

# DRUG FREE WORKPLACE POLICY

Approved:

Policy No. 17-017(P)

Effective: January 29, 2024

Supersedes: Drug Free Workplace and Drug  
and Alcohol Testing Policy effective January 2, 2023

  
Jack Marchbanks, Ph.D., Director

## I. POLICY STATEMENT

The purpose of the Drug Free Workplace Policy is to provide a safe and productive environment by creating a workplace that is free of restricted substances. A restricted substance shall include alcohol, any controlled substance, and any substance, legal or illegal, that is used intentionally, inappropriately, and impairs job performance, including non-medical marijuana, medical marijuana and prescription medication of a controlled substance. For the purposes of this policy, controlled substance is defined as a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V, as provided in ORC 3719.41. The goal of the policy is to prevent the use and being under the influence of a restricted substance to reduce accidents, injuries, and fatalities, and abate the risks created by employees who are on duty in an impaired condition. All employees are required to be fit for duty at the time they report to work and any time they are in active work status or otherwise in the workplace or conducting agency business.

## II. AUTHORITY

Drug Free Workplace Act, 1988  
Americans with Disabilities Act of 1990, as amended  
Omnibus Transportation Employee Testing Act, 1991  
49 CFR Part 40  
Ohio Revised Code 3796.28  
Ohio Administrative Code 123:1-45-01, 123:1-76-01 through 123:1-76-14  
State of Ohio Drug Free Workplace Policy – HR-39, 2023  
State of Ohio/OCSEA Contract, Appendix M

## III. SCOPE

This policy applies to all ODOT employees and final applicants for unclassified or safety sensitive positions. This policy does not affect, in any way, the requirements of the Federal Omnibus Transportation Employee Testing Act of 1991 and applicable US DOT regulations.

#### **IV. TESTING REQUIRED**

Testing is used to determine whether a prohibited level of a restricted substance is present in an employee's bodily fluids. Testing procedures are conducted consistent with the DOT Drug Testing Laws, unless modified by the OCSEA collective bargaining agreement and/or the Director of DAS (for those exempt from collective bargaining). This includes procedures for sample collection, laboratory analysis, and reporting and reviewing results.

Pre-employment drug testing is required as a condition of employment for all final applicants for unclassified positions, Commercial Driver's License (CDL) required positions, and positions identified as those performing safety sensitive duties. Any applicant who tests positive for a restricted substance will not be hired and will not be reconsidered for employment with the State of Ohio for one (1) year. For final applicants of positions requiring a CDL, medical marijuana is prohibited as a valid medical explanation for a positive drug test.

All employees may be tested when there is reasonable suspicion based upon a for-cause determination that they are using or under the influence of a restricted substance. The reasonable suspicion is based upon documented observations of symptoms and/or behaviors, and may include, but not limited to, an on- the-job accident requiring immediate hospitalization or property damage in excess of \$2,000. The aim of such testing is to rule out the employee being under the influence of a restricted substance as the cause for the suspicious behavior and symptoms being observed.

All employees may be subject to drug or alcohol testing under the Workers' Compensation Rebuttable Presumption Rule, as specified in Ohio Revised Code section 4123.54. When an employee suffers a work-related injury, or has been involved in an accident, and there is reasonable cause to suspect the employee may be under the influence of a restricted substance, a rebuttable presumption test may be ordered. In addition to the usual current reasonable suspicion observations, other criteria may be considered for a rebuttable presumption test, including: a pattern of abnormal behavior, deteriorating work performance, frequent absenteeism, recurrent accidents, etc. Medical marijuana is not excused for purposes of rebuttable presumption testing.

Employees whose jobs require them to possess a Commercial Driver's License and who perform safety sensitive duties as defined under Federal regulations are subject to the following Federal DOT test types: pre-employment, reasonable suspicion, post-accident, random, return-to-duty, and follow-up. Employees who are assigned to classifications identified as safety sensitive by the Department of Administrative Services or in Appendix M of the State of Ohio/OCSEA contract, including those who are regularly assigned to construction projects, are subject to random testing under the State drug/alcohol testing plan.

Employees subject to random drug and alcohol testing under Federal regulations or state testing program are separately selected using a computer-driven random number process based upon position number. The random selection process is made monthly and managed by the Department of Administrative Services/Office of Drugfree Workplace (DAS/DFW). An employee may be ordered to test at any time during an employee's work shift. An employee must respond as soon as possible to the order to be tested. If an employee is removed from the random pool for more than 30 days or is off work for more than 30 days and during the period of absence is randomly selected for a drug test, the employee is required to complete a pre-employment drug test on the first day of their return to work.

Return-to-duty and follow-up drug and/or alcohol tests are required for all employees refusing to test or testing positive for a restricted substance for the first time. A refusal to test includes being uncooperative, interfering with the testing process, or not providing a sufficient specimen. These tests are conducted under direct observation procedures and the employee is responsible for payment of the costs of these tests.

## **V. TESTING PROCEDURES**

Procedures and protocols for the collection, transmission and testing of employee samples shall conform to the methods and procedures provided by Federal regulations pursuant to the Federal Omnibus Transportation Employee Testing Act of 1991, to ensure the integrity and accuracy of the testing process, and the validity of the test results. Testing laboratories are certified by the US Department of Health and Human Services. Drug testing shall be performed through urinalysis. Alcohol testing will be performed using an evidential breath testing device as operated by a breath alcohol technician.

Confidentiality regarding alcohol or drug test results will be maintained to the extent provided by law.

## **VI. NOTICE OF DRUG-RELATED CONVICTIONS**

All employees are required to report any drug-related conviction of Federal or state statute in writing to their Labor Relations Officer (via email or letter) within five (5) calendar days, provided such conviction is related to an incident that occurred at the workplace or any location where agency business was conducted at the time of the incident which gave rise to the conviction. A conviction means a finding of guilty, no contest or the imposition of a sentence by a judge or jury in a Federal or state court. An employee who fails to report such a conviction in writing, as explained above, will be subject to immediate termination of employment. If required, any criminal drug convictions will be reported to Federal granting authorities within ten (10) days of receiving notice.

## **VII. GENERAL PROHIBITIONS**

Regardless of whether the conduct is otherwise lawful, all employees who are in an active work status or otherwise in the workplace, with a prohibited level of a restricted substance present in their bodily fluids will be considered in violation of this policy, unless such presence is otherwise exempt from this policy. All employees are prohibited from unlawfully manufacturing, distributing, purchasing, selling, transferring, dispensing, possessing, using or being under the influence of restricted substances, or abusing a prescription drug in the workplace or while on official business, on or off the workplace. An employee is prohibited from reporting to work or being under the influence of restricted substances or abusing prescription drugs during the workday.

Alcohol, non-medical marijuana, and medical marijuana are considered restricted substances, and no employee is permitted to use or possess alcohol, non-medical marijuana or medical marijuana while in an active work status or otherwise in the workplace, including in state vehicles, on state grounds, or during breaks or lunch. This prohibition exists even if an employee has a valid physician's recommendation for medical marijuana. Employees under Federal testing regulations, e.g.: employees required to maintain a valid commercial driver's license, are subject to additional prohibitions, including the use of non-medical marijuana and medical marijuana at any time.

An employee may not refuse to submit to a required drug or alcohol test, or otherwise fail to cooperate with the testing process. An employee must immediately report to test upon being contacted to test. An unreasonable delay to report to test is considered a refusal to test. A refusal to test shall be considered a positive test, and subject to disciplinary action. An applicant who refuses to test is not eligible for employment.

## **VIII. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

The Ohio Employee Assistance Program (EAP) is a confidential, professional support service available to all State of Ohio employees and their dependents. The EAP is a voluntary program which helps employees and their families affected by drug or alcohol abuse with referral to a certified Substance Abuse Professional. Employees with substance abuse problems are encouraged to voluntarily contact the EAP. Enrollment in a substance abuse program will not adversely affect employment, however, unacceptable job performance, attendance, and/or behavior problems may result in disciplinary action.

The Ohio Employee Assistance Program may be contacted at <https://das.ohio.gov/employee-relations/benefits-administration/ohio-eap/ohio-eap> or (800) 221-6327.

## **IX. CONSEQUENCES**

Employees shall abide by the terms of this policy statement as a condition of employment. An employee who violates the provisions of this policy shall be subject to disciplinary action up to and including termination of employment on a first offense pursuant to ORC 124.34 or Collective Bargaining Agreement.

Employees who test positive for a restricted substance shall be deemed to have engaged in prohibited conduct. Alcohol test results of .04% BAC shall be considered a positive test. An employee testing positive will be immediately removed from duty and subject to disciplinary action. In addition, alcohol results of .02 - .0399 will result in the employee being immediately removed from duty for 24 hours, or start of the next shift, whichever is greater, and subject to disciplinary action.

Except for temporary, seasonal, unclassified or employees in their initial probationary period, employees who test positive for a restricted substance on a first offense shall be provided an opportunity to hold disciplinary action in abeyance contingent upon completion of an EAP participation agreement, including successful completion of a substance abuse rehabilitation program, and Last Chance Agreement. An employee who tests positive will also be required to complete a return-to-work test and follow-up testing, both under direct observation with negative results on each. Both test types are at the employee's own expense.

Employees or applicants will be provided the opportunity to provide medical documentation of legally prescribed medication, medical marijuana recommendation, or exposure to toxic substances which may explain a positive test result to the medical review officer (MRO) in his or her determination of the validity of a positive test result. The employee is required to provide the requested documentation within the timeframe provided by the MRO.

For employees subject to Federal DOT drug testing regulations, non-medical marijuana and medical marijuana are prohibited substances. Also, a medical prescription for a controlled substance may be considered medically unqualified / safety risk which would prevent the performance of safety sensitive duties required for their position.

## **X. TRAINING**

Each employee will be provided a copy of this policy and receive information on the drug free workplace expectations, drug and alcohol testing programs and procedures, and the Ohio Employee Assistance Program within thirty (30) days of employment.

All employees shall be provided periodic drug-free workplace training in accordance

with Federal Regulations, State Policy and Collective Bargaining Agreement, including new employee orientation, supervisor training and e-learning courses.

## **XI. ADMINISTRATION OF THE TESTING PROGRAMS**

The Office of Labor Relations in the Division of Human Resources is responsible for the administration of the drug and alcohol testing programs in conjunction with the Ohio Department of Administrative Services, Office of Drug Free Workplace. Drug and Alcohol Testing Confidants are also designated in every ODOT district and Central Office to administer the drug and alcohol testing programs at the local level, primarily the district Labor Relations Officer.

These individuals, along with other agency managers and supervisors, shall be responsible for the implementation, enforcement and monitoring of this policy and the drug free workplace program to ensure that it is administered consistently, fairly and within appropriate constitutional parameters.

Employees with questions about the drug and alcohol testing programs may contact the Office of Labor Relations at (614) 466-6114, or the district Labor Relations Officer or Drug and Alcohol Testing Confidant.

## **XII. FISCAL ANALYSIS**

The budgeted amount for drug and alcohol testing is \$120,000 per year, payable through the Division of Human Resources, Office of Labor Relations cost center.