

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Employee Random Drug Testing	PAGE <u>1</u> OF <u>7</u> NUMBER: 31-SEM-04
RULE/CODE REFERENCE:	SUPERSEDES: 31-SEM-04 dated 10/01/14
RELATED ACA STANDARDS: 4-APPFS-3C-01	EFFECTIVE DATE: February 9, 2016
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to ensure a drug-free correctional environment and to reduce accidents, injuries, and fatalities while maintaining the safety and security of the Department, its prisons and facilities.

III. APPLICABILITY

This policy is applicable to all exempt and bargaining unit employees in accordance with the appropriate collective bargaining agreement.

IV. DEFINITIONS

Chain of Custody - Procedures to ensure the integrity of each specimen for drug 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 drug testing policy throughout the Department of Rehabilitation and Correction.

Enzyme Immunoassay Test (EMIT Test) - Initial test done to detect traces of illegal/controlled 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 drug testing policy at a local level including Operation Support Center, institutions, and Division of Parole and Community Services 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 drug test result.

GC/MS Test - Gas Chromatography/Mass Spectrometry test used to confirm positive results of EMIT Test or initial screen. This will be the standing result of the drug test.

Illegal/Controlled Substances - Marijuana, cocaine, amphetamines, opiates, and phencyclidine. These substances make up the current testing panel and will be in conformance to the panel required by the Federal Omnibus Act.

Impeding the Test Process - Any activity in which the employee, after notification, does not immediately go to, nor immediately return from the collection site and supply an original specimen. Examples include, but are not limited to, refusing to go to a collection appointment, not attending a collection appointment in a timely manner, and altering the specimen. The employee will be considered to have a positive test if they are found to have impeded the test process or tampered with their 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 drug test during this time will result in the employee’s termination following an appropriate pre-disciplinary hearing.

Medical Review Officer (MRO) - An independent physician contracted by the drug testing laboratory serving the state who reviews and makes the final determination on all positive test results.

Positive Test Result - When an employee’s urine specimen is determined to contain unacceptable levels of 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 Drug Testing (RDT) - The process of testing for illegal/controlled substances through the random selection of employee PNs.

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

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 (DRC) that its employees be free of illegal/controlled substances. Consequently, the use of illegal/controlled substances by employees is prohibited. It is the policy of the Ohio Department of Rehabilitation and Correction to randomly test employees for the presence of illegal/controlled substances and to require return-to-duty testing and follow-up testing as necessary.

VI. PROCEDURES

A. Employee Selection, Notification, and Specimen Collection

1. The Office of Drug Free Workplace (ODFW) shall provide a list of position numbers (PNs) to be tested to DRC's Random Drug Testing Coordinator (Department Coordinator).
2. The Department Coordinator shall provide the Field Coordinator with a list of PNs to be tested.
3. The Field Coordinator shall schedule all tests with the collection site as soon as possible. The Field Coordinator has seven (7) calendar days to test all PNs of that cycle.
4. When scheduling random drug testing appointments at the specimen collection site, the Field Coordinator shall provide the employee's name, employee identification number, and the institution's agency billing code to the collection site.
5. 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. Failure to immediately report or impeding the process will be treated as a positive result which is subject to discipline.
6. Employees that utilize a timeclock at their worksite shall punch out when departing for the collection site and punch in upon their return to the worksite. Administrative Leave shall be granted to cover the testing time.
7. A state vehicle shall be provided to the employee for transportation to the collection site as necessary. If a state vehicle is not available, the Field Coordinator shall make alternative arrangements for transportation to the collection site. If the employee is required to use their personal vehicle, reimbursement shall be made to the employee in accordance with the terms of the respective collective bargaining agreement or applicable policy.

8. At the collection site, the employee must present his/her state identification badge or driver's license for identification purposes.
9. The employee must follow collection site instructions, which will conform to the requirements of the Federal Omnibus Act. If a sufficient urine sample is not collected, the employee may be required to drink up to forty (40) ounces of a non-alcoholic beverage and then provide a sample within three (3) hours or as may be required by the Federal Omnibus Act.
10. Upon completion of specimen collection, the employee shall immediately return directly to the work site to complete the remainder of his/her shift or to properly clock out.
11. If a sufficient urine sample is not provided within three 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 employee shall be given five (5) business days to provide medical documentation from their personal physician.
12. Documentation provided by the 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.

B. Specimen Chain of Custody

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 witnessed by a person of the same sex as the donor-employee 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 urine specimen will be split into two 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.
4. 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.
5. 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 illegal/controlled substance(s) in the employee's system, the sample shall be retained for a period of six (6) months to permit further testing in case of a dispute.

6. The MRO will attempt to contact the employee to discuss the test result before reporting a positive test to the employer. If the MRO is unable to contact the employee directly, the employee will be contacted by the designated Field Coordinator and instructed to contact the MRO immediately. It is the MRO's sole discretion to determine if a test result is positive or negative.
7. Test results are kept strictly confidential as required by state or federal regulations. An applicant may receive his/her test results by submitting a written request.
8. An employee who tests positive 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 prepay all costs associated with the retest.

C. Positive Test Results

1. 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.
2. If the employee elects to have the original sample re-tested at a DHHS/NIDA certified laboratory of his/her choosing, the employee will be on an approved leave of absence without pay or use the appropriate accumulated leave balances until such time as the re-test results are returned. Upon notification of the re-test being positive, the employee shall receive notice of the pre-disciplinary hearing in accordance with the above language. If the re-test is negative, the time period between notification of the positive test and the re-test 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.
3. A finding of just cause at this hearing shall lead to a Last Chance Agreement and EAP Participation Agreement being made with the employee.
4. 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. The employee may also be given an opportunity to enter into EAP, as referenced below.

D. 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 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 twenty-four (24) hours, whichever is greater. Employees shall be subjected 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, illegal/controlled 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 random 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 Field Coordinator to schedule the employee for a return-to-duty drug test.
6. The Field Coordinator shall schedule a return-to-duty drug test at a collection site in the state collection network. The employee must produce a negative drug 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 drug test result.

E. Follow-Up Testing

1. Upon returning to duty, the employee will be subject to a minimum of six (6) follow-up drug tests within 365 days as required by the SAP. The employee shall be responsible for the cost of all follow-up drug 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 Substance Abuse Professional, test positive on any required drug 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 drug test or deviates from the Last Chance Agreement, the employer may terminate his/her employment.

F. Records

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