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## **Policy Guide – Developing an Alcohol and Drug-Testing Policy**

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**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.

**BACKGROUND:** Not all agencies need a drug-testing policy, but for those that do, below are items that may be included in a policy. There should be a clear nexus between the agency's mission and the identification of positions subject to drug-testing. There are federal/state requirements for licensure for certain occupations, and work activities. For example, pilots, ferry operators, Commercial Driver's License holders, etc. must participate in random drug and alcohol testing and may also be tested for other specified circumstances. Those positions responsible for the care, treatment, and custody of clients, wards, offenders, etc., are obligated to be fit for duty while overseeing those entrusted to their care. The rationale for implementing the full range of drug-testing for specific positions should always focus on the job-related need. Within an agency, certain designated positions may be subject to alcohol/drug testing while others are not, depending upon the nature of the work assigned.

### **CONSIDERATIONS AND STEPS:**

#### **Developing an Agency Drug-Testing Policy**

- If agencies decide to or are federally mandated to conduct alcohol and drug-testing, they must develop an alcohol and drug-testing policy and procedures.
- Such policy should outline the conditions under which such testing will occur and designate to which positions/employees the alcohol and drug-testing will apply.

#### **Items to consider in establishing an Agency alcohol and drug-testing policy**

##### ***Review/Approval of Agency alcohol and drug-testing policy***

- Seek review by the Department of Human Management and approval by the Office of the Attorney General or appropriate legal counsel.

##### ***Costs associated with drug-testing program***

- This is a business operational expense for agencies.
- Identify a funding source.
- Inform employees or applicants that the agency will assume the costs associated with alcohol and drug testing and related appeals.
- Frequency and the complexity of the testing will drive costs as will the targeted population.

##### ***Confidentiality***

- Protect confidentiality of the tests and related documentation.
- Designate to whom results are submitted and how such information is shared within the agency.
- Maintain documentation in accordance with DHRM's Policy 6.05 and Policy 6.10 regarding access to and the dispensation of drug and alcohol testing records and associated actions.



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### ***Employees subject to alcohol and drug testing***

- Determine the criteria for employees who will be tested. For example, those who perform dangerous or safety-sensitive jobs or those entrusted with custodial care or services.
- Notify those affected employees and potential candidates for these positions in the job announcements, during the interview process, in the offer letter and in the Employee Work Profile.
- Current employees and new hires must attest that they have received, read, and understand the drug-testing policy.

### ***Conducting Testing for Alcohol and Drugs***

- Contract with accredited collection and laboratory services facilities. Ensure a Medical Review Officer is available to interpret and communicate results.
- Services should be available statewide if impacted employees work in various locations.
- Ensure a chain of custody is maintained and split specimens are retained for confirmation of positive results. Laboratory procedures and agency procedures must ensure that chain of custody is maintained.
- Identify the location of all testing sites.
- If your agency has 24/7 operations, ensure that testing collection sites are available to accommodate your operations.

### ***Frequency and Timing of Tests***

- Identify the types of tests the agency will require.
  - Random testing, pre-employment testing, post-accident testing, or reasonable suspicion testing based upon observable behaviors.
- Develop internal procedures to ensure safe and timely transportation of an impaired employee to the test site.
- Specify a timeframe the employee must meet in response to being instructed to report for alcohol and/or drug testing. For example, within sixty minutes from time of notification to arrival and check in at the assigned testing site.

### ***Positive test results***

- Pre-employment – applicant is not hired and the job offer is rescinded. This may not be applicable for positions that are not mandated by Federal alcohol and drug testing regulations.
- Current classified, non-probationary employees - Standards of Conduct will be applied and required participation in rehabilitation if the employee seeks treatment.
- Agency policy will determine the appropriate actions taken for Non-covered employees to include probationary, wage/hourly, faculty/university staff, and at-will employees.

### ***Appeal of positive test***

- Outline the Appeal procedure to use if the employee's or applicant's drug test is positive. Accredited labs will test the split specimen retained from the original collection. Employees may request a review of testing results by another accredited laboratory (Substance Abuse and Mental Health Administration or SAMHSA accredited facilities) at the employee's expense.



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### ***Refusal to take test***

- Pre-employment - job offered rescinded.
- Current classified, non-probationary employee - Standards of Conduct will be applied.
- Agency policy will determine the appropriate actions for non-covered employees.

### ***Drugs covered by the test***

- Identify which drugs will be tested and the parameters/thresholds to be identified in the results.
- Drug information can be obtained from the Drug Control Act of Virginia in the Code of Virginia at § 54.1-3401 or schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) of the US Code.

### ***Applicants***

- Requirement for pre-employment drug test and subsequent testing should be included in the recruitment notice.
- Offer letter should include alcohol and drug testing as a Condition of Employment if required.

**NOTE:** Marijuana and related products may remain in one's system for an extended period of time. Legal impairment levels are not yet established for standard drug testing procedures.

### **SOME RELATED LAWS:**

- Federal Drug Free Workplace Act of 1988
- Omnibus Transportation and Employee Testing Act of 1991, and Implementing Regulations
- U.S. Department of Transportation (DOT) Testing Procedures 49 CFR Part 382 et al, 49 CFR Part 40 et al., and Implementing Regulations
- Federal Controlled Substances Act of 1970 and Implementing Regulations
- Federal Department of Health and Human Services – Mandatory Guidelines for Federal Workplace Drug Testing Programs
- Federal Drug Free Schools and Communities Act
- Virginia Drug Control Act § 54.1-3400 et seq.
- Cannabis Control Act Sub-Title II §4.1-600 et seq.
- Alcoholic Beverage Control Act (Title 4.1 Code of Virginia)
- Federal Brady Handgun Violence Prevention Act of 1993 (Brady Act) as codified at 18 U.S.C. § 922(g)(3)