



DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

POLICY 1.05 ALCOHOL AND OTHER DRUGS

APPLICATION:

All Executive Branch employees, both classified and non-classified, including teaching, research and administrative faculty, employees of the Governor's Office, the Office of the Lieutenant Governor, and the Office of the Attorney General.

PURPOSE:

It is the policy of the Commonwealth of Virginia to establish and maintain a work environment free from the adverse effects of alcohol and other drugs to include marijuana and marijuana products, cannabis oil and cannabis products, and to ensure the fair and equitable application of policy requirements. The effects of alcohol and other drugs in the workplace could undermine the productivity of the Commonwealth's workforce and create a serious threat to the welfare and safety of fellow employees and to Virginia's citizens.

Note: For the purposes of this policy, the term marijuana will be inclusive of marijuana products; and the term cannabis will be inclusive of cannabis oil and cannabis products.

POLICY SUMMARY:

This policy provides guidelines for addressing employee's possession, use of, and impairment due to alcohol, marijuana, cannabis and other drugs (lawful or unlawful) in the Commonwealth's workplaces to include state vehicles or alternate work locations while conducting business for the Commonwealth of Virginia.

AUTHORITY & INTERPRETATION:

Title 2.2 of the Code of Virginia

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with §2.2-1201 of the Code of Virginia. The Department of Human Resource Management reserves the right to revise or eliminate this policy.

RELATED POLICIES:

1.60, Standards of Conduct

POLICY HISTORY:

EFFECTIVE DATE	DESCRIPTION
09-16-93	Establish policy.
11-29-06	Policy revised.
10-05-21	Policy revised to comply with legalization of marijuana use in the Code of Virginia eff. 7-1-21. Guide to development of agency-unique drug-testing policies added.



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ADMINISTRATIVE PROCEDURES

PROCEDURES

EMPLOYEE RESPONSIBILITIES

General Provisions	Application
Abide by policy	<ul style="list-style-type: none">• Employees must abide by the Commonwealth of Virginia's Policy on Alcohol and Other Drugs and Policy 1.60, Standards of Conduct.• Employees must also abide by their Agency's supplemental alcohol and drug policies to include those specific to testing.
Report charges/convictions	<p>Employees must notify their supervisors and their Human Resources Office of any:</p> <ul style="list-style-type: none">• Criminal charges or convictions related to alcohol or drug-related conduct occurring in or outside of the workplace, which affect the employee's ability to perform job duties (e.g., driving a state vehicle, operating equipment, direct interaction with children/students, enforcement of laws or regulations, etc.)• Employees must notify their agency's HR and their immediate supervisor of such criminal charges or convictions impacting performance of their duties in writing immediately, but no later than five calendar days afterwards.• An employee's appeal of a conviction does not affect the employee's obligation to report the conviction.
Prescribed Drugs and Over-the-Counter Medications	<ul style="list-style-type: none">• Employees are responsible for consulting with their prescribing physician and/or pharmacist to determine whether any prescribed drugs or over-the-counter medications may affect their ability to safely and effectively perform their job duties.• Employees must notify their supervisor if the use of such products may or does impact their ability to perform their job duties or the safety of the employee, other workers, or the public.• The employee and supervisor must discuss ways to ensure that duties can be performed safely.

General Provisions	Application
Alcohol and Drug Testing	<ul style="list-style-type: none"> • Employees may be required to participate in alcohol and/or drug testing when a supervisor or other designated individual determines that reasonable suspicion exists to suggest that the employee is impaired or under the influence of alcohol or drugs while performing their job duties. • Employees may also be subject to post-accident testing when they cause or contribute to accidents that damage a state vehicle, machinery, equipment, or property and/or result in an injury to themselves or other individuals.
Violations of this policy	<p>The following constitutes a violation of this policy:</p> <ul style="list-style-type: none"> • Use or possession of alcohol, marijuana, and cannabis in the workplace. • The unlawful or unauthorized manufacture, distribution, dispensation, possession, or use of other drugs in the workplace. • Impairment in the workplace from the use of alcohol, marijuana, cannabis, or other drugs, except from the use of drugs for legitimate medical purposes. • Criminal conviction for a violation of any criminal drug law, based upon conduct occurring either on or off the workplace; or violation of any alcoholic beverage control law, cannabis control law, or other laws that govern driving while intoxicated or impaired; and that is impactful to the employee's ability to perform essential job duties. • An employee's failure to report criminal charges and convictions of any alcohol or drug-related offense that may impact performance of their duties to their supervisor and Human Resources as required. • An employee's failure or refusal to cooperate with their agency's alcohol or drug testing policy/ procedures.
Consequences of Policy Violations	<ul style="list-style-type: none"> • Employees are encouraged to seek help for alcohol and/or drug problems. However, any employee who commits any violation, as described in the section above, shall be subject to the full range of disciplinary actions, including discharge, in accordance with Policy 1.60, Standards of Conduct. • Employees may be required to complete an appropriate substance abuse assistance program and/or undergo additional testing as a condition of continued employment. • The severity of disciplinary action for violations of this policy shall be determined on a case-by-case basis. • Mitigating circumstances that may be considered in determining the appropriate discipline include whether the employee voluntarily admits to, and seeks assistance for, an alcohol or other drug problem.

AGENCY RESPONSIBILITIES

General Provisions	Application
Fair application of policy	<ul style="list-style-type: none"> The Commonwealth of Virginia is dedicated to assuring fair and equitable application of this policy. Therefore, management shall use and apply all aspects of this policy in an unbiased and impartial manner.
Provide employees with a copy of the summary of policy or, upon request, a copy of entire policy	<ul style="list-style-type: none"> Agencies must provide to every employee a copy of the Summary of the Commonwealth of Virginia's Policy on Alcoholic and Other Drugs, or a similar summary receipt that also acknowledges any Agency's supplemental policy, and upon an employee's request, a copy of the DHRM policy and any Agency's supplemental policy. Employees shall be required to sign a form indicating their receipt of either the Summary or the entire policy. This form shall be kept in the employee's personnel file.
Posting the policy(ies)	<ul style="list-style-type: none"> Agencies must post a copy of this policy and any supplemental Agency policies on Alcohol and Other Drugs in a conspicuous place or places in the workplace, to include virtual links.
Training of agency representatives and supervisors	<ul style="list-style-type: none"> The Department of Human Resource Management shall provide instruction on this policy, noting: <ul style="list-style-type: none"> how to recognize behaviors that may indicate impairment from alcohol and/or other drug use; appropriate referral techniques; and resources for rehabilitation for alcohol and other drug use.
Ongoing employee education	<p>Agencies must inform employees and supervisors, on an ongoing basis, of:</p> <ul style="list-style-type: none"> the dangers of alcohol and/or other drug use or abuse in the workplace; available counseling for alcohol and/or other drug use; available rehabilitation and employee assistance programs; any Agency supplemental policies to include alcohol and drug testing requirements; and penalties that may be imposed for policy violations.
Appropriate action when notified of criminal alcohol or drug convictions	<ul style="list-style-type: none"> Upon receiving notice of an employee's criminal conviction, as specified in the Reports convictions section of this policy or of any other violation of this policy, agency management must promptly initiate appropriate actions in accordance with DHRM's Standards of Conduct policy and respective Agency policies: <ul style="list-style-type: none"> take appropriate disciplinary action against the employee; and/or require the employee to participate satisfactorily in a substance abuse rehabilitation program for alcohol and/or drug use;

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	<ul style="list-style-type: none"> • employee's satisfactory participation in a rehabilitation program shall be determined by management after: <ul style="list-style-type: none"> ○ the employee's presentation of adequate documentation (the agency has discretion to determine what documentation will be required); and/or ○ consultation with the Employee Assistance Program (EAP) or with any rehabilitation program, provided that the employee gives their consent when the consultation is to be with the rehabilitation program that treated the employee. • For employees covered by covered by the federal US Code Title 41 Chapter 81, <u>Drug Free Workplace Act</u> who are convicted of a criminal drug law violation occurring in the workplace, the agency shall notify the appropriate federal contracting or granting agency within ten calendar days after receiving notice. • Agencies are strongly encouraged to consult with legal counsel prior to taking actions specific to alcohol and/or drug-related convictions or following an administrative investigation of actions leading to criminal charges.
Require contractor compliance	Management shall ensure that agency contractors certify that their employees working on state property or with state employees have been informed of this policy and contractors must commit to taking appropriate action for violations.
Confidentiality and Maintenance of Records	All records and information concerning personnel actions related to this policy shall remain confidential and shall be disclosed only with the employee's permission, or when the agency determines that disclosure is necessary to ensure safe operations. Disclosure and recordkeeping must comply with DHRM's personnel recordkeeping Policies 6.05 and 6.10.

REHABILITATION PROGRAMS

General Provisions	Application
Assistance from management	<ul style="list-style-type: none"> • Employees with problems related to the use of alcohol, marijuana, cannabis, or other drugs are encouraged to seek counseling or other rehabilitative treatment. • Management is encouraged to assist employees seeking counseling or other treatment and should consult with the Employee Assistance Program (EAP) before referring an eligible employee to a substance abuse rehabilitation program.
Assistance from EAP	<ul style="list-style-type: none"> • Eligible employees are encouraged to consult with the EAP to determine appropriate rehabilitation programs.

General Provisions	Application
	<ul style="list-style-type: none"> • The EAP can provide information regarding health insurance coverage for rehabilitation programs. Not all programs are licensed, accredited or covered under employees' health insurance coverage. • If the employee does not participate in a DHRM health plan having an EAP, the EAP may assist the employee in identifying other treatment resources.
Leaves of absence to seek rehabilitation	<ul style="list-style-type: none"> • Employees may request leave from work to participate in treatment programs for alcohol and/or other drug use addictions. • Eligible employees may request paid or unpaid leave under the Family Medical Leave Act to include the use of their sick leave if they participate in the Traditional Sick Leave program; or VSDP Family/Personal Leave [VSDP Personal Leave, VSDP Sick Leave, or VSDP Short-Term Disability if they participate in the Virginia Sickness and Disability Program; and annual [vacation], compensatory, leave or recognition leave. • Eligible employees may also request reasonable accommodations. • Agencies must inform employees of the impact that a leave of absence may have on their benefits and leave.

AGENCY POLICIES

General Provisions	Application
Agency-Specific Alcohol and Drug Testing	<ul style="list-style-type: none"> • Some employees, depending on their job duties, and applicable law, regulations, or memoranda of agreement including, but not limited to, Federal Motor Carrier Safety Administration, U.S. Coast Guard, Federal Aviation Administration, or other federal or regulatory entities, may be subject to the following alcohol and/or drug tests in addition to those for reasonable suspicion: <ul style="list-style-type: none"> • Pre-employment • Post-accident • Random • Return-to-duty • Follow-up • Agencies with positions that participate in federally mandated or other alcohol and drug testing must comply with employee rehabilitation requirements in response to an employee's alcohol or drug testing violations and incorporate the best practices included in the Policy Guide for Developing an Alcohol and Drug Testing Policy.
Content of policies	<ul style="list-style-type: none"> • Agencies may promulgate supplemental alcohol and other drugs policies as needed to comply with federal or state law, and that more strictly regulate alcohol,

General Provisions	Application
	<p>marijuana, cannabis, and other drugs in the workplace provided such policies are consistent with this policy.</p> <ul style="list-style-type: none"> • Agency supplemental policies shall identify employee roles that are subject to federally mandated alcohol and drug testing, and/or roles which are directly responsible for the safety, health or well-being of the agency’s stakeholders, and customers; or the Commonwealth’s infrastructure. • Agencies that require alcohol and drug testing shall: <ul style="list-style-type: none"> ○ include the required drug testing protocols; ○ identify the panel of drugs included in the testing; and ○ outline the testing appeals process in their supplemental alcohol and drug testing policy. • See the Policy Guide – Developing an Alcohol and Drug-Testing Policy.
Approval and Implementation of Agency drug-testing policies	<ul style="list-style-type: none"> • The Office of the Attorney General must approve supplemental agency policies before their implementation. • Agencies are strongly encouraged to seek legal counsel prior to addressing policy violations.

GLOSSARY

- Alcohol Any product defined as such in the Alcoholic Beverage Control Act, Code of Virginia § 4.1-100.
- Cannabis Oil Any formulation of processed Cannabis plant extract, which may include oil from industrial hemp extract acquired by a pharmaceutical processor pursuant to § 54.1-3442.6, or a dilution of the resin of the Cannabis plant that contains at least five milligrams of cannabidiol (CBD) or tetrahydrocannabinolic acid (THC-A) and no more than 10 milligrams of delta-9-tetrahydrocannabinol per dose. "Cannabis oil" does not include industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or processed in compliance with state or federal law, unless it has been acquired and formulated with cannabis plant extract by a pharmaceutical processor.
- Cannabis Product A product that is (i) produced by a pharmaceutical processor, registered with the Board, and compliant with testing requirements and (ii) composed of cannabis oil or botanical cannabis as defined in the Drug Control Act, Code of Virginia § 54.1-3408.3.
- Conviction A finding of guilty (including a plea of guilty or nolo contendere), or imposition of sentence, or both, by any judicial body charged with the responsibility of determining

violations of the federal or state criminal drug laws, alcoholic beverage control laws, or laws that govern driving while intoxicated or impaired.

Criminal Charges

An arrest or indictment by law enforcement authorities against an employee for the commission of a criminal offense.

Criminal Drug Law

Any criminal law governing the manufacture, distribution, dispensation, use, or possession of any controlled drug.

Controlled Drug

Any substance defined as such in the [Drug Control Act](#) of the Code of Virginia Drug Control Act, Chapter 34, Title 54.1 and whose manufacture, distribution, dispensation, use, or possession is controlled by law.

Employee Assistance Program (EAP)

A confidential assessment, referral, and short-term problem-solving service available to eligible employees and family members. Enrollment in the EAP is automatic as part of the health plan coverage. The EAP helps participants deal with problems affecting personal and work life, such as:

- conflicts within the family and workplace,
- personal and emotional concerns,
- alcohol and substance abuse,
- financial and legal problems,
- elder and child care, and
- career concerns and other challenges.

Federal Drug Free Workplace Acts of 1988 and 1998

Federal laws and regulations applicable to any agencies accepting federal grants and/or serving as a federal contractor. Such agencies are required to implement and follow policies promoting drug-free work places and report convictions occurring as a result of workplace conduct to the respective federal sourcing agency in accordance with the terms and conditions of the contract or grant agreement.

Other Drug

Any substance other than alcohol that may be taken into the body and may impair mental faculties and/or physical performance. Includes prescribed and over the counter medications.

Marijuana

For the purpose of this policy, any part of a plant of the genus Cannabis, whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, its resin, or any extract containing tetrahydrocannabinol (THC) and may be smoked, vaped, or ingested. See Code of Virginia §4.1-600 et seq.

Marijuana Products

"Marijuana products" means (i) products that are composed of marijuana and other ingredients and are intended for use or consumption, ointments, and tinctures or (ii) marijuana concentrate.

Workplace

Any state-owned or leased property, or any site where and when state employees are performing official duties to include state vehicles/equipment and/or alternate work locations to include approved telework locations.