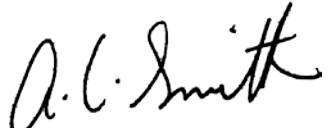




Department of
Rehabilitation & Correction

SUBJECT: Drug-Free Workplace	PAGE <u> 1 </u> OF <u> 11 </u> .
	NUMBER: 31-SEM-03
RULE/CODE REFERENCE: ORC 3719.41, 3796.01, 4123.54; OAC 123:1-76-13; DAS HR-39	SUPERSEDES: 31-SEM-03 dated 4/3/2017 31-SEM-04 dated 2/9/2016
RELATED ACA STANDARDS: 4063; 2-CO-1C-20; 4-APPFS-3C-01; 1-HC-2A-12; 2-CTA-1C-08; 2-CI-6C-2	EFFECTIVE DATE: December 2, 2019
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to ensure a drug-free workplace and to reduce accidents, injuries, and fatalities while maintaining the safety and security of the Ohio Department of Rehabilitation and Correction (ODRC), its prisons and facilities.

III. APPLICABILITY

This policy applies to all applicants and persons employed by or under contract of employment with the Ohio Department of Rehabilitation and Correction (ODRC) in accordance with the appropriate collective bargaining agreement and State of Ohio administrative codes and policies.

IV. DEFINITIONS

Abuse - Any use of an illegal drug; intentional misuse of any over-the-counter drug in cases where such misuse impairs job performance; use of any prescription drug in a manner inconsistent with its prescription, or under circumstances where use is not permitted; the use of recommended medical marijuana in a manner inconsistent with a medical purpose, or under circumstances where use is not permitted; the use of any restricted substance under circumstances where use is not permitted.

Active Work Status - The conditions under which an employee is actually in a work status and is eligible to receive pay but does not include vacation pay, sick leave, bereavement leave, compensatory time, holidays, personal leave, and disability leave.

Applicant Testing - The process of conducting restricted substance tests on final applicants who have tentatively met all relevant employment criteria but have not been officially offered employment with the ODRC.

Chain of Custody - Procedures to ensure the integrity of each specimen for restricted substance testing by tracking its handling from point of collection to final disposition.

Cycle - The time period in which the random listing of position numbers (PNs) selected for testing is to be completed. There will be multiple cycles per year.

Department Coordinator - The individual or designee responsible for the implementation, administration, and monitoring of the random restricted substance testing policy throughout the ODRC.

Enzyme Immunoassay Test (EMIT Test) - Initial test done to detect traces of restricted substances in urine specimens.

Employee Assistance Program (EAP) - A screening, information, referral and support service for state employees and their family members.

EAP Participation Agreement - A contract that gives EAP the authority to develop a plan, agreed upon by the employee, to ensure the employee's participation in a recognized substance abuse treatment program as developed by a treatment provider.

Federal Omnibus Transportation Employee Testing Act of 1991 (Federal Omnibus Act) - Regulations governing random testing issued by the Federal Department of Transportation.

Field Coordinator - The individual responsible for the implementation, administration, and monitoring of the random restricted substance testing policy at a local level including Operation Support Center (OSC), institutions, and Division of Parole and Community Services (DPCS) locations. The field coordinator will be assisted by at least one backup individual specified at each location. The backup will serve as the field coordinator as needed.

Fit to Return to Duty - When a substance abuse professional (SAP) determines that the employee is compliant with treatment requirements and has a negative return-to-duty restricted substance test result.

GC/MS Test - Gas Chromatography/Mass Spectrometry test used to confirm positive results of EMIT Test or initial screen.

Impeding the Test Process - Any activity in which the employee, after notification, does not immediately go to the collection site and supply an original specimen. Employee will be considered to have a positive test if they are found to have failed to submit to the properly ordered test or otherwise failed to cooperate with the testing process. Examples include, but are not limited to, refusing to go to a collection appointment, not attending a collection appointment in a timely manner, and/or altering the specimen.

Last Chance Agreement - An agreement signed by the employer, the respective union, and the employee indicating that a removal order has been held in abeyance pending the successful completion of their EAP Participation Agreement. The Last Chance Agreement will be in effect for sixty (60) months. Any positive restricted substance test during this time will result in the employee's termination following an appropriate pre-disciplinary hearing.

Medical Marijuana - Marijuana that is cultivated, processed, dispensed, tested, possessed, or used for medical purpose, as defined in ORC 3796.01. Medical marijuana is a controlled substance. A patient only qualifies to use medical marijuana if he or she is on the registry established by the Ohio State Board of Pharmacy with a valid and active recommendation issued by a physician. Note: For purposes of this policy, medical marijuana is not a prescription medication.

Medical Review Officer (MRO) - An independent licensed physician or other professional delineated in federal regulations with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results, a person's medical history and other relevant biomedical information.

Positive Test Result - When an employee's urine specimen is determined to contain unacceptable levels of one or more illegal/controlled substances. An employee refusing to be tested, adulterating the specimen, or impeding the process will be treated as if they have a positive test result.

Random Testing - The process of testing for restricted substances, as defined by this policy, through the random selection of employee position numbers (PNs).

Random Selection - The process of selecting PNs for random testing. This is done via a computer program at the Department of Administrative Services, Office of Drug Free Workplace.

Reasonable Suspicion Testing - Any employee may undergo restricted substance 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 has occurred, will be subject to reasonable suspicion testing in accordance with the requirements of any applicable collective bargaining agreement(s) or the Director of DAS.

Restricted Substance - Includes alcohol as being ethyl alcohol or ethanol; controlled substance(s) as a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V, as provided in ORC 3719.41 (referred to herein as a "controlled substance"); or any substance, legal or illegal, that is used intentionally, inappropriately, and impairs job performance.

Substance Abuse Professional (SAP) - A licensed physician (M.D. or D.O.), licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of substance abuse disorders. Drug abuse counselors with National Association of Alcohol and Drug Addiction Counselors (NAADAC) certification are also acceptable SAPs.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to ensure a drug-free workplace. Consequently, the use of restricted substances by employees is prohibited. It is the policy of the ODRC to randomly test employees for the presence of restricted substances and to require return-to-duty testing and follow-up testing as necessary.

VI. PROCEDURES

- A. All employees shall receive a copy of the ODRC Standards of Employee Conduct which states: "The use, possession, conveyance or unauthorized distribution of illegal drugs, narcotics or controlled substances is prohibited at all times. The use of alcoholic beverages while on duty or being under the influence of alcohol or drugs while on duty are prohibited."

The possession of any illegal drug except in the performance of official duties is prohibited.

- B. The Standards of Employee Conduct also cites behaviors that constitute rule violations in a drug-free workplace and the corresponding penalties.
- C. The opportunities available for treatment and counseling for restricted substance abuse must be shared with new employees during pre-service training. The State will periodically provide information and training programs concerning the impact of restricted substance on job performance as well as information concerning the State's Employee Assistance Program and any other resources that an employee or his/her family may contact for assistance in overcoming an addiction to such substances.
- D. All external final applicants, regardless of job classification, are subject to a restricted substance test and must render a negative result before being officially offered final employment with the ODRC.
- E. Test Types
1. Random Testing
 - a. Employees of ODRC shall be subject to random restricted substance tests.
 - b. The Office of Drug-Free Workplace (ODFW) shall provide a list of PNs to be tested to ODRC's Random Testing Coordinator (Department Coordinator).
 - c. Each appointing authority shall appoint a field coordinator and assistant field coordinator. The department coordinator shall provide the field/assistant field coordinator with a list of PNs to be tested.
 - d. The field coordinator shall schedule all tests with the collection site as soon as possible. The field coordinator has seven (7) calendar days, Monday through the end of shift on Sunday, to test all PNs of that cycle.
 - e. When scheduling random restricted substance testing appointments at the specimen collection site, the field coordinator shall provide the employee's name, employee identification number, and the facility billing code to the collection site, via the State of Ohio, Notification of Drug and/or Alcohol Testing form.

- f. The field coordinator shall inform the selected employee's supervisor and will ensure that the employee is notified and instructed to immediately report directly to the collection site at the time scheduled by the field coordinator or designee.
- g. Failure to immediately report to the collection site or otherwise impeding the collection process will be treated as a positive result, which is subject to discipline. Any intentional or deliberate tampering with the specimen collection process to include, but not limited to, deliberately avoiding the test shall be regarded as a positive test and shall be subject to the appropriate discipline process per the Standards of Employee Conduct.
- h. Employees who utilize a timeclock at their worksite shall punch out when departing for the collection site and punch in upon their return to the worksite. If unable to utilize the timeclock, the employee shall complete a Request for Leave form (ADM4258) and the Payroll Officer shall use pay code DGTST to cover the testing time.
- i. Employees may request a state vehicle for transportation to the collection site as necessary. If requesting a state vehicle, employees shall follow ODRC Policy 22-BUS-04, Travel Policy and ODRC Policy 22-BUS-18, Employee and Contractor Use of State-Owned Vehicles Policy to determine eligibility to drive a state vehicle. If a state vehicle is not available or if the employee is not eligible to drive a state vehicle, the employee may be required to use his/her personal vehicle for transportation to the collection site. When an employee is required to use his/her personal vehicle, the employee may request reimbursement for such use, which shall be made to the employee in accordance with the terms of the respective collective bargaining agreement, applicable ODRC policies, and applicable Travel Policy and/or Travel Rule as defined by DAS Office of Budget and Management (OBM).
- j. At the collection site, the employee must present his/her state identification badge or driver's license for identification purposes.

2. Reasonable Suspicion Testing

- a. All employees within the ODRC shall be subject to a reasonable suspicion test if the employee displays behaviors, based on objective facts or circumstances, that indicate consumption or use of restricted substances.
- b. Such reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of, or is using or abusing, a restricted substance. Examples of reasonable suspicion shall include, but are not limited to, slurred speech, disorientation, abnormal conduct or behavior. Behavior of this nature shall be

immediately reported to a supervisor, be supported by at least two witnesses and documented on an Incident Report (DRC1000) by all involved parties.

- c. An employee ordered to undergo a reasonable suspicion test shall be transported by a managing officer/designee of the worksite location to the collection test site. If a test renders a positive result for a restricted substance or if the results are not immediately available, the employee, once brought back to the worksite location, shall not be allowed to drive off state grounds. The managing officer/designee shall assist the employee with making transportation arrangements from the worksite location, to include but not limited to, contacting someone on the employee's emergency contact list or another person designated by the employee.

F. General Provisions for All Testing

1. Urine specimen collection shall be conducted off-site by professional non-state personnel at the collection site designated by the employer in a secure and private room. If witnessed, the collection shall be observed by a person of the same sex as the specimen provider in accordance with standards established by the Federal Omnibus Act.
2. Urine specimens shall be handled by proper chain of custody procedures from the time of collection to the return of the written report, according to standards established by the Federal Omnibus Act. Collection procedures shall be used which ensure security for the specimen, prevention of adulteration of the specimen, and privacy for the employee. Any failure to follow such procedures shall result in the elimination of the test results, as if no test had been administered. In such cases, the test results shall be destroyed, and no adverse action shall be taken against the employee.
3. The applicant/employee must follow collection site instructions, which will conform to the requirements of the Federal Omnibus Act. If unable to produce an adequate specimen, the applicant/employee may drink up to forty (40) ounces of non-alcoholic beverage and provide a specimen within three (3) hours.
4. If a sufficient urine sample is not provided within three (3) hours, or as may be required by the Federal Omnibus Act, it is considered a positive test result. If a sufficient urine sample is not provided due to an alleged physical condition, the applicant/employee shall be given five (5) business days to provide medical documentation from their personal physician.
5. The urine specimen will be split into two (2) vials (a primary vial and a secondary vial) and will be submitted to a Department of Health and Human Services, National Institute of Drug Abuse (DHHS/NIDA) certified laboratory to perform the initial screen on all primary vials.
6. The initial screening shall be accomplished by means of the Enzyme Immunoassay Test (EMIT) procedure or other procedure as required by the Federal Omnibus Act.

7. If the primary specimen tests positive, a confirmation test by means of a gas chromatography/mass spectrometry (GC/MS) or other procedure as required by the Federal Omnibus Act will be performed before being reported by the DHHS/NIDA-certified laboratory to the medical review officer (MRO) as a positive test. In those cases where the second test confirms the presence of a restricted substance(s) in the applicant's/employee's system, the sample shall be retained for a period of six (6) months to permit further testing in case of a dispute.
8. The MRO will attempt to contact the applicant/employee to discuss the test result before reporting a positive test to the employer. If the MRO is unable to contact the applicant/employee directly, the applicant/employee will be contacted by the field coordinator or designee and instructed to contact the MRO immediately. It is within the MRO's sole discretion to determine if a test result is positive or negative.
9. Documentation provided by the applicant/employee's personal physician shall be reviewed by the MRO. If the MRO determines that a physical condition prevented the employee from providing a sufficient urine sample, no action shall be taken against the employee. If the MRO determines that a physical condition does not exist that prevented the employee from providing a sufficient urine sample, it shall be deemed a positive test result, and appropriate disciplinary action shall be taken against the employee. This paragraph is applicable only to employees; for applicants, contact the department coordinator or designee.
10. Confidentiality of test results will be maintained to the extent provided by law, and employees shall have the opportunity to refute the results of any tests.

G. Medical Marijuana

1. Medical marijuana is a restricted substance for purposes of this policy. Accordingly, State of Ohio employees who are in active work status or otherwise in the workplace shall not manufacture, distribute, dispense, possess, purchase, transfer, or use medical marijuana.
 - a. This policy is not intended to prohibit medical marijuana use by State of Ohio applicants/employees who are NOT in active work status at the time of use, provided that:
 - i. Such use is in accordance with applicable Ohio law, this policy, and any other applicable policy, procedure, work rule, or directive (collectively "standards");
 - ii. Such use does not occur within the workplace;
 - iii. The employee's position is not subject to Federal Department of Transportation Testing;
 - iv. The employee's position does not require an individual holding the position to transport, carry, or otherwise possess a firearm or ammunition; and
 - v. When the employee returns to active work status or is otherwise in the workplace, he/she is fit for duty.

2. Any applicant/employee in a position that requires him/her to carry or otherwise possess or transport a firearm(s) or ammunition is prohibited from unlawfully using any controlled substance as defined by federal law.

Note Regarding Medical Marijuana: Marijuana is a controlled substance that is prohibited by federal law. As such, any applicant/employee who holds a position that is required to carry or otherwise possess or transport a firearm(s) or ammunition is prohibited from using medical marijuana, at any time, even if a medical marijuana recommendation or other medical documentation is provided.

3. Due to legal restrictions, certain groups of employees will continue to be prohibited from using medical marijuana even if the employee has a valid recommendation for medical marijuana. This policy does not affect, in any way, the requirements of the Federal Omnibus Transportation Employee Testing Act of 1991 and applicable United States Department of Transportation regulations (collectively, "DOT drug- testing laws"). Any applicant/employee in a position that is subject to federal DOT testing is prohibited from using drugs and/or alcohol (both defined by federal law) in a manner that violates DOT drug-testing laws.

Note Regarding Medical Marijuana: Marijuana is one of the classes of drugs included in a federal DOT test. As such, any applicant/employee who holds a position that is subject to federal DOT testing is prohibited from using medical marijuana, at any time, even if a medical marijuana recommendation or other medical documentation is provided.

4. For positions subject to DOT drug-testing laws, the MRO will report a positive test. For all other test results that show the presence of THC from the use of medical marijuana, the MRO will contact the DAS Drug-Free Workplace Program to verify whether the applicant/employee is in a position prohibited from using medical marijuana. If so, the MRO will report a positive test.

5. Other Prohibitions Relating to Medical Marijuana

Under both the State's Drug-Free Workplace Policy and the Federal Drug-Free Workplace Act, employees are prohibited from having (possessing) medical marijuana in any form while in an active work status or otherwise in the workplace. This also includes a prohibition on unlawfully manufacturing, distributing, dispensing, purchasing or transferring medical marijuana while in active work status or otherwise in the workplace. This includes times that an employee is on his/her paid breaks or unpaid lunch breaks.

H. Positive Test Results

1. Applicants/employees shall be given the opportunity as required by applicable collective bargaining agreements, or in the absence of such agreements, as stipulated by the Director of DAS, to offer an explanation or submit medical documentation of legally prescribed

medication, medical marijuana recommendation, or exposure to toxic substances which may explain a positive test result. Such information shall be reviewed only by the MRO in his/her determination of the validity of a positive test and shall be released to the employer only to explain a test result.

Employee Responsibility: The employee is solely responsible for providing medical documentation as instructed by the MRO. This responsibility includes, but may not be limited to, coordinating any necessary records exchange between the employee's physician and the MRO and ensuring that the MRO receives the requested documentation within the timeframe provided by the MRO.

2. At the time the field coordinator receives notice of a positive test result, it shall be given to the employee along with the Pre-Disciplinary Notice. The pre-disciplinary hearing shall be held as soon as practicable. If the agency is not able to hold the pre-disciplinary hearing immediately, the employee is to be placed on administrative leave with pay until the pre-disciplinary hearing is conducted. If the employee refuses to waive the right to a seventy-two (72) hour notice of pre-disciplinary hearing, the employee will be placed on an approved leave without pay and may use accrued leave to cover this time off.
3. If the employee elects to have the original sample re-tested at a DHHS/NIDA-certified laboratory, the employee will be on an approved leave of absence without pay or may use the appropriate accumulated leave balances until such time as the retest results are returned. Pursuant to OAC 123:1-76-13, if the re-test is negative, the time period between notification of the positive test and the retest results shall be reflected as administrative leave with pay. Any accumulated leave balances used to cover this time period shall be reimbursed to the employee. Any such retest shall be at the expense of the employee.
4. Employees who have a positive restricted substance test result may ask for a retest of the original specimen according to procedures and specifications of applicable federal regulations, or in the absence of such regulations, any governing collective bargaining agreement or, in the absence of such agreement, according to procedures and specifications of the director of the Department of Administrative Services. The laboratory performing such a retest shall be certified by the Federal Department of Health and Human Services.
5. An employee who tests positive for a restricted substance may make a written request to the field coordinator to have the split sample tested within seventy-two (72) hours of the positive notification. The employee must pay all costs associated with the retest.
6. An employee request for a retest shall not delay the imposition of appropriate disciplinary action or referral to an appropriate rehabilitation program.

I. Disciplinary Action

1. An employee who tests positive during his/her initial probationary period shall not be eligible for a Last Chance Agreement and shall be terminated on the first occasion in which he/she tests positive. All other employees will be subject to disciplinary action as specified in the Standards of Employee Conduct.
2. A test result that indicates a .04% blood alcohol level or higher 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 twenty-four (24) hours, whichever is greater. Employees shall be subject to progressive discipline for failure of good behavior in accordance with the Standards of Employee Conduct. While the employee is removed from duty, the employee may use any accrued leave or compensatory time at the employee's option or be placed in a leave without pay status if accrued leave or compensatory time is not available.
3. On the first occasion that a non-probationary employee is determined to be under the influence of, or using, restricted substances as confirmed by testing pursuant to this policy, the employee will be offered a Last Chance Agreement and shall be given the opportunity to enter into and successfully complete a substance abuse program certified by the Ohio Department of Mental Health and Addiction Services (ODMHAS). No disciplinary action for the positive test result shall be taken against the employee provided he/she successfully completes the program.
4. While in the substance abuse program, the employee may utilize leave as appropriate. Disciplinary action may be taken if the employee does not agree to or adhere to the Last Chance Agreement.
5. When the employee has been determined fit to return to duty by the SAP, the SAP will notify the Ohio Employee Assistance Program, who will contact the authorized employer representative identified on the EAP Agreement to schedule the employee for a return-to-duty restricted substance test.
6. The field coordinator shall schedule a return-to-duty restricted substance test at a collection site in the state collection network. The employee must produce a negative restricted substance test result to return to duty. The employee shall be responsible for the cost of return-to-duty testing.
7. The employee's PN will remain in the random pool for potential future selection. The Last Chance Agreement removal order shall be implemented with any positive restricted substance test result.

J. Follow-Up Testing

1. Upon returning to duty, the employee will be subject to a minimum of six (6) follow-up restricted substance tests within 365 days as required by the SAP. The employee shall be

responsible for the cost of all follow-up tests. Time spent by the employee on approved leave will not be counted toward the 365 days.

2. Should the employee not cooperate fully with the directives of the SAP, test positive on any required restricted substance test or fail to return to duty, the employer may terminate his/her employment.
3. The Last Chance Agreement will remain in effect for sixty (60) months. If the employee tests positive on any restricted substance test or deviates from the Last Chance Agreement, the employer may terminate his/her employment.

K. Rebuttable Presumption

Pursuant to ORC 4123.54, when an employee who suffers a work-related injury tests positive for a restricted substance, or refuses to be tested, the positive test or refusal to test creates a rebuttable presumption that the proximate cause of the employee's work-related injury is intoxication or being under the influence of a restricted substance. The burden of proof then shifts to the employee to prove that the work-related injury was not caused by such intoxication or restricted substance influence. An employee who tests positive or refuses to submit to chemical testing may be disqualified from receiving compensation and benefits under the Workers' Compensation Act. Medical marijuana is not exempted from this rebuttable presumption provision.

L. Records

Records relating to restricted substance tests and their results shall be treated as confidential medical records and will be maintained in accordance with Ohio and federal laws.