

STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

MEMORANDUM

TO: SEE DISTRIBUTION

FROM: Gregory L. Wayt, Major General (Ohio), The Adjutant General 

DATE: November 15, 2004

SUBJECT: POLICY – State Employee Procedure Letter #37
Ohio Drug-Free Workplace Policy (DFWP)

1. REFERENCES:

- A. Ohio Administrative Code Chapter 123:1-76
- B. OCSEA/AFSCME Contract Appendix M
- C. Federal Drug-Free Workplace Act of 1988
- D. Federal Omnibus Transportation Employee Testing Act of 1991

2. SCOPE: This policy applies to all employees of The Adjutant General's Department.

3. PURPOSE: The State of Ohio desires a workplace that is free from the adverse effects of alcohol and other drugs. Substance abuse is a serious and complex, yet treatable, condition/disease that adversely affects the productive personal and family lives of employees. Substance abuse may lead to safety and health risks in the workplace, for the abusers, their co-workers and the public-at-large. The emphasis of the drug-free workplace program is to prevent abuse and rehabilitate employees and to abate risks created by employees who are on duty in an impaired condition.

4. GENERAL:

- A. Employees are required to report to work in a fit condition to perform their duties. If an employee reports to work under the influence of alcohol or other drugs, it will be considered a violation of the State of Ohio's DFWP policy.
- B. The DFWP Policy prohibits all employees on official business, on or off the workplace, from purchasing, transferring, using or possessing illegal drugs, or abusing alcohol or abusing prescription drugs in any way that is illegal.
- C. Some prescription medications may cause impairment in judgment, coordination and physical ability. Reasonable accommodations will be made for any employee who uses a prescribed medication.
- D. Any employee suffering from a substance abuse problem shall receive the same careful consideration and offer of treatment that is presently extended under the State's existing benefit plans to those employees having other mental health and substance abuse conditions, as well as under the Employee Assistance Plan. The same benefits and insurance coverage that are provided for all other illnesses, diseases, and/or physical or psychological conditions, under the State's established health insurance benefit plan, shall be available for employees who accept medically approved treatment of alcoholism or drug dependency.
- E. An employee's refusal to accept referral for diagnosis or to follow the prescribed treatment will be handled in accordance with other policies relating to job performance. No person

**SUBJECT: POLICY – State Employee Procedure Letter #37
Ohio Drug-Free Workplace Policy (DFWP)**

with a substance abuse problem shall have his/her job security or promotional opportunities jeopardized by a request for diagnosis and/or treatment. Continued unacceptable job performance, attendance and/or behavioral problems will result in disciplinary action, up to and including termination.

- F. Due to their confidential nature, all medical records of employees with substance abuse problems, to include drug tests and their results, shall be maintained in accordance with Ohio and Federal laws.

5. DRUG-TESTING CONDITIONS:

- A. Applicant Testing: Final applicants for unclassified and safety-sensitive positions within the Adjutant General's Department.

- B. Reasonable Suspicion: Any employee may undergo testing based on a for-cause determination by Management as follows:

1. Where there is reasonable suspicion to believe that the employee, when appearing for duty or on the job, is under the influence of, or his/her job performance is, impaired by alcohol or other drugs.

- a. Reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of, or is using or abusing, alcohol or drugs. Examples shall include, but are not limited to

1. Slurred speech
2. Disorientation
3. Abnormal conduct or behavior

- b. Involvement in an on-the-job accident resulting in disabling personal injury requiring immediate hospitalization of any person or property damage in excess of \$2,000, where the circumstances raise a reasonable suspicion concerning the existence of alcohol or other drug use or abuse by the employee.

- c. Reasonable suspicion must be documented in writing and be supported by two witnesses, including the person having such suspicion. The immediate supervisor shall be contacted to confirm a test is warranted based upon the circumstance. The documentation must be presented to

1. The employee and
2. The Human Resource Administrator or designated representative.

2. An employee designated for reasonable suspicion testing will be accompanied by the supervisor or a designated management representative to the prescribed testing facility. Upon request of the employee, a union representative may also accompany him/her to the testing site. Testing will not be unreasonably delayed to accommodate the request to provide a union representative at the testing site.

- C. Random Testing – The classifications listed in paragraph 12 shall be subject to random testing.

1. Covered employees will be selected from the random selection pool by a computer-

**SUBJECT: POLICY – State Employee Procedure Letter #37
Ohio Drug-Free Workplace Policy (DFWP)**

driven random number process based upon the position control numbers of all positions for which testing is required.

2. The random testing pool shall be maintained and administered by the State of Ohio's DFWP coordinator.
 3. Names will be submitted monthly to the applicable Personnel Officer.
 4. The Personnel Officer will call selected employees and inform them where and when they are to report for testing.
- D. Follow-up Testing: Any employee referred through administrative channels to a counseling or rehabilitation program as a result of that employee's on-the-job substance abuse may be subject to follow-up testing.

6. TESTING PROCEDURES AND GUARANTEES:

- A. All procedures and protocols for collection and testing of an employee's breath for alcohol shall conform to the methods and procedures set forth in federal and state regulations, laws and rules.
- B. Test results shall be reported to the Human Resource Administrator within twenty-four (24) hours of the receipt of the result by the DFWP services program.

7. COLLECTION AND HANDLING OF SPECIMENS:

- A. The employee to be tested shall report to the collection site as soon as possible after the testing order is given, but no later than thirty-two hours, or as required by law.
- B. The collection site person shall
 1. Request photo identification or other confirming identification. If identity cannot be established, the collection shall not proceed.
 2. Ask the employee to remove any garments that might conceal substances/items that could be used to tamper with or adulterate the urine specimen.
 3. Instruct the employee to wash and dry his/her hands prior to urination and shall not have access to any water or other materials that could adulterate the urine specimen.
 4. Allow the employee to provide the specimen in a stall or a partitioned area that allows for privacy.
 5. Receive the specimen, measure its temperature and color and visually inspect for contaminants.
 6. Seal and label the specimen in the presence of the employee. The labels shall contain
 - a. The date
 - b. The employee's specimen number
 - c. Any other identifying information provided or required by the department of administrative services.
 7. Ask the employee to initial the I.D. label on the specimen certifying that it is the specimen collected from him/her.
 8. Enter all information identifying the specimen into the record book and shall sign the

**SUBJECT: POLICY – State Employee Procedure Letter #37
Ohio Drug-Free Workplace Policy (DFWP)**

book.

9. Ask the employee to sign the statement in the record book certifying that the specimen is, in fact, the specimen he/she provided.

8. GENERAL PROVISIONS APPLICABLE TO ALL TESTING:

- A. Employees shall have the right to consult with a Union representative, if applicable, if one is available one hour prior to testing and a Union representative may accompany the employee to the specimen collection site as long as reasonable suspicion is called for by the Employer.
- B. A test result that indicates a .04% blood alcohol level (BAC) will be considered a positive test. No consequences will attach to any result below a .04% level.
- C. Any employee who refuses to submit to a properly ordered drug test shall be considered to have a positive test result.
- D. Any employee who attempts to alter or substitute the specimen provided for drug testing shall be deemed a refusal to take the drug test when required and shall be considered to have a positive test result.
- E. Travel time and testing are to be considered "time worked" for compensation purposes.
- F. All sample collection shall be conducted off-site by professional non-state personnel subject to the requirements of the testing lab unless the parties on a facility-by-facility basis mutually agree to an alternative sample collection process.

9. POSITIVE RESULTS

- A. Employees who have a positive drug test result may ask for a retest of the original specimen according to procedures and specifications of applicable rules, regulations and laws.
- B. An employee request for a retest shall not delay the imposition of appropriate disciplinary action or referral to an alcohol and/or drug abuse rehabilitation program.
- C. An employee may be assigned to non-safety sensitive duties after testing positive.
- D. If the employee is sent home after notice is received by the Employer that he/she tested positive the Employer shall place the employee on administrative leave with pay pending notice of the pre-disciplinary meeting. If the employee does not waive the 72-hour pre-disciplinary meeting requirement, the employee shall be placed on approved administrative leave without pay and may use any accruals to cover the time off.
- E. The employee shall be responsible for the cost of all follow-up alcohol and drug tests that are ordered by the Employer.

10. NOTICE OF DRUG-RELATED CONVICTIONS: As required by the Federal Drug-Free Workplace Act of 1988, each employee covered by this Agreement is required to notify his/her agency head or his/her designee, within five (5) days after he/she is convicted of a violation of any federal or state criminal drug statute, provided such conviction occurred at the workplace or any location where the employee is working at the time of the incident which led to the conviction. Failure to report such a conviction will subject the employee to disciplinary action. An agency head or his/her designee may refer such employees to the Employee Assistance Program for referral and treatment.

**SUBJECT: POLICY – State Employee Procedure Letter #37
Ohio Drug-Free Workplace Policy (DFWP)**

11. DISCIPLINARY ACTION: Employees who are found to be under the influence of alcohol and/or other drugs while on official business, on or off the workplace, are subject to discipline provisions of the collective bargaining agreement, work rules, policies and procedures and ORC Section 124.34, as applicable.

- A. On the first occasion that an employee is determined to be under the influence of, or using, alcohol or other drugs while on duty, as confirmed by testing, the employee shall be given the opportunity to enter into and successfully complete a substance abuse program certified by the Ohio Department of Alcohol and Drug Addiction Services. No disciplinary action shall be taken against the employee, provided he/she successfully completes the program.
- B. On the first occasion, the employee will also be asked to enter into a last chance agreement. Last chance agreements shall not be effective for longer than five (5) years, except if any of the following situations led to the drug or alcohol testing, in which the last chance agreement shall be of an unlimited duration:
 1. Any accident involving a fatality;
 2. Any accident in which the driver is cited and there is disabling damage to the vehicle(s) requiring tow-away; or
 3. Any accident in which the driver is cited and off-site medical treatment was required.
- C. If an employee has a confirmed positive drug test while enrolled in or subsequent to completion of the rehabilitation program, the employee will be subject to discipline, up to and including dismissal.
- D. Employees on their initial probationary period who test positive for drugs or alcohol from either a random or reasonable suspicion test shall not be eligible for a last chance or EAP Agreement. The probationary employee shall be terminated on the first occasion in which they test positive for alcohol or other drugs.

12. SAFETY SENSITIVE POSITIONS: The following Adjutant General's Department classifications are considered to be safety sensitive positions. Employees in these classifications shall be subject to random testing as described in Section 5 above:

- A. Firefighter
- B. Lieutenant Firefighter
- C. Fire Station Captain
- D. Air Force Base Fire Training Officer
- E. Assistant Fire Chief
- F. Security Officer Specialist
- G. Security Officer Specialist Supervisor
- H. Security Officer Specialist Manager

**DISTRIBUTION:
AD**