the drug rehabilitation program. I further agree that should I be required to attend an outpatient program that my time away from work for such appointments will only include the time necessary for the appointment and travel to and from the appointment.
- (5) I understand that this agreement constitutes a final warning and is non-precedent setting for any other employees with the employer in the future. Each case will be reviewed on its own merit.
- (6) I understand the Employee Assistance Program is available to me should personal problems arise in the future which may have an effect on my ability to remain in compliance with the employer's drug policies and this agreement.
- (7) I understand that violation of the employer's drug policies at any time in the future is cause for termination.
- (8) All parties to this agreement understand that the undersigned employee will be terminated should he/she exhibit deficient performance or conduct to the type that led to the drug test and this agreement.
- (9) I understand the terms and conditions of this agreement. I also understand that this agreement does not guarantee me employment for any set period of time. I have had the opportunity to discuss it with my representative. I sign this agreement free from any duress or coercion. This agreement will become a permanent part of my official personnel file.

Personal Commitment

I pledge and agree to abide by the terms of this agreement. I understand that a violation of, or

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noncompliance with, any of these terms can result in my being discharged. Further, I pledge to remain free of all illegal drugs and not to abuse legal drugs during my term of employment.

Employee

Date

Employer

Date

Employee Representative

Date