

DRUG-FREE WORKPLACE/EMPLOYEE DRUG AND  
ALCOHOL PREVENTION  
(In compliance with the Federal Drug Free Workplace Act of 1988;  
Arkansas Executive Order 89-2.)

I. Policy:

The Arkansas Department of Health seeks to ensure prevention of the use of illegal drugs or alcohol, and/or abuse of legal drugs, by employees and volunteers in the workplace.

The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in a state agency's workplace is prohibited. Any employees violating this policy will be subject to discipline up to and including termination.

The Arkansas Department of Health does not differentiate between drug users and drug suppliers or sellers. Any employee who gives, or in any way transfers, a controlled substance to another person or sells or manufactures a controlled substance while on the job or on the Agency's premises is subject to discipline up to and including termination.

All Department of Health (ADH) employees and volunteers are prohibited from using or possessing controlled substances or alcohol or working with the presence of alcohol or illegal drugs in the employee's body, or abusing legal drugs, while on duty. Abusing legal drugs includes using drugs prescribed for another person. Legal drugs are defined as medications prescribed by a licensed physician or medical facility for an employee, volunteer or another person. Employees who engage in drug or alcohol abuse face the risk of termination and the forfeiture of worker's compensation medical and indemnity benefits. Volunteers who engage in drug or alcohol abuse face the risk of termination of volunteer employment.

All employees and volunteers are subject to the provisions of this policy when engaged in the following activities:

- Conducting ADH business, whether on or off ADH property.
- On ADH property at any time, including parking lots, whether leased or owned by ADH.
- Driving or riding as a passenger in an ADH vehicle.
- Assigned to on-call status, required to remain available by telephone or pocket pager, in order to be called in to work.

This policy will be strictly applied according to its terms. No terms or conditions not appearing under this policy apply. For example, no Administrative Review is required to implement disciplinary action pursuant to this policy.

All data, information, and results related to employee drug and alcohol testing are confidential. Disclosure of information will only be to those individuals whose official business duties necessitate disclosure or as required by law.

Supervisors are responsible for the implementation of this policy. Human Resources is responsible for ensuring the Agency's compliance with the policy.

### **Disclaimer**

Nothing in this policy will alter the employment-at-will relationship between the employees and ADH. Any Agency error that is trivial, formal, or merely academic and does not prejudice the substantive rights of an affected party will be deemed harmless error and will not be grounds for overturning the Agency decision.

The following three levels of drug testing will be used:

- Pre-Employment: All persons selected for new employment or a change in employment within ADH, including volunteers' employment, must submit to a drug test as a precondition of employment. All hiring decisions are contingent on the selectee passing the drug test. This applies to current ADH employees applying for different positions, as well as volunteers and external applicants. Note: Employees involved in administrative moves will not be subject to drug testing.
- Reasonable Cause: All employees, including volunteers, are subject to reasonable cause drug and alcohol screening.
- Random: The Agency reserves the right to randomly test all employees and volunteers in a safety-sensitive position as a condition of employment.

Each employee is required by law to inform the Agency within five days after he/she is convicted for violation of any federal or state criminal drug statute where such violation occurred on the Agency's premises. A conviction means a finding of guilt, including plea of nolo contendere, or the imposition of a sentence by a judge or jury in any federal court, state court, or other court of competent jurisdiction.

The Arkansas Department of Health will notify the Federal Funding Agency of the conviction of any employee for drug use or abuse who is employed in a position using federal funds or a federal grant within ten days of receiving notice of the conviction from the employer or otherwise receiving actual notice of such conviction.

If an employee is convicted of violating any criminal drug statute while in the workplace, he/she will be subject to discipline up to and including termination. Alternatively, the Agency may require the employee to successfully complete a drug abuse program sponsored by an approved private or governmental institution.

## **Definitions**

Positive Drug Test Result - A test result which indicates the presence of an illegal drug, or a legal drug prescribed for another person, a controlled substance, alcohol or abuse of a legal drug prescribed for the employee or volunteer; also, an indication that the sample has been tampered with in any way or that the selectee has attempted to falsify the test results, including the use of masking agents or chemicals.

Legal Drugs - Medications prescribed by a licensed physician or medical facility for an employee, volunteer or another person.

Negative Drug Test Result - A test result which does not indicate the presence of any drugs, legal or illegal, or alcohol.

Controlled Substance - Any drug listed in 21 U.S. Code, Section 812. Generally, these are drugs that have a high potential for abuse. Controlled substances include, but are not limited to, marijuana; stimulants like amphetamines, "crack," and cocaine; depressants like barbiturates; analgesics like heroin and opium; and hallucinogens like Ecstasy and LSD. They also include "legal" drugs that are not prescribed by a licensed physician.

Conviction - A finding of guilt, including plea of nolo contendere, or the imposition of a sentence by a judge or jury in any federal court, state court, or other court of competent jurisdiction.

Safety-Sensitive Position – Any position involving a safety sensitive function pursuant to federal regulations governing drug and alcohol testing adopted by the U. S. Department of Transportation or any other rules, guidelines, or regulations adopted by any other federal or state agency. It also means any position designated in writing by ADH in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety, including without limitation a position that requires any of the following activities:

- (a) Carrying a firearm;
- (b) Performing life-threatening procedures;
- (c) Working with confidential information or documents pertaining to criminal investigations; or
- (d) Working with hazardous or flammable materials, controlled substances, food, or medicine; or in which a lapse of attention could result in injury, illness, or death, including without limitation a position that includes the operating, repairing, maintaining, or monitoring of heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles as part of the job duties.

## **Pre-Employment Drug Testing Process**

All ADH job advertisements will include a statement advising applicants that they will be required to submit to drug and alcohol testing after a conditional offer of employment. All applicants selected for employment (includes applicants for temporary, emergency, extra-help and volunteer positions) will be notified in writing on a Pre-Employment Drug Testing Process Applicant Notice (HR-1956) at the time of interview that an offer of employment is conditional upon passing a pre-employment drug test. The written notifications will inform applicants of the consequences of (1) failing to appear for testing, and/or (2) a test indicating positive for drugs and alcohol.

Upon conditional selection of an individual for employment, including volunteer employment, the hiring official must notify the selectee via telephone and letter that the selectee is conditionally selected for employment contingent of his/her successfully passing a pre-employment drug test, and must provide instructions for taking the test.

ADH will select the drug testing site and pay for the initial drug test.

Within 48 hours of the initial notification, the selectee must pick up a Chain of Custody Form, take the form to the testing location, and provide a sample for testing. **Keeping in mind that some testing locations are closed on weekends and holidays, the hiring official will not make the initial notification on the last workday before a weekend, holiday, or scheduled time off.**

If extenuating circumstances beyond the selectee's control prevent the selectee from providing a sample within 48 hours, the selectee must request an extension within 48 hours of the initial notification of selection. Scheduling or transportation problems experienced by the selectee are **NOT** extenuating circumstances. The decision of whether to grant the extension will be made by the hiring supervisor. The supervisor must notify the selectee of the decision verbally within one working day, followed by written notification.

The following will result in the selectee, whether internal or external applicant, being banned from applying for employment, including volunteer employment, with ADH for two years:

- If the drug test is not performed within 48 hours, unless an extension is granted.
- If the drug test is positive. A test is considered to be positive if the test results indicate that the sample has been tampered with in any way or that the selectee has attempted to falsify the test results, including the use of masking agents of chemicals.
- If the selectee fails to appear for drug testing without notifying the hiring official that he/she is declining the position.

This ban applies to all drug tests, not exclusively pre-employment drug tests.

Drug test results are forwarded directly to Human Resources/Employee Relations Section. HR/Employee Relations Section will notify the hiring supervisor whether the applicant is eligible or not eligible for hiring.

If the results of the drug test are negative for controlled substances, the hiring supervisor will notify the selectee of his or her final selection and ask the selectee to complete the necessary documents for employment.

If the results of the drug test are positive for controlled substances, the selectee will be notified in writing of the results and will not be considered further for the position. Internal applicants will be disciplined in accordance with this policy. External applicants will not be eligible for employment, including volunteer employment, with ADH until the following conditions have been met:

- The selectee has successfully completed a supervised drug rehabilitation program that has been approved by ADH.
- A two-year waiting period has expired.
- The selectee passes a new employee drug screening.
- The selectee agrees to random drug screening throughout his/her employment with ADH.

If the selectee disagrees with the findings of the drug test, the selectee may arrange to have a portion of the original sample retested at a laboratory certified by the National Institute of Drug Abuse. The selectee must arrange and pay for the second test. The second test must be performed within five working days after learning the results of the first test. If the second test is negative for the presence of drugs or alcohol, the hiring supervisor may either accept the second result or have a third test performed at the Agency's expense. The results of the third test will be considered conclusive.

No applicant will be placed on the payroll before successful completion of the pre-employment drug screening, except as approved by the Agency Director/designee. Placement of any applicant on the payroll by approval of the Agency Director/designee before the successful completion of the pre-employment drug screening will be conditional contingent on the applicant successfully completing the pre-employment drug screening.

### **Reasonable Cause Drug Testing Process**

ADH may require a blood test, urinalysis, or other drug/alcohol screening for employees any time there is reasonable cause to suspect the employee is in violation of this policy. Reasonable cause to suspect a violation of this policy may be established by any of the following:

- Observed impairment of job performance
- Uncharacteristic or erratic behavior
- The employee's attendance changes, e.g., habitual absenteeism
- Direct observation by a manager, supervisor, or other ADH employee of drug or alcohol use or possession during working hours or while on ADH premises
- A workplace accident or an accident involving an ADH vehicle when the accident results in personal injury
- Physical symptoms indicative of drug or alcohol use, e.g., slurred speech, tremors, drowsiness, pupils dilated or constricted, irritability, hyperactivity, general motor impairment, disorientation, or the smell of alcohol on the breath

- Arrest or conviction for a drug or alcohol related offense or the identification of an employee as the subject of a criminal investigation into illegal drug possession, use, or trafficking
- Evidence the employee has tampered with a previous drug or alcohol test
- Evidence drugs have been tampered with or are missing from a unit or designated area to which the employee has access
- Any other facts or circumstances which would cause a reasonable person to believe that the employee is in possession of, or under the influence of drugs or alcohol

Upon establishing reasonable cause, the employee's (or volunteer's) supervisor will promptly detail in writing the circumstances that formed the basis of the determination that reasonable suspicion existed to warrant the testing. A written record will be made of the observation leading to a controlled substances reasonable suspicion test within 24 hours of the observed behavior. Original documentation will be kept for at least 1 year. A copy of the documentation will be given to the employee (or volunteer) upon request. The employee (or volunteer) must be ordered to report for drug and alcohol testing.

### **Random Drug Testing Process**

The Arkansas Department of Health reserves the right that all employees, including volunteers, are subject to random drug testing as a condition of his/her employment in a safety-sensitive position. Employees in a safety-sensitive position, including volunteers, may be randomly selected at intervals determined by ADH. Once an employee is selected for testing, the employee must report for drug testing procedures.

### **Random/Reasonable Cause Testing Compliance**

An employee, including volunteers, selected under random or reasonable cause for drug or alcohol testing **must report to the designated testing site within four hours of notification.** The employee or volunteer is subject to random or reasonable cause testing only on scheduled workdays. An employee or volunteer failing to submit to testing within four hours of notification will be terminated. If the employee or volunteer tampers with the sample or in any way falsifies test results, including the use of masking agents or chemicals, he/she will be terminated and will not be eligible for rehire as an employee or volunteer.

If the employee or volunteer is to be tested at a location other than the employee's work site, supervisors will be responsible for arranging transportation to the test site in cases of reasonable cause testing.

### **Failure to Provide Sample**

Normal drug screening uses a urinalysis test. If the employee, volunteer or applicant is unable to provide a sample when he/she reports to the sampling site, the person to be tested may opt to provide a blood sample or hair sample. If blood or hair sample is provided, the cost of testing will be at the employee, volunteer, or applicant's own expense. Failure to provide a urine, blood, or hair sample will have the same consequences as testing positive for drugs or alcohol.

### **Employee/Volunteer/Applicant Disagrees with Test Results**

If an employee, volunteer or applicant disagrees with the findings of the drug or alcohol test, he/she may arrange to have a portion of the original sample retested at a laboratory certified by the National Institute of Drug Abuse. The employee, volunteer or applicant will arrange and pay for the second test. The second test must be performed within five working days of learning the results of the first test. If the second test is negative for the presence of drugs or alcohol, the supervisor may either accept the second test result or have a third test performed at the Agency's expense. The results of the third test will be considered conclusive.

### **Disciplinary Actions for Violations**

The supervisor of an employee or volunteer who tests positive for drugs or alcohol will be notified, and the employee or volunteer must abide by the following terms. Note: Other terms and conditions may apply under the Nurse Practice Act and/or any other state licensing board. (See Appendices in the Patient Care Services Volume for the Arkansas State Board of Nursing Scopes of Practice.)

#### **First Offense**

- Up to ten days suspension without pay. Factors to consider include a pattern of behavior including use of a controlled substance at work or on weekends.
- Sign and adhere to a Return to Work Agreement (HR-1958) to refrain from all illegal drug use. Failure to sign or fulfill the terms of this agreement is a second offense.
- Enroll in the State of Arkansas Employee Assistance Program (EAP), request substance abuse services, and fully participate in all offered services including services required but not paid by EAP. Contact the EAP before returning to work from the suspension. Failure to complete any of the above is a second offense. Note: Volunteers may not be eligible to participate in the State of Arkansas Employee Assistance Program (EAP) and will therefore be required to enroll in a substance abuse program approved by the Arkansas Department of Health and fully participate in all offered services at the volunteer's expense.

- Participating in mandatory EAP or approved substance abuse program random interval drug screening for up to one year or more. Failure to take these drug tests at the time determined by EAP or the approved substance abuse program is a second offense. The employee may be required to pay the cost of these drug tests.
- Obtaining EAP or approved substance abuse program certification that the employee or volunteer has successfully completed a substance abuse program designated by EAP. EAP notification of program non-compliance is a second offense.

### **Second Offense**

- Second offense includes the failure to meet any condition imposed as a result of a first offense.
- Any employee or volunteer committing a second offense under this policy will be immediately terminated. A terminated employee forfeits eligibility for worker' compensation, as well as medical and indemnity benefits.
- Terminated employees and volunteers will be eligible for re-employment consideration only after all of the following conditions are met:
  - Successful completion of a supervised drug rehabilitation program approved by ADH;
  - A two-year waiting period has expired; and
  - Passes a new employee drug screening.

### **Employee Assistance Program**

EAP is an established program capable of providing problem assessment, short-term counseling, referrals to other providers, follow-up services, and education and training.

If an employee or volunteer, in the course of employment, voluntarily enters EAP or an approved treatment program requesting services related to substance abuse, ADH has the option of not requiring follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two-year period after completion of the program. Advance notice of a follow-up test will not be given to the employee or volunteer to be tested.

ADH will not discharge, discipline, or discriminate against an employee or volunteer solely upon him/her voluntarily seeking treatment for a drug-related or alcohol-related problem, entering a drug or alcohol assistance program for drug-related or alcohol-related problems, or entering a drug or alcohol rehabilitation program, if the employee or volunteer has not previously tested positive for drug or alcohol use.



II. Procedures:

A. Pre-Employment Drug Testing, Including Transfers and Promotions

<u>Responsibility</u>	<u>Action</u>
Hiring Official	Completes Step 1 of Chain of Custody Form and calls selectee to pick up.  Completes the Drug Test Authorization Fax Transmittal (HR-57) and faxes to HR/Employee Relations Section (501-661-2675).
Selectee	Within 48 hours of notification, picks up Chain of Custody Form, reports to testing site, and provides sample.
Official Testing Site	Completes remaining information on Chain of Custody Form, collects specimen, and forwards to laboratory for testing.  Once test results are received from laboratory, makes results available to HR/Employee Relations Section.
HR/Employee Relations Section	Monitors test results.  <b>For Negative Test Results:</b>  Notifies the hiring supervisor by e-mail or fax that the selectee may be hired. Notification will not include actual test results.
Hiring Official	Notifies selectee of his final selection for the position.  Includes the e-mail/fax notification in the hire packet.  <b>For Positive Test Results:</b>
Official Testing Site	Has test reviewed by Medical Review Officer (MRO).

<u>Responsibility</u>	<u>Action</u>
Medical Review Officer	Contacts the applicant for additional information to rule out the possibility of false positive test results.  Within five working days, makes a determination and sends final results to HR/Employee Relations Section.
HR/Employee Relations Section	Notifies hiring of final results.  If results are determined to be negative, follows procedure under "For Negative Test Results."  If results are determined to be positive, notifies hiring official that selectee cannot be hired.
Hiring Official	Notifies selection by letter indicating that he/she had a positive drug test results and is not eligible for employment at ADH for a minimum of 24 months.
HR/Employee Relations Section	Notifies HR/Recruitment that applicant has tested positive for drugs and is not eligible for employment for a minimum of 24 months.

B. Random Drug Testing

Note: The Agency reserves the right to randomly drug test all employees as a condition of employment at intervals determined by the Agency.

<u>Responsibility</u>	<u>Action</u>
HR/Employee Relations Section	Provides a list of all ADH employees to the facility at intervals determined by the Agency.
Official Testing Site	Generates a list of names for random testing. Faxes a copy of this list to HR/Employee Relations Section.  <b>For Off-Site Collection:</b>  Notifies HR/Employee Relations Section of collection site.

<u>Responsibility</u>	<u>Action</u>
HR/Employee Relations Section	Notifies Center Director/designee of the name(s) of employees and volunteers, date, time, and location of site where testing will be conducted.
Center Director/Designee	Notifies immediate supervisor of employee and/or volunteer and provides them with instructions of where selected employee or volunteer is to report for on-site testing.
Immediate Supervisor	Notifies selected employee or volunteer with instructions of when and where to report.
Selected Employee	Reports at appropriate time and place for on-site testing.
Official Testing Site	Completes the Chain of Custody Form.
Center Designee or Supervisor	Authenticates employee or volunteer information on Chain of Custody Form completed by testing facility.
Official Testing Site	Collects specimen sample and sends to the Substance Abuse and Mental Health Services Administration certified laboratory for testing.
<b>For Off-Site Collection:</b>	
HR/Employee Relations Section	Notifies Center Director/designee of the name(s) of employees or volunteers selected for random drug testing.
Center Director/Designee	Notifies immediate supervisor of employee(s) selected for random drug testing.
Immediate Supervisor	Completes Step 1 of the Chain of Custody Form and gives to selected employee(s).  Notifies selected employee(s) and/or volunteers they are to report for a collection specimen within four hours of notification.

<u>Responsibility</u>	<u>Action</u>
Selected Employee	Reports to collection site and provides specimen within four hours of notification.
Official Testing Site	Collects specimen and tests.

**For Test Results:**

	Provides negative test results to HR/Employee Relations Section within 24-48 hours. For positive results, follows same procedures as described under Pre-Employment Testing.
HR/Employee Relations Section	Notifies supervisors and employees of all negative test results.  Notifies Agency Director and Center Director/designee of all positive test results.
Center Director/Designee	Insures that necessary disciplinary actions are taken for all employees who have a positive test results.

C. Reasonable Cause Testing

<u>Responsibility</u>	<u>Action</u>
Immediate or Next Level Supervisor	Upon observing suspect behavior on the part of an employee or volunteer or receiving such a report immediately: <ul style="list-style-type: none"><li>- Contacts another manager or supervisor to observe behavior, if practical.</li><li>- Notifies Manager of HR/Employee Relations Section or Human Resources Director of observations or report.</li></ul> Carefully documents in detail observations, facts, and employee reports collected in the investigation. <u>Note:</u> All documentation <b>MUST BE</b> based on fact – what the supervisor sees, hears, or smells – and not on rumors or memory.

<u>Responsibility</u>	<u>Action</u>
HR/Employee Relations Manager or HR Director	Reviews and analyses all documentation collected by supervisor, participates in investigation, if requested by supervisor or Center Director, and makes recommendation as to whether there is reasonable cause to require a drug test. <u>Notes:</u> 1. Final determination is the responsibility of the supervisor and Center Director/designee. 2. Any action taken both before and after discussion with HR/Employee Relations Manager or Human Resources Director must be detailed in written documentation.
HR/Employee Relations Section or HR Director	Contacts official testing site to request an on-site Breathalyzer Test.
Official Testing Site	Conducts an on-site Breathalyzer Test or notifies HR/Employee Relations Section that the employee or volunteer should be sent to a collection site.
HR/Employee Relations Section	Notifies supervisor of time on-site Breathalyzer Test will be performed or collection site to which employee or volunteer is to be taken.
Supervisor	Ensures that employee or volunteer is available for the Breathalyzer Test or transports employee or volunteer to the nearest collection site. Completes Step 1 of the Chain of Custody Form and takes to collection site.
Employee	Submits for a Breathalyzer Test or provides a blood specimen for testing at collection site.
Official Testing Site	Conducts Breathalyzer Test or collects blood specimen, tests specimen, and provides results to HR/Employee Relations Section.  <u>Note:</u> A positive alcohol test result will be .05.

Responsibility

Action

HR/Employee Relations  
Section

Notifies supervisors and employees and volunteers  
of all negative test results.

Notifies HR Director, Agency Director and Center  
Director/designee or all positive test results.

Center Director/Designee

Insures that necessary disciplinary actions are  
taken for all employees who have a positive test  
result.



**RETURN TO WORK AGREEMENT**

**For Continuation of Employment at the Arkansas Department of Health**

NAME: \_\_\_\_\_

I, the undersigned, agree to refrain from the use of an illegal drug and/or alcohol while employed at the Department of Health. I understand that I will be subject to random drug screens per the State of Arkansas' Employee Assistance Program guidelines for up to one year or more and that I must furnish proof of successful completions of an approved drug rehabilitation program. I understand that a second offense will result in my termination from the Department of Health.

*Please initial each area:*

\_\_\_\_\_ I understand that any noncompliance with the above employment criteria will result in termination.

\_\_\_\_\_ I understand that all expenses for post positive screening and treatment may be my financial responsibility.

\_\_\_\_\_ I understand that any test results indicating further or continued use of illegal drugs will result in termination.

\_\_\_\_\_ I understand that any positive reading that is not an over-the-counter medication or for which I cannot provide a verifiable legal prescription will be viewed as a positive result and will result in termination.

\_\_\_\_\_ I understand that I am being referred to the State of Arkansas' Employee Assistance program, or an Agency approved program if I am a volunteer, and I have been provided with the Employee Assistance Program telephone number.

Comments:

\_\_\_\_\_  
\_\_\_\_\_

I have read and understand the criteria of the Return to Work Agreement for Continuation of Employment.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor

\_\_\_\_\_  
Date