

SECTION: 6.26
SUBJECT: Drug and Alcohol Testing
AUTHORITY: Executive Director (Section 112.0455, F.S.)

Policy:

In order to provide for a workplace environment that is drug free and to deter the use of drugs at the workplace, this policy shall provide for the authorization and procedures to test for drug use by employees in the course and scope of their work, pursuant and in conformance with section 112.0455, F.S.

Content:

- 6.26.1 Definitions
- 6.26.2 Notice Requirements Relation to Agency Drug Testing
- 6.26.3 Types of Authorized Testing
- 6.26.4 Collection Procedures and Employee Protection
- 6.26.5 Test Results
- 6.26.6 Positive Confirmed Test Result and Notice to Applicants or Employees
- 6.26.7 Disciplinary Action
- 6.26.8 Use of Prescriptive or Non-prescriptive Drugs
- 6.26.9 Grievances and Appeals

Procedure:

6.26.1 Definitions

- A. Drug** - Alcohol, including beer, wine, malt beverages, intoxicating liquors, distilled spirits, amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, a metabolite of any of the substances listed herein, or other illegal drugs, or controlled drugs for which an employee does not have an approved prescription.
- B. Drug Test or Test** - Any chemical, biological, or physical instrument analysis administered for the purpose of determining the presence or absence of a drug or its metabolites.
- C. Employee Assistance Program** - An established program for employee assessment, counseling, and possible referral to an alcohol and/or drug rehabilitation program.
- D. Initial Drug Test** - A sensitive, rapid and reliable immunoassay procedure to identify negative and presumptive positive specimens.
- E. Job Applicant** - A person who has applied for a special-risk or safety-sensitive position with an employer and has been offered employment conditioned upon successfully passing a drug test.

- F. Confirmation Test** - A second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. This confirmation test must be different in scientific principle from the initial test procedure.
- G. Prescription or Nonprescription Medication** - A drug or medication obtained pursuant to a prescription as defined by s. 893.02(17) or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.
- H. Reasonable Suspicion Drug Testing** - Drug testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences. Reasonable suspicion drug testing shall not be required except:
 - When ordered by a Division/Office Director
or
 - Upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question and approved by the Division/Office Director.

Among other factors, such facts and inferences may be based upon:

1. Observable phenomena while at work, such as direct observation of drug use or the physical symptoms or manifestations of being under the influence of a drug.
 2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
 3. A report of drug use, provided by a reliable and credible source, which has been independently corroborated.
 4. Evidence that an individual has tampered with a drug test.
 5. Information that an employee has caused, or contributed to, an accident while at work.
 6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.
- I. Safety-Sensitive Position** - Any designated position occupied by an employee in who drug impairment would constitute an immediate and direct threat to the public health or safety.
 - J. Special Risk** - Employees who are required as a condition of employment to be certified under Chapter 943, Florida Statutes.
 - K. Specimen** - A tissue or product of the human body capable of revealing the presence of drugs or their metabolites.

6.26.2 Notice Requirements Relating to Agency Drug Testing

- A.** Prior to testing, employees or affected job applicants shall be given a copy of this policy.
- B.** Job opportunity announcements shall include notice of drug testing for special-risk and safety-sensitive positions.

6.26.3 Types of Authorized Testing

The Commission is authorized to conduct the following types of drug tests:

- A. Job Applicant** - The Division/Office Director shall require job applicants who have applied for and been offered a "special-risk" position to submit to a drug test. Safety-sensitive positions may be tested prior to or upon appointment. The Commission may use a refusal to submit to a drug test or may use a positive confirmed drug test as a basis for refusal to appoint the job applicant to a special-risk or safety-sensitive position.
- B. Reasonable Suspicion** - The Division/Office Director may require any employee to submit to "reasonable suspicion" drug testing. The director shall promptly detail in writing on the Notice to Submit to a Drug Test form (HR Share Point/Forms) the circumstances that formed the basis of the determination that reasonable suspicion exists to warrant the testing. A copy of this documentation shall be given to the employee and the original documentation shall be kept confidential pursuant to Section 112.0455, F.S.
- C. Routine Fitness for Duty** - The Division/Office Director may require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination.
- D. Commercial Driver's License (CDL)** - Under federal law, those employees who hold a Commercial Driver's License (CDL) due to the duties of their positions will be required to take drug screen and alcohol tests annually. Fifty percent of those employees who fall in this category will be randomly selected for these tests. Incumbents in these positions will be required to take these tests as a condition of employment. Employees hired into a position requiring a CDL must be drug and alcohol tested prior to operating any equipment requiring a CDL.
- E. Follow-Up** - If the employee, in the course of employment, enters an *Employee Assistance Program* for drug related problems, or an alcohol and drug rehabilitation program, the Division/ Office Director may require the employee to submit to a drug test as a follow-up to such program, on a quarterly, semi-annual or annual basis for up to two years thereafter.

6.26.4 Collection Procedures and Employee Protection

- A.** Employees/affected job applicants shall have all specimen collection and testing for drugs performed in accordance with section 112.0455(8), F.S., and with due regard to the privacy of the individual and in a manner reasonably calculated to prevent substitution or contamination. The drug test must be performed by a laboratory licensed and approved by the Department of Health.
- B.** Any drug test conducted or requested by the Division/Office Director may be required before, during, or immediately after the regular work period of the employee, and shall be deemed to be performed during work-time for the purpose of determining pay and benefits for the employee.
- C.** Cost for initial testing, confirmation testing and follow-up testing which is required by the Commission shall be paid by the Commission. Any additional

test not required by the Commission is the responsibility of the employee or applicant.

6.26.5 Test Results

- A.** Section Leaders and higher-level administrators shall have access to the test results. Laboratories and assistance and rehabilitative program staff may also have copies of the results. Release of such information under any other circumstances shall be solely pursuant to a written consent form voluntarily signed by the employee except where release is compelled by a hearing officer or court or where deemed appropriate by a professional or occupational licensing board related to a disciplinary proceeding. The consent form, completed by the employee or applicant, must contain the following:
 - 1. The name of the person who is authorized to obtain the information.
 - 2. The purpose of the disclosure.
 - 3. The precise information to be disclosed.
 - 4. The duration of the consent.
 - 5. The employee/applicant's signature.
- B.** Information on drug test results shall not be released or used in any criminal proceeding against the employee or applicant. Information released contrary to the law shall be inadmissible as evidence in any criminal proceeding.
 - 1. All information, interviews, reports, statements, memorandum, and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential and exempt from the provisions of 119.07(1) and 24(a), Art. I of the State Constitution, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings.

6.26.6 Positive Confirmed Test Result and Notice to Applicants or Employees

- A.** Within five working days after receipt of a positive confirmed test result, the Division/Office Director shall inform the employee or job applicant in writing by certified mail, return receipt requested, of such positive test results, the consequences of such results, and the options available to the employee or job applicant. In addition, the Division/Office Director may have a hand-delivered copy of the notice given to the employee or job applicant. A mailed notice or attempted personal delivery shall constitute full and complete notice even if the mail or delivery attempt is refused or ignored by the employee or job applicant.
- B.** The Division/Office Director shall provide to the employee or job applicant, upon request, a copy of the test results.
- C.** Within five working days after receiving notice of a positive confirmed test result, the employee or job applicant may submit information to the Division/Office Director or Executive Director explaining or contesting the test results.
- D.** If an employee or job applicant's explanation or challenge of the positive test results is unsatisfactory, a written explanation as to why the employee or job

applicant's explanation is unsatisfactory, along with the report of positive results, shall be provided by the Division/Office Director to the employee or job applicant and all such documentation shall be kept confidential and shall be retained by the Commission.

6.26.7 Disciplinary Action

- A.** Employees, except special-risk employees, may not be discharged, refused employment, disciplined, or discriminated against on the sole basis of the first positive confirmed drug test, unless the employee was first given the opportunity to participate in, at the employee's own expense, an approved *Employee Assistance Program* or alcohol and/or drug rehabilitation program and the employee:
 - 1. Refused to participate in the approved program.
 - 2. Failed to successfully complete the program.
 - 3. Retested with a positive test result after completion of the program.
 - 4. Failed or refused to sign a consent form allowing the Commission to obtain information regarding the progress and successful completion of the approved program.
- B.** Employees in the following classes have been determined safety-sensitive: Executive Director, Assistant Executive Director, Regional Director, General Counsel, Senior Attorney, Director of Law Enforcement, Deputy Directors of Law Enforcement, Law Enforcement Section Leader and any class required to have a CDL as part of their duties. Employees in safety-sensitive positions shall not be permitted to continue performing duties of a safety-sensitive position when a positive confirmed drug test is found. As determined by the Executive Director or by the Chairman of the Commission if the Executive Director has a confirmed positive test, the employee shall be:
 - 1. Placed in a non-special-risk or non-safety-sensitive position if available, or temporarily assigned non-safety-sensitive or non-special-risk tasks, or
 - 2. Placed on annual, compensatory or non-paid leave while participating in an *Employee Assistance Program* or alcohol and drug rehabilitation program.
- C.** Employees who occupy a special-risk position may be disciplined or discharged for the first positive confirmed drug test result when illicit drugs, pursuant to Section 893.13, F.S., are confirmed. Special-risk employees shall not be permitted to continue work in a law enforcement capacity, but may be assigned either a non-safety-sensitive activity or be placed on leave status while participating in an employee assistance program.
- D.** Refusal to submit to a drug test may be used as a basis for refusing to hire an applicant or as a basis for terminating or disciplining an employee.

6.26.8 Use of Prescriptive or Non-prescriptive Drugs

- A.** When any use of prescription or nonprescription medication impairs an employee's fitness to properly perform his/her job, the employee shall:
 - 1. Request permission from the supervisor to take a leave of absence or
 - 2. Request the supervisor's permission to perform alternate work activities.

- B. An employee who is suspected of taking a prescription or nonprescription medication in a manner which may impair the employee's fitness to perform the employee's job duties shall be asked to provide the following information:
 1. The name of the medication.
 2. The dosage and frequency of use.
 3. Whether the drug is prescriptive or non-prescriptive.
 4. Name of the physician who prescribed or recommended the use of such medication.
- C. If it is determined that an employee is using a prescriptive or non-prescriptive drug in a manner that impairs the employee's fitness to perform his/her job duties, the employer must give the employee written notice of such determination and may take one or more of the following actions:
 1. Assign the employee to alternate duties.
 2. Direct the employee to use sick leave.
 3. Direct the employee to refrain from misusing prescriptive or non-prescriptive medication in any manner that will impair the employee's fitness while performing job duties and responsibilities.
 4. Request that the employee participate in, at the employee's expense, an approved *Employee Assistance Program* or drug rehabilitative program.
 5. Special-risk employees may be required to undergo a medical or psychiatric examination by a physician selected and paid for by the Division/Office Director in order to evaluate the employee's fitness to perform the duties of a special-risk employee.
 6. If, after exercising one or more of the options available in paragraphs 1-5, the director determines that the employee is continuing to use prescriptive or non-prescriptive medication in a manner which seriously impairs the employee's fitness to perform his/her job, the Division/Office Director may take such disciplinary action as is appropriate.

6.26.9 Grievances and Appeals

Grievance and appeals covering actions relating to drug testing, results and actions, if any, shall be processed in accordance with the provisions of Section 112.0455, F.S. and as set forth below:

- A. Any Career Service employee who is disciplined or any applicant who applies for a special-risk or safety-sensitive position and is not selected may file an appeal with the Public Employees' Relations Commission within thirty calendar days of receipt of such action.
- B. Career Service employees shall be given notice of their right to file an appeal, or if available, the right to file a collective bargaining grievance pursuant to the bargaining contract.
- C. Career Service employees who have been disciplined or who have not been selected pursuant to this policy must exhaust either the administrative appeal process or collective bargaining grievance process.
- D. Senior Management, Selected Exempt Service or OPS employees alleging a violation of the provisions of Section 112.0455, F.S., may institute a civil action or injunctive relief or damage or both, in a court of competent

jurisdiction within 180 days of the alleged violation or be forever barred from obtaining relief.

History: Est.: 11/12/2002; Rev.: 9/21/2012

Approved:

Gregory L Holder
Executive Director or Designee

September 25, 2012
Date