

## The State Contract Series

For use in understanding the state employees' contract

### Appendix M - Drug & Alcohol Testing

#### What is the policy?

Both OCSEA and the state agreed to a drug policy that recognizes that:

- 1) use of drugs and/or alcohol which cause impairment on the job may pose risks to the Employer as well as other employees;
- 2) abuse of drugs and/or alcohol is a treatable illness.

The policy does not change or diminish rights under discipline for just cause in Article 24 or employee assistance programs described in Article 9 and Article 24. What the policy does is strengthen testing procedure protections.

#### Discipline

Bargaining unit members will continue to be encouraged to deal with drug and or alcohol abuse problems through the Employee Assistance Program in Article 9 or through a program currently provided by existing health benefits. There is specific language to protect people from being discriminated against with regard to job security or promotion because of his/her request for help. However, if the problem results in on the job problems, discipline could result under the standards of just cause.

Also note: In the event in which an employee is confirmed by testing (following the appropriate procedures) to be under the influence or using alcohol or other drugs while on duty, the employee may be given the opportunity to enter into and complete a substance abuse program certified by the Ohio Department of Alcohol and Drug Addiction Services, if this is the first time an employee has tested positive, generally within the last 5 years. No discipline shall be imposed in cases where the employee and



the employer have entered into a voluntary Employee Assistance Program Participation Agreement in which the employer agrees to defer discipline as a result of employee participation in the Ohio Employee Assistance Program treatment program. However, 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. Last chance agreements shall not be effective for longer than 5 years. If there are further violations, discipline will be imposed in accordance with Article 24 of the collective bargaining agreement.

An employee who tests positive may be assigned to non-safety sensitive duties. However, no other employee may be displaced for a pick-a-post assignment as a result of that employee's assignment to other duties. If the employee is sent home after notice is received by the Employer that the employee tested positive, the employee shall be placed on administrative leave with pay pending notice of disciplinary action. If the employee does not waive the 72-hour predisciplinary hearing requirement s/he shall be placed on administrative leave without pay and may use any appropriate leave accruals to cover the time off. If the person refuses treatment, just cause standards for discipline would still apply.

Finally if an employee refuses to undergo a properly ordered test, he/she may be subject to discipline for insubordination.

The discipline must be administered in accordance with Article 24. (Continued)

### When can the Employer test

An employee may be required to submit to drug testing when the Employer has reasonable suspicion that the employee is under the influence of drugs or alcohol when he/she comes to work or his/her job performance is impaired by alcohol or drugs while at work. This can mean that a person appears to be under the influence or that his/her job performance is impaired. Examples of this are:

- 1) Aberrant or unusual on duty behavior,
- 2) Physical indications of intoxication,
- 3) Involvement in an on the job accident resulting in personal injury requiring immediate hospitalization or significant (over \$2000) property damage if reasonable suspicion exists

Before jumping to the conclusion of substance abuse, a supervisor is expected to consider alternative explanations for the behavior, such as fatigue, side effect of prescription or over the counter drugs or reaction to fumes or smoke.

Reasonable suspicion must be documented in writing. It also must be supported by one other person besides the person asserting that reasonable suspicion exists. The immediate supervisor of the person asserting that reasonable suspicion exists must also be contacted to confirm a test is warranted based on the circumstances.

Finally, the written documentation must be presented to the employee and the agency head as soon as possible. A copy of the written documentation will only be released to individuals designated by the affected employee.

### Testing for Employees Performing Safety Sensitive Functions

Testing of employees who perform safety sensitive functions is required by federal law and regulation. The following classifications are considered to be safety sensitive positions. Employees in these classifications shall be subject to random testing as described above.

#### **B.U. CLASS # TITLE**

4	44213	ACTIVITY THERAPY SPECIALIST 1
4	44214	ACTIVITY THERAPY SPECIALIST 2
6	65312	ADVANCED EMERGENCY MEDICAL TECHNICIAN -AMBULANCE
6	54211	AIRCRAFT ATTENDANT
6	30762	AIRCRAFT MECHANIC 2
6	54221	AIRCRAFT MECHANIC TECHNICIAN
14	54231	AIRCRAFT PILOT 1
14	54232	AIRCRAFT PILOT 2
7	21581	AMUSEMENT RIDE AND GAME INSPECTOR 1
7	21582	AMUSEMENT RIDE AND GAME INSPECTOR 2
7	21583	AMUSEMENT RIDE AND GAME LEAD INSPECTOR
7	26531	ARSON INVESTIGATORS
7	24941	AVIATION SPECIALIST 1
7	24942	AVIATION SPECIALIST 2
7	24121	BOILER INSPECTOR
6	54541	BOILER OPERATOR 1
6	54542	BOILER OPERATOR 2
7	24421	BREATH ALCOHOL TESTING INSPECTOR
7	24110	BUILDING INSPECTOR 1
3	6531	CORRECTION OFFICER

**B.U. CLASS # TITLE**

13	86111	CRIMINALIST
6	54421	DREDGE OPERATOR 1
7	24341	CUSTOMER SERVICE SPECIALIST 1 PUBLIC SAFETY CUSTOMER SERVICE CENTER ONLY
7	24342	CUSTOMER SERVICE SPECIALIST 2 PUBLIC SAFETY CUSTOMER SERVICE CENTER ONLY
6	54422	DREDGE OPERATOR 2
7	24332	DRIVER'S LICENSE EXAMINER 2 (LEAD WORKER)
7	24331	DRIVER'S LICENSE EXAMINER 1
7	24332	DRIVER'S LICENSE EXAMINER 2 (CDL)
7	24131	ELECTRICAL INSPECTOR
7	24145	ELEVATOR INSPECTOR
7	24140	ELEVATOR INSPECTOR TRAINEE
4	65311	EMERGENCY MEDICAL TECHNICIAN-AMBULANCE
13	86150	EVIDENCE INTAKE TECHNICIAN
7	26521	FIRE SAFETY INSPECTOR
4	44211	GENERAL ACTIVITIES THERAPIST 1
4	44212	GENERAL ACTIVITIES THERAPIST 2
7	33343	HAZARDOUS MATERIALS COORDINATOR
7	23161	HAZARDOUS MATERIALS INVESTIGATION SPECIALIST 1
7	23162	HAZARDOUS MATERIALS INVESTIGATION SPECIALIST 2
7	24151	HIGH PRESSURE PIPING INSPECTOR
4	44111	HOSPITAL AIDES
7	26211	INVESTIGATOR (ONLY) IN THE LOTTERY COMMISSION AND THE DEPARTMENT OF PUBLIC SAFETY PRIVATE INVESTIGATOR AND SECURITY GUARD SECTION
6	22551	LOCK AREA TECHNICIAN
7	21541	MEDICAL BOARD INVESTIGATOR
7	23111	MOTOR CARRIER ENFORCEMENT INSPECTORS
7	24123	NUCLEAR BOILER INSPECTOR
4	44310	OCCUPATIONAL THERAPY ASSISTANT
3	44141	PSYCHIATRIC ATTENDANT
7	23181	PUBLIC UTILITIES GAS PIPELINE SAFETY COORDINATOR INVESTIGATOR
7	23311	RAILROAD INSPECTOR 1
7	23312	RAILROAD INSPECTOR 2
7	23313	RAILROAD INSPECTOR 3
4	44112	THERAPEUTIC PROGRAM WORKER
3	46611	YOUTH LEADER (BLIND/DEAF SCHOOL)

Testing for new classifications listed will not commence until such time as employees are provided notice and training. Safety sensitive functions include the following:

- 1) All time spent driving a commercial motor vehicle
- 2) All time spent on employer or public property waiting to be dispatched,

unless the driver has been relieved from duty by the employer

- 3) All time (other than driving time) in or on any commercial vehicle
- 4) All time spent inspecting, servicing, or reconditioning any commercial vehicle at any time

- 5) All time spent loading or unloading a vehicle, remaining in readiness to operate a commercial vehicle or giving receipts for shipments loaded or unloaded
- 6) All time spent repairing, obtaining assistance for or standing by a disabled vehicle

A commercial motor vehicle includes any of the following vehicles:

- 1) A vehicle with a gross combination rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight rating of 10,000 pounds or
- 2) A vehicle with a gross vehicle weight rating of 26,001 or more pounds or
- 3) A vehicle that is designed to transport 16 or more passengers including the driver, or
- 4) A vehicle that is of any size and is used to transport hazardous materials as defined by the Hazardous Materials Transportation Act.

Employees, who perform safety sensitive duties, are subject to the following types of tests:

- 1) Pre-employment -- this includes testing prior to promotion, transfer or demotion into a position that requires the performance of safety sensitive functions.
- 2) Post-accident testing when any of the following circumstances occur:
  - a) A person dies
  - b) If the employee is cited and a person is injured and immediately receives medical treatment arising from the scene of an accident
  - c) If the employee is cited and one or more vehicles were disabled and had to be towed away.
- 3) Random
- 4) Reasonable suspicion
- 5) Return to duty
- 6) Follow-up testing

## **Random Testing of DR&C, DYS and other “Care and Custody Agencies” Employees**

The fact finder in the 1997 negotiations awarded the state's position to randomly drug test DYS employees and DR&C employees who have direct contact with youths, inmates or parolees. Subsequent negotiations have added other “care and

custody” classifications such as Therapeutic Program Worker to the random testing pool.

The State will only reinstate an employee after the employee tests negative on a return to duty test and has seen a substance abuse professional who has determined appropriate treatment needed by the employee. It is also expected the employee will be required to be subject to follow-up testing to ensure the employee remains drug-free.

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.

## **Testing Procedures and Protocols**

Procedures and protocols for the collection, transmission and testing of the employees' samples shall conform to the methods and procedures provided by federal regulations pursuant to the Federal Transportation Employee Testing Act of 1991.

The random testing pools for DYS, DR&C and other “care and custody agency” employees who are subject to testing shall be maintained on a statewide basis that includes all employees of that agency who are subject to testing. The random testing pools for employees who are subject to drug and alcohol testing based upon the performance of safety sensitive functions shall be maintained as a separate pool on a statewide basis. The random testing pools shall be administered by the Drug Free Workplace Services Program of the Department of Administrative Services. For DYS, DR&C and other “care and custody agency” employees the percentage of employees to be tested annually will be up to 30% of the random testing pool. During the last year of the agreement, the percentage of employees to be tested annually can vary from 10% to 30% of the average total of the random testing pool. Twenty-five percentage of employees who perform safety sensitive duties must be randomly tested for alcohol each year and 50% must be randomly tested for drugs each year.

Any DR&C, DYS and other “care and custody agency” employee, whose name is selected to be randomly tested, must be tested within seven (7) days after the agency receives notice of the employee’s selection from the pool.

Employees will be responsible for the costs associated with any return to duty or agency follow-up tests required. The employer is responsible for the costs associated with all random and/or reasonable suspicion testing.

The employee must be paid wages for any time associated with the actual testing and/or travel time necessary to be tested.

## **Union Rights**

Employees have the right to consult with a union representative if one is available within one hour prior to testing as long as the employer claims reasonable suspicion for the testing.

The union representative may accompany the employee to the specimen collection site. Random testing is not subject to specific union representation prior to and during testing.

The union has the right to inspect and observe any drug testing laboratory with which the State has contracted. If the employee has authorized the release to the union representative in writing, the union may inspect the test results. The union has the right to audit the employer’s sampling and testing procedures.

## **Drug Free workplace notification**

Under the federal Drug Free Work Place Act, employees who are convicted of a violation of any federal or state criminal

drug statute, provided that the conviction occurred as a result of activity at the workplace, must report said conviction within five days after he/she is convicted. Failure to do so may result in disciplinary action although an employee may be referred by the Employer to EAP in lieu of discipline, other than during a initial probationary exception.

## **Rebuttable Presumption**

House bill 223, also known as the rebuttable presumption law, puts the burden of proof on employees to prove that alcohol or drugs in their systems were not the proximate cause of a workplace injury. This legislation is intended to curb substance abuse in the workplace.

The new law allows employers to ask for disallowance of a workers’ compensation claim filed by an employee who tests positive on a qualifying chemical test. The law also applies if the injured employee refuses the test. For the claim to be allowed the injured employee must produce sufficient evidence to prove that being intoxicated by alcohol or being under the influence of any of nine controlled substances (not prescribed by the employee’s physician) did not cause the injury.

The law took effect on October 13, 2004. (Cross Reference, Fact Sheet No. 253 – Workers’ Compensation Questions and Answers)

## **References**

Article 9, 24  
Appendix M

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