

PPM #11

Policy Name: *Substance Abuse and Drug-Free Workplace*
Effective Date: *November 1, 1998*
Revision Date: *January 31, 2003; January 4, 2010; September 1, 2011;
December 1, 2011; December 13, 2012; January 25, 2013*

Authorization:



Charles R. Davis, Deputy Secretary

PHILOSOPHY

The Office of the Lieutenant Governor (OLG) and the Department of Culture, Recreation and Tourism (DCRT) are fully committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this State. To accomplish this, the OLG/DCRT hereby adopt this Substance Abuse and Drug-Free Workplace Policy which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of the OLG/DCRT and its employees.

The OLG/DCRT's philosophy is consistent with the State of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the State of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for State employees. Further, the Governor of the State of Louisiana issued Executive Order 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with Louisiana Revised Statute 49:1001, *et seq.* The OLG/DCRT fully supports these actions and is committed to a drug-free workplace.

APPLICABILITY

This policy applies to all employees and appointees of the OLG/DCRT, as well as potential employees, potential appointees, individuals providing service to us through a contract with a third party employer (i.e., temporary agency employees), and all other persons having an employment relationship with the OLG/DCRT, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary (hereinafter "employee(s)" unless otherwise noted).

REQUIREMENTS

To maintain a safe and productive work environment, all OLG/DCRT employees are required to:

1. Report for duty in the physical and emotional condition that maximizes their ability to perform assigned tasks in a competent and safe manner;

2. Promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;
3. Notify a supervisor, prior to or immediately upon reporting for duty, when they have reason to believe that prescribed or over-the-counter medication may impair their ability to perform customary job duties or otherwise create a safety hazard. While the duration that the medication will be taken should be disclosed, employees should know that it is not necessary to disclose to the supervisor the medication being taken or the condition for which it was prescribed. Such information may be required to be disclosed to the Department's Medical Review Officer should circumstances or the nature of the employee's job duties warrant, as determined by the appointing authority; and
4. Notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off duty.

PROHIBITIONS

To maintain a safe and productive work environment, OLG/DCRT employees are prohibited from:

1. Using, possessing, dispensing, distributing, manufacturing, buying and selling illegal or unauthorized drugs or other prohibited substances while on duty or engaged in OLG/DCRT business, on or off premises;
2. Having in their bodies illegal or unauthorized drugs or other prohibited substances while on duty, scheduled on-call or engaged in OLG/DCRT business, on or off premises;
3. Possessing illegal or unauthorized drugs or other prohibited substances in an OLG/DCRT vehicle while on or off-duty;
4. Possessing drug paraphernalia, as defined by La. R.S. 40:1021, while on duty or engaged in OLG/DCRT business, on or off premises, or within an OLG/DCRT vehicle while on or off-duty;
5. Consuming alcohol and having a prohibited concentration of alcohol in their bodies while on duty or engaged in OLG/DCRT business, on or off premises;
6. Possessing alcohol while on duty or engaged in OLG/DCRT business, on or off premises, or within an OLG/DCRT vehicle while on or off-duty;
7. Operating an OLG/DCRT vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of this policy;

DEFINITIONS

1. “Illegal or unauthorized drug” includes any drug which is not legally obtainable; any drug which is legally obtainable, but has been illegally obtained; prescription drugs not being used in accordance with the prescription; or any substance which affects the employee’s ability to safely and competently perform assigned duties. Controlled dangerous substances are listed in Schedule I, II, III, IV and V of La. R.S. 40:964.
2. The presence of alcohol prohibited by this policy is indicated by a confirmed blood alcohol concentration of 0.04 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.
3. “Reasonable suspicion” is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use.
4. “Medical Review Officer” (MRO) is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual’s medical history and other relevant biomedical information.

DRUG/ALCOHOL TESTING

All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive or designated position. Whether announced or unannounced, tests will be administered under the following circumstances:

- A. **Pre-Employment:** Drug tests are required of all prospective employees and appointees of the OLG/DCRT. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer.

Once an offer is made, the applicant has only 48-hours to be tested. If testing is not completed in 48-hours, the employment offer must be withdrawn even if the test result is negative. If the supervisor fails to advise the applicant of the 48-hour testing period, and the test is administered after 48-hours, it is the supervisor’s responsibility to contact the applicant to advise them they cannot be employed due to the supervisor’s failure to inform them of this special stipulation. In the event that an applicant fails to test within the 48-hour testing period, they cannot reapply for employment with OLG/DCRT for six months.

In accordance with applicable state law, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment. In the event that an applicant should test positive, they cannot reapply for employment with OLG/DCRT for one year. A list of applicants that test positive will be retained in Human Resources for one year.

- B. **Post-Accident/Incident:** Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:
1. The accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;
 2. The accident meets the criteria of paragraph (1.) and results in or causes the release of hazardous waste as defined by La. R.S. 30:2173(2) or hazardous materials as defined by La. R.S. 32:1502(5); or
 3. The accident results in a fatality or serious bodily injury.
- C. **Random:** Random alcohol and drug testing is required of all employees holding the safety-sensitive or designated positions listed in Appendix A. Such testing shall be periodic and unannounced, and employee selection therefore shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.
- D. **Promotion/Reassignment/etc., to Safety-Sensitive Position:** Current employees are required to undergo drug testing prior to being reassigned, temporarily detailed, promoted or demoted to the safety-sensitive or designated positions as defined in Appendix A. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in this policy.
- E. **Temporary Employment:** Current employees who are on a part-time temporary appointment and work a rotating schedule, with breaks over two weeks between each period worked are not required to drug test again. Employees in a full-time temporary position that have a break in service longer than two weeks must take a pre-employment/return to duty drug test.
- F. **Reasonable Suspicion:** An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be made by an appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.
- G. **Return-to-Duty/Rehabilitation Monitoring:** Any employee who retains his/her job following a violation of this policy shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse

professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORIZATION

Pre-employment and random alcohol/drug testing will be handled by designated personnel within the Human Resources Division. Post-accident/incident, reasonable suspicion and return-to-duty rehabilitation alcohol/drug testing will be handled by the appointing authority in collaboration with the Human Resources Director. That is, **only** the appointing authority possesses the authority to direct an employee to submit to such testing.

NOTE: When post-accident/incident or reasonable suspicion testing is ordered, an OLG/DCRT representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

DRUG TESTING PROCEDURES

Drug testing pursuant to this policy shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with La. R.S. 49:1001, *et seq.* Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

- A. That all specimens for drug testing are collected, stored, transported and tested in compliance with U.S. Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process.
- B. Urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:
 - 1. When there is specific, articulable reason to believe that the individual may alter or substitute the specimen;
 - 2. When the individual has provided a urine specimen which falls outside the acceptable temperature range;
 - 3. When the last urine specimen provided by the individual was verified by the Medical Review Officer as adulterated; or
 - 4. When collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process.

- C. The split sample collection methodology must be used in accordance with La. R.S. 49:1006(D) with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP).
- D. Appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition.
- E. Testing shall be performed by laboratories certified for forensic urine drug testing by the DHHS and in strict compliance with DHHS Guidelines.
- F. The dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry).
- G. All positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to OLG/DCRT's qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result.
- H. If the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense.
- I. Once a positive test is confirmed and reported to the OLG/DCRT representative by the MRO, an employee in safety-sensitive or designated positions will be prohibited from performing customary duty assignments. A request for testing of the split sample will not delay any such employee's removal from performing his/her customary duties; and
- J. If testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

ALCOHOL TESTING PROCEDURES

- A. Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.

- B. The employee will be advised of the results of the breath-screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed. If the confirmatory test indicates a blood alcohol concentration of 0.04 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the results will be reported as positive to the OLG/DCRT representative.
- C. An employee occupying a safety-sensitive or designated position will be immediately removed from performing his/her customary duty assignments in the event of a positive alcohol test.
- D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

ENFORCEMENT

The use of illegal or unauthorized drugs or other prohibited substances by OLG/DCRT employees will not be tolerated. Substance abuse and misuse endanger the health and well-being of our employees, prevent quality service to the public and are inconsistent with the OLG/DCRT's mission. While maintaining a philosophy of zero tolerance for violations of this policy, we will resolve any reasonable doubt regarding the testing procedure or test results in the employee's favor.

Disciplinary action, including the possibility of termination, will be imposed for violations of this policy, but only after a complete and thorough review of all available information. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action as required by Chapter 12 of the Civil Service Rules. Factors to be considered in determining the appropriate sanction include, but are not limited to, the circumstances under which testing process was required, the circumstances under which drug usage occurred, the employee's candor and cooperation during the investigative process, the employee's work history, length of service, current job performance and the existence of prior disciplinary action.

Although OLG/DCRT generally subscribes to a philosophy of progressive discipline, employees are hereby placed on notice that termination will be the recommended penalty for the following violations:

- 1. Second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
- 2. Refusal to submit to a drug or alcohol test;
- 3. Failure to cooperate in any way which prevents the completion of a drug or alcohol test;
- 4. Submission of an adulterated or substitute sample for testing;

5. Using, possessing, dispensing, distributing, manufacturing, buying or selling illegal or unauthorized drugs or other prohibited substances while on duty or engaged in OLG/DCRT business, on or off premises, or within an OLG/DCRT vehicle while on or off-duty; and
6. Operating a State vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of this policy.

Employees also are hereby placed on notice that certain conditions must be satisfied if it is determined that a first positive test (drug or alcohol) will not result in the penalty of termination. These conditions include, but are not limited to:

1. The employee will be required to obtain a substance abuse evaluation from a certified substance abuse professional at his/her own expense;
2. The employee will be required to satisfy any treatment regimen recommended by the substance abuse professional;
3. The employee will be required to accept, without challenge, the recommended disciplinary action; and
4. The employee will be required to submit to periodic testing for prohibited substances.

NOTE: The conditions under which continued employment will occur will be memorialized within a Rehabilitation Covenant to be signed by the employee. Compliance with the conditions within this agreement is required, especially satisfaction of the evaluation/treatment process.

CONFIDENTIALITY/EMPLOYEE RIGHTS

All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to La. R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

In compliance with La. R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

Employees should know that statistical records and reports of drug testing are maintained by OLG/DCRT, contract physicians and drug testing laboratories. This information is aggregate

data and is used to monitor compliance and to assess the effectiveness of the drug-testing program.

The OLG/DCRT has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in this policy will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by this Policy, discovered in/on OLG/DCRT/State property, or upon the person of an OLG/DCRT employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on OLG/DCRT/State property shall be referred to appropriate law enforcement authorities.

EMPLOYEE ASSISTANCE

Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from Human Resources. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) would be kept abreast of the employee's treatment and leave needs.

Employees referred to Human Resources by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the Return-to-Duty/Rehabilitation Monitoring testing set forth in this policy.

GENERAL PROVISIONS

The OLG/DCRT reserve the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, the OLG/DCRT will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

Although the substance abuse testing defined in this policy is restricted to five specified drugs and alcohol, the OLG/DCRT reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

QUESTIONS

Questions regarding this policy should be addressed to the Human Resources Director.

Summary of Charges: Revised policy number (December 1, 2011); added OSM Police to Appendix A for random testing due to agency requirement that employees certify for and carry a weapon as needed, reorganized content to include separate Prohibitions, Definitions and Authorization sections (December 13, 2012); expanded Prohibitions and Enforcement sections (January 25, 2013).

APPENDIX A

Office of State Museum

Carpenter
Carpenter Foreman
Carpenter Master
Electrician
Electrician Foreman
Police Captain-A
Police Lieutenant-A
Police Officer 1-A
Police Officer 2-A
Police Officer 3-A
Police Sergeant-A

Office of State Parks

Black Powder Certified Employees
Carpenter Master
Maintenance Foreman
Maintenance Repairer 1
Maintenance Repairer 2
Maintenance Superintendent
Mobile Equipment Operator 1
Park Manager 1*
Park Manager 2*
Park Manager 3*
Park Manager 4*
Park Manager 5*
Park Ranger 1
Park Ranger 2
Park Ranger Specialist
Parks Chief of Operations
Parks District Manager

** - Only those employees occupying these job titles that are POST-certified.*

Office of Tourism

Courier:
Administrative Coordinator 3
Administrative Coordinator 4
Tourist Information Regional Coordinator