

STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

MEMORANDUM

TO: State of Ohio Employees and Supervisors

FROM: Major General Mark E. Bartman, The Adjutant General *MEB 26 Feb 16*

DATE: 29 February 2016

SUBJECT: WORK RULE - Drug-Free Workplace Policy (DFWP)

REFERENCES:

- Ohio Revised Code Chapter 124.34
- Ohio Administrative Code Chapter 123:1-76-02
- OCSEA/AFSCME Contract Appendix M
- Federal Drug-Free Workplace Act of 1988
- Department of Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40
- Federal Omnibus Transportation Employee Testing Act of 1991
- Master Cooperative Agreement
- Government wide Requirements for Drug-Free Workplace (Financial Assistance), 2 CFR Part 182

SCOPE

This policy applies to all state of Ohio employees of the Adjutant General's Department (ADJ).

PURPOSE

The ADJ desires a workplace that is free from the adverse effects of alcohol and other drugs. Substance abuse is a serious and complex, yet treatable, condition/disease that adversely affects the productive personal and family lives of employees. Substance abuse may lead to safety and health risks in the workplace, for the abusers, their co-workers, and the public-at-large. The emphasis of the drug-free workplace program is to prevent abuse and rehabilitate employees and to abate risks created by employees who are on duty in an impaired condition.

GENERAL

1. State of Ohio employees are prohibited from unlawfully manufacturing, distributing, dispensing, possessing, or using alcohol or a controlled substance in the workplace. "Controlled substance" means those substances defined in Sections 3719.01 and 3719.41 of the Ohio Revised Code.

This memorandum supersedes State Employee Procedure Letter # 37, dated November 15, 2004.

2. Ohio currently has an Employee Assistance Program (EAP) which refers employees or their families to appropriate substance abuse rehabilitation programs. These programs are often subsidized by the employee's health insurance plan. Employees with substance abuse problems are encouraged to voluntarily contact the EAP and enroll in a rehabilitation program certified by the Ohio Department of Alcohol and Drug Addiction Services. Voluntary contact of the EAP or enrollment in a substance abuse program will not adversely affect employment. However, continued unacceptable job performance, attendance, and/or behavioral problems will result in disciplinary action, up to and including termination.
3. Managers and supervisors shall be provided training about the DFWP and the drug testing program and shall be responsible for implementation, enforcement, and monitoring of the policy and program to ensure that they are administered consistently, fairly, and within appropriate constitutional parameters.
4. ADJ employees are required to report to work in a fit condition to perform their duties. If an employee reports to work under the influence of alcohol or other drugs, it will be considered a violation of the state's DFWP. The employee will be subject to disciplinary actions pursuant to ORC Section 124.34, the disciplinary provisions of any applicable collective bargaining agreements, and this agency's work rules, policies, and procedures.
5. The ADJ will not hire anyone who is known to currently abuse alcohol and/or other drugs. However, this policy shall not preclude the ADJ from hiring persons who are in recovery from alcohol and/or other drug addiction.
6. The ADJ prohibits all employees on official business, at or away from the workplace, from purchasing, transferring, using, or possessing illegal drugs, or abusing alcohol, or abusing prescription drugs in any way that is illegal.
7. The ADJ recognizes that some prescription medications may cause impairment in judgment, coordination, and physical ability. Reasonable accommodations will be made for any employee who uses a prescribed medication. An employee requesting a reasonable accommodation due to the proper use of prescription medication must contact the Human Resource Manager.
8. The ADJ will enforce this policy through management supervision and alcohol and/or other drug testing. The drug testing program will include the following components:
 - a. Applicant testing: Final applicants for testing-designated positions within the ADJ will undergo testing prior to hiring.
 - b. Reasonable Suspicion Testing: Any employee may undergo alcohol and/or other drug testing based on a for-cause determination by management. Any employee involved in a significant incident in which the health or safety of himself, herself, or other individuals is involved, or in which extensive property damage (in excess of \$2,000) has occurred,

will undergo alcohol and/or other drug testing according to requirements of any governing collective bargaining agreement(s) or The Adjutant General.

- c. Follow-up Testing: Any employee referred through administrative channels to a counseling or rehabilitation program as a result of that employee's on-the-job substance abuse may be subject to follow-up testing according to specifications and provisions of any governing collective bargaining agreement(s), last chance agreement, the Human Resource Manager, or The Adjutant General.
9. Confidentiality about the alcohol and/or other drug test results will be maintained to the extent provided by law and employees shall have the opportunity to refute the results of any alcohol and/or other drug tests.
 10. Employees who are found to be under the influence of alcohol and/or other drugs while on official business, at or away from the workplace, are subject to disciplinary provisions of the various state collective bargaining agreements, ADJ work rules, policies, and procedures, and ORC Section 124.34 as applicable.
 11. An alcohol test result which indicates a .04% blood alcohol level will be considered a positive test. Any employee who tests at or above .02% and below .04% shall be immediately removed from duty until the start of the employee's next scheduled shift or for 24 hours, whichever is greater. While the employee is removed from duty, the employee may use any accrued leave or compensatory time at his or her option, or be placed in a leave without pay status if accrued leave or compensatory time is not available.
 12. Employees who have a confirmed positive alcohol or other drug test may be required to enroll in and successfully complete a substance abuse rehabilitation program certified by the Ohio Department of Alcohol and Drug Addiction Services. If an employee has a confirmed positive drug test while enrolled in or subsequent to completion of the rehabilitation program, the employee will be subject to discipline up to and including dismissal. Notwithstanding this provision, employees may still be subject to disciplinary action for workplace or job-related incidents which may be directly or indirectly associated with the drug test results.
 13. The sale or possession of alcohol and/or illicit drugs in the workplace or any location where employees conduct official business shall be reported to the Ohio State Highway Patrol or other appropriate law enforcement authorities. Any criminal drug conviction occurring in the workplace will be reported to federal granting authorities. Employees who possess or sell alcohol or illicit drugs in the workplace or any location where employees conduct official business will be appropriately disciplined pursuant to ORC Section 124.34, the disciplinary provisions of the various state collective bargaining agreements, and ADJ work rules, policies, and procedures. Sale of illicit drugs in particular will result in the strongest form of discipline possible, up to and including termination.

14. Each employee is required to notify the Human Resource Manager and his/her immediate supervisor within five (5) days after he or she is convicted of a violation of any federal or state criminal drug statute where such violation occurred at the workplace or any location where official business is conducted. A conviction means a finding of guilty, no contest (including a plea of nolo contendere), or the imposition of a sentence by a judge or jury in any federal or state court. The ADJ has an obligation to notify the U.S. government agency with which it has a contract or grant within ten (10) days after receiving notice from the employee or otherwise actual notice of such conviction. See 2 CFR 182.225(a). Any employee who fails to report such a conviction will be subject to immediate termination.

Within thirty (30) days of such notification, the ADJ is required to take appropriate disciplinary action against such an employee, up to and including termination. The ADJ may also refer the employee to the EAP for referral and treatment.

15. All ADJ employees will be provided with periodic drug-free workplace training. The training will include information regarding:
 - a. The dangers of alcohol and other drug abuse in the workplace;
 - b. The state of Ohio DFWP;
 - c. The EAP and other available treatment programs; and
 - d. Penalties that may be imposed upon employees for alcohol and/or other drug abuse violations occurring at the workplace or any location where official business is conducted.
16. Outside contractors or vendors who are working on state property shall sign a Certificate of Drug-Free Workplace Compliance as a condition of such contract.