

Drug-Free Workplace Guidelines (November 2015)

The State of Tennessee recognizes the need for each employee to work in a safe and healthy environment free of substance abuse and with persons free from the effects of drugs or alcohol. In addition, the State expects each employee to report to work and to perform his or her duties in a manner which does not jeopardize the health and safety of coworkers and the public. Therefore, it is the State's policy to promote and maintain an alcohol and drug-free workplace. It is the policy of the State that agencies that conduct drug testing on employees, or plan to do so, shall create a policy regarding maintenance of a drug-free workplace.

These guidelines are intended to provide agencies with a tool for creating a drug-free workplace policy. The suggestions provided in these guidelines are designed to protect state employees and ensure consistency across agencies when incorporating drug testing into their mission.

Agency obligations for establishing a drug-free workplace

To the extent permitted by law, agencies may conduct the following types of drug or alcohol testing: job applicant drug and alcohol testing, reasonable-suspicion drug and alcohol testing, routine fitness-for-duty drug testing, follow-up drug testing, and post-accident testing. The policies and procedures regarding drug tests on employees shall be defined by the agency conducting the test.

When establishing drug testing policies and procedures, an agency should ensure that it provides employees with at least sixty (60) days' notice that a drug-free workplace program is being implemented and the effective date of the program. It is suggested that employees receive a copy of the policy statement and sign a consent form acknowledging receipt of the agency's policy.

Each agency's internal policy shall include, at a minimum, the following provisions:

- A listing of which job classifications shall be subject to drug or alcohol testing.
- The types of drug or alcohol testing an employee or applicant may be required to submit to (i.e. reasonable-suspicion), including a list of all drug classes for which the agency may test. The agency shall also include a definition of what each type of drug testing means.

- The consequences of refusing to submit to a drug or alcohol test.
- A general statement concerning confidentiality, including procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications, if the testing process revealed a positive result for the presence of alcohol or drug use.
- Communication encouraging employees to contact the Employee Assistance Program (EAP) to assist in the rehabilitation and treatment of alcohol and drug abuse. The statement should include contact information for EAP and language that an employee may participate in the EAP without jeopardizing his/her employment status. However voluntary participation in EAP does not preclude disciplinary action for violating policy. Referral to the EAP cannot be mandatory unless your agency has a policy in place to support mandated referrals. Information regarding the EAP can be found at <http://www.here4tn.com/>.
- A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within five (5) working days after receiving written notification of the test result; that if an employee's or applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the covered employer; and a person may contest the drug or alcohol test result pursuant to rules adopted by the Department of Labor and Workforce Development.
- Language requesting the employee to inform his or her supervisor or agency human resources office of any criminal drug conviction no later than five (5) calendar days of such conviction. A conviction is a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Pursuant to the Drug-Free Workplace Act (41 U.S.C. § 701 et seq.), an agency receiving federal funding must notify the appropriate federal agency, in writing, within ten (10) calendar days of receiving notice of or otherwise becoming aware of a conviction of unlawful use of a controlled substance. The employing agency must, within thirty (30) calendar days of receiving notice of or becoming aware of a conviction for unlawful use of alcohol or drugs, take appropriate personnel action against the employee.

Records generated for alcohol or drug testing should be maintained for a period of two (2) years from the date of making the record or personnel action involved, whichever occurs later. Records should be separate from personnel file.

Questions regarding these guidelines may be directed to the Office of the General Counsel.