Washington State Department of Social & Health Services

Transforming lives

**Administrative Policy No. 18.75**

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| **Subject:** | Drug and Alcohol-Free Workplace |
| **Information Contact:** | Human Resources Division |
| **Authorizing Sources:** | Federal Drug Free Workplace Act of 1988<br>Mandatory Guidelines for Federal Workplace Drug Testing Programs<br>Federal Omnibus Transportation Employer Testing Act of 1991<br>Federal Commercial Motor Vehicle Act of 1986<br>49 CFR Parts 40 and 382<br>Chapter 69.50 RCW Uniform Controlled Substances Act.<br>Chapter 46.25 RCW Washington's Uniform Commercial Driver's License Act<br>WAC 296-800-11025 Prohibit alcohol and narcotics from your workplace<br>WAC 357-37-200 Drug/Alcohol Testing<br>Chapter 357-40 WAC Discipline<br>Chapter 357-52 WAC Appeals |
| **Effective Date:** | July 1, 2017 |
| **Revised:** | September 18, 2020 |
| **Approved By:** | **Original signed by Wendy Long**<br>Senior Director, DSHS Human Resources |

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## Purpose

This policy establishes the rules and standards of employee conduct toward the use of, and impairment by, drugs, alcohol, or other controlled substances in the Department of Social and Health Services workplace. The intent of the policy is to promote a safe, efficient, and productive work environment, and protect the health and safety of employees, and the clients, patients, residents and those citizens with whom they interact.

This policy also provides direction on how to assist employees who are struggling and may develop job performance problems as a result of a dependence on drugs, alcohol, or other controlled substances. The department recognizes substance use disorder as a treatable illness and an employee suffering from dependency on drugs, alcohol, or other controlled substances will receive the same consideration extended to employees having any other illness, including the use of sick leave to pursue a professionally prescribed program of treatment. The department

will keep all requests for assistance confidential. No employee will have their job security or promotional opportunities jeopardized when assistance is requested prior to an incident or the employee being notified they are being subjected to a test unless other circumstances warrant such action. No employee will be retaliated or discriminated against in any way, as a consequence of seeking treatment.

**Scope**

This policy applies to all department employees. For represented employees, the collective bargaining agreements (CBA) supersedes specific provisions of this policy with which it conflicts.

**Additional Guidance**

- **Reasonable suspicion guidelines**
- **Drug and alcohol testing program manual for CDL employees**
- Applicable collective bargaining agreements

**Definitions**

**(The drug and alcohol testing program manual for CDL employees contains additional definitions specific to that program.)**

**Alcohol**: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl alcohol and isopropyl alcohol.

**Approved treatment program**: Substance use disorder (formerly chemical dependence) service providers certified by the Department of Health.

**Chain of custody**: The process of transmitting a urine sample to a federally certified laboratory for analysis and transporting the results of the testing to a medical review officer for review and verification of the results. To ensure the correct identity of the urine sample, a federal drug testing custody and control form (CCF) accompanies the sample from the collection site (where the employee attests to the identity of the sample) to the laboratory and then to the medical review officer. The employee retains one copy of the CCF, and another copy is sent to the employer. If the chain of custody is suspected of inaccuracy at any point, the urine sample is discarded and the result is noted as negative.

**Commercial driver's license (CDL):** A license required by the commercial vehicle safety act of 1986 or chapter 46.25 RCW, to operate a commercial motor vehicle.

**Confirmation test**: For alcohol testing, a confirmation test means a second test by an evidential breath-testing machine following a screening test resulting in an outcome of 0.02 or greater, which provides quantitative data of alcohol concentration. For controlled substances testing, a confirmation test means a second analytical procedure to identify the presence of a specific drug

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or metabolite, which is independent of the screening test and uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy.

**Controlled substance**: Any substance or its immediate precursor listed in schedules I through V of Article II, chapter 69.50 RCW. Examples of such substances include, but are not limited to, amphetamines, methamphetamines, cannabinoids, cocaine metabolite, phencyclidine (PCP), opiates metabolite, barbiturates, benzodiazepines, methadone, marijuana methaqualone, propoxyphene, or a metabolite of any such substance.

**Drug**: Any substance, whether controlled, medically prescribed, or over the counter, which has or tends to have the effect of altering one's mood or mental functioning, and of interfering with an employee's ability to perform duties safely and with the exercise of necessary judgment. For purposes of this policy, testing for drugs or controlled substances refers to the five illegal substances for which employees may be tested: amphetamines, cocaine, marijuana, opiates, and PCP (phencyclidine). Management may require expanded non-DOT drug testing, depending on the incident.

**Drug and alcohol coordinator**: Management employee designated to oversee the operations of this policy, and to act as the designated employer representative (DER) as described in 49 CFR Part 40.

**Drug paraphernalia**: As defined in RCW 69.50.102 is all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.

**Medical review officer (MRO):** A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program. The MRO has knowledge of substance abuse disorders; has appropriate medical training to interpret and evaluate a person's confirmed positive test result, together with the person's medical history and any other relevant biomedical information; provides verification of laboratory test results. The MRO may not have any financial relationship with a treatment program and may not provide substance use disorder treatment for employees whose test results they have reviewed.

**Reasonable suspicion**: The inference that an employee may be under the influence of drugs, alcohol, or controlled substances based on specific, contemporaneous, describable observations concerning the employee's appearance, behavior, speech, or body odors.

**Refusal to submit** (to a drug, alcohol, or controlled substance test): Besides outright refusal, this term includes situations in which the employee:

1. Fails to provide adequate breath for testing without a valid medical explanation after having received notice of the requirement for breath testing;
2. Fails to provide adequate urine for drug testing without a valid medical explanation after having received notice of the requirement for urine testing;
3. Engages in conduct that clearly obstructs the testing process;

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4. Fails to cooperate with any part of the testing process;
5. Refuses to read and sign a statement on the drug testing custody and control form certifying the specimen is in fact the employee's specimen;
6. Fails to appear for any test within a reasonable time as determined by the department and after being directed to do so; or
7. Leaves the scene of an accident without valid reason before a drug, alcohol, or controlled substance test has been conducted.

**Return to duty (or return to work) plan**: A written document, developed by a certified substance use disorder professional (CSUDP) or other approved drug and alcohol specialist involved in monitoring the personal progress of an employee who has violated the policy. The document will include all the requirements with which the employee must comply before returning to the employee's position. The requirements may include treatment, aftercare, frequency of follow-up tests, and requirements for continuing care beyond the date of the employee's return to work.

**Safety sensitive position**: For purposes of this policy, safety sensitive positions are:

1. Licensed health care professionals who prescribe, administer, or dispense medications as part of their job duties;
2. Licensed emergency medical technicians (EMT);
3. Employees issued firearms as part of their position;
4. Non-represented employees who provide security on state property or ensure public safety; and
5. Employees whose positions require a commercial driver's license (CDL). For CDL employees, safety sensitive functions include such duties as operating, loading, unloading, inspecting, maintaining or repairing a commercial vehicle, obtaining assistance or remaining in attendance with a disabled vehicle, or as otherwise set forth in the code of federal regulations (CFR). A CDL employee is considered to be performing a safety sensitive function during any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety sensitive function.

**Serious bodily injury**: As a criterion in requiring a post-accident drug, alcohol, or controlled substance test, this term means a workplace accident or injury severe enough that off-site medical attention is required.

**Service agent**: The firm retained by the department to designate approved sites for the collection of specimens (breath for alcohol testing, urine for drug and controlled substance testing); transport urine specimens to approved laboratories for analysis; provide medical review officer services to verify test results, report results to the department drug and alcohol program coordinator; and provide other allied services requested by the department.

**Significant property or environmental damage**: as a criterion in requiring a post-accident drug, alcohol, or controlled substance test, this term means a workplace accident or incident, which results in damage estimated to be in excess of $500.

**Substance use disorder (formerly known as chemical dependency)**: A progressive and chronic illness characterized by lack of control over the use of drugs, alcohol, or other controlled

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substances, and the continued use of the substance in the face of negative effects by the use to any major life area.

**Substance use disorder professional (formerly known as chemical dependency professional)**: A substance use disorder professional (SUDP) is certified as such by the Washington state department of health under RCW 18.205. SUDPs provide substance use disorder counseling services in approved agencies. For purposes of this policy, use of the term substance use disorder professional will also mean those professionals formerly classified as chemical dependency professionals.

**Under the influence**: Exhibiting behavior, work performance or judgment, or physical characteristics leading to a reasonable belief that the employee may be impaired because of the use of drugs, alcohol, or controlled substances. Examples of characteristics include, but are not limited to any one or more of the following:

1. Eyes: Glassy, dilated or constricted pupils, lack of focus;
2. Speech: Slurred, uncharacteristically rapid, or very slow and deliberate;
3. Head and body: Staggers, sways while attempting to stand still, has to hold on to furniture or steady self to walk or stand, head bobs, extreme sleepiness, eyelids drooping;
4. Behavioral manifestations: Uncharacteristic aggressiveness, impulsive behavior, fighting;
5. Odor of drugs, alcohol, or other controlled substances;
6. Sudden or unexplained mood changes; or
7. Loud or inappropriately talkative, persistently boisterous, difficulty in concentrating, displays emotion not appropriate to situation, verbally abusive, or belligerent.

**Policy**

**A. DSHS drug and alcohol-free workplace rules for all department employees:**

1. All employees must report to work in a condition fit to perform their assigned duties, unimpaired by drugs, alcohol, or controlled substances. Employees will not use drugs, alcohol or controlled substances during work hours or while in paid standby status.
    a. An employee who is unable to report for work, remain at work, or return to duty because they are under the influence will be ineligible to receive regular or standby pay.
    b. Employees must notify their supervisor directly, by telephone or other prescribed manner pursuant to agency, division, or program procedures, of their inability to report for unscheduled overtime if under the influence of drugs, alcohol, or other controlled substances. The department will not penalize employees in these instances.

2. The use or possession of drugs, alcohol, or controlled substances by an employee is prohibited in state vehicles, on agency or state owned or leased property or premises, or other governmental or private worksites where employees are assigned to conduct official state business, except when the premises are considered residences.
    a. Exceptions include medications legally prescribed by a physician, and over the counter medications, excluding marijuana, which remains prohibited. See

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subsection 5 of this section for additional provisions on physician prescribed or over the counter medications.

3. The unlawful use, possession, delivery, dispensing, distribution, manufacture, or sale of drugs, alcohol, or controlled substances, unauthorized prescription drugs, or drug paraphernalia in state vehicles, on agency or state owned or leased property or premises, or while on official business is prohibited at all times.

4. The off duty use or possession of illegal substances, or any other trafficking in drugs by an employee will not be grounds for disciplinary action unless said activities:
    a. Result in a conflict of interest under chapter 42.52 RCW;
    b. Are detrimental to the employee's work performance, the program, or the reputation of the agency; or
    c. Present a connection to the employee's position.

5. Employees taking physician prescribed or over the counter medications, if there is substantial likelihood that such medication will affect job safety or impact the essential job functions, must:
    a. Notify their supervisor, or in the supervisor's absence, the next available official in their chain of command, that they are taking the medication and the side effects or limitations of the medication.
        i. The employee does not have to disclose the specific medication or any related health condition requiring use of medication to the supervisor or chain of command.
    b. Provide notice when the employee starts taking the medication(s);

    Employees whose work performance is temporarily impacted by prescription or over the counter medication may be reassigned productive alternate work, if available. If no alternate work is available, the employee may be required to take paid leave or leave without pay.

6. Employees arrested or placed on court appointed sanctions or conditions that affect their ability to perform assigned duties must notify their immediate supervisor within twenty four (24) hours or prior to their next scheduled work shift, whichever occurs first, of the arrest, sanctions, or conditions. Employees convicted of a violation of a criminal drug statute for an offense occurring in the workplace or on-duty assignment must notify their immediate supervisor, within five days of the conviction.
    a. Within 10 days of this notification, the department will notify the federal agency that provides funding for the office in which the convicted employee works.
    b. The department may impose appropriate disciplinary action, up to and including dismissal, and/or require, as a condition of continued employment that the employee satisfactorily complete an approved substance abuse rehabilitation program.

7. If an employee's whose position requires that they drive a vehicle (whether state owned, personal, or rented) while on state business, the employee must notify their immediate supervisor of any driving citations involving drugs, alcohol or controlled substance and

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any conviction or administrative license revocation or suspension that result from the citation. Such notification must occur no later than the first workday following the action.

8. Employees must submit to drug, alcohol, or controlled substance testing when required by the provisions of this policy. A refusal to test has the same consequence as a positive test as defined.

9. An employee may request assistance for a drug or alcohol problem and will be given an opportunity to seek assistance from the employee assistance program or other agency recognized assistance program.
    a. If the assistance is requested prior to an incident or the employee being notified they are being subjected to a test, the employee will not be subject to discharge, unless other circumstances warrant such action or where provisions of a collective bargaining agreement may apply differently.

10. All employees must comply with this policy. The department will consider disciplinary action, up to and including dismissal for any violation of this policy.

**B. Reasonable suspicion**

1. When reasonable suspicion exists to believe an employee may be under the influence of drugs, alcohol, or controlled substances while at work or performing official duties, the employee will be relieved of duty for the remainder of their scheduled shift.
    a. The determination of reasonable suspicion must be documented by a manger, supervisor, or lead worker who has completed department provided or approved training on detecting the signs and symptoms of being affected by drugs, alcohol, or controlled substances. The determination must be verified by another trained manager, supervisor, or lead worker.
    b. If the employee is in a safety sensitive position as identified in this policy, the department will refer the employee for drug, alcohol, or controlled substance testing in accordance with this policy and applicable collective bargaining agreements.
    c. If the employee is not in a safety sensitive position, the employee will be subject to the procedures established in the reasonable suspicion guidelines document.

See reasonable suspicion guidelines for specific procedures and documentation requirements.

**C. Drug, alcohol, and controlled substance testing**

1. Employees are subject to drug, alcohol, and controlled substance testing when the following apply:
    a. Employees are required to possess a commercial driver license (CDL) and are required to perform "safety sensitive" duties involving a commercial motor vehicle. Refer to drug and alcohol testing program manual for CDL employees for the federally mandated testing requirement. In addition, these CDL employees are also subject to the provisions of this policy, as it applies to all department employees.

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b. Post-accident/incident testing: Safety sensitive CDL employees will be required to submit to a drug, alcohol, and controlled substance test following a workplace incident involving any motor vehicle resulting in:
   i. Serious bodily injury or significant property/environmental damage;
   ii. The potential for death, serious bodily injury, or significant property or environmental damage;
   iii. One of the vehicles involved is unable to operate or drive, except for tire or headlight damage; and
   iv. When an employee's actions or inaction either contributed to the incident, or cannot completely be discounted as a contributing factor.

2. Safety sensitive testing:
   a. Reasonable suspicion testing: Employees are subject to testing for drugs, alcohol, or controlled substances when their supervisor has reason to suspect, based on observations of the employee's behavior and other indicators that the employee may be under the influence of drugs, alcohol, or controlled substances.

   b. Random testing: Under RCW 46.25, Federal CFR 49 part 40, all department CDL positions or positions required to perform safety sensitive functions aboard a marine vessel are subject to random testing for the presence of drugs and alcohol. Drug testing is fifty percent (50%) of the total number of employees in each prospective "pool" annually, and alcohol testing is ten percent (10%) annually.

   c. Return to duty testing: Department employees, including those employees testing under federal regulations who test positive for drugs, alcohol, or controlled substances must provide a negative test result before returning to safety sensitive duty.

   d. Follow-up testing: Employees who tested positive and are cleared to return to duty by a CSUDP or MRO, are subject to a minimum of six (6) unannounced follow-up tests within the first year after the individual returns to work. The CSUDP or MRO may require additional follow-up tests. All employee tests conducted under federal regulations will follow applicable federal CFR.

3. Safety sensitive positions
   a. Employees in safety sensitive positions are subject to drug, alcohol, or controlled substance testing. An example of an employee is a safety sensitive position includes, but is not limited to a licensed health care professional who administers or dispenses medications as part of their job duties.

   b. Pre-employment: Applicants for department safety sensitive positions will be required to produce a negative drug test result after receiving a conditional offer of employment.

   c. Post-accident: Employees in safety sensitive positions will be required to submit to a drug, alcohol, or controlled substance test following a workplace incident

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when an employee's action(s) or inaction(s) either contributed to the incident, or cannot completely be discounted as a contributing factor resulting in:

i. Death, serious bodily injury, or significant property or environmental damage;
ii. The potential for death, serious bodily injury, or significant property or environmental damage; and

d. Post firearm shooting incidents: Following any incident in which an employee in a safety sensitive position uses their weapon, that employee will be required to submit to testing for drugs, alcohol, or controlled substances use as soon as the incident has concluded. A supervisor or other management designee will transport the employee to the collection site. A refusal to test will be considered the same as a positive test and may result in disciplinary action, up to and including dismissal.

4. Reasonable Suspicion
Reasonable suspicion testing for drugs, alcohol, or controlled substances may be directed by the department for any employee performing safety sensitive functions when there is reason to suspect that the employee may be under the influence of drugs, alcohol, or controlled substances.

a. Specific, objective grounds must be stated in writing that support the reasonable suspicion. Examples of specific objective grounds may include, but are not limited to the following:

i. Physical symptoms consistent with drugs, alcohol, or controlled substances use;
ii. Evidence or observation of the use, possession, sale, or delivery of drugs, alcohol, or controlled substances; or
iii. The occurrence of an accident where a trained manager, supervisor, or lead worker suspects that drugs, alcohol, or controlled substances use may have been a factor.

b. A trained manager, supervisor, or lead worker is one who has completed drug and alcohol training on detecting the signs and symptoms of being affected by drugs, alcohol, or controlled substances. A referral for testing will be made based on specific objective grounds documented **and** verified by another trained manager, supervisor, or lead worker.

c. When reasonable suspicion exists, employees must submit to drug, alcohol, or controlled substance testing when required by the department. A refusal to test is considered the same as a positive test. When an employee is referred for testing, they will be removed immediately from duty and transported to the collection site.

d. Follow-up testing will be required of safety sensitive employees if required in a return to work plan.

**D. General provisions for drug, alcohol, and controlled substance testing:**

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1. Testing for the presence of drugs, alcohol, or controlled substances will be conducted in such a way as to ensure maximum accuracy and reliability.

2. Testing will use the techniques, chain of custody procedures and forms, and equipment and laboratory facilities approved by the U.S. department of health and human services in the mandatory guidelines for federal workplace drug testing programs. Collection of test samples (urine for controlled substances, breath for alcohol) will be done only at approved collection sites.

3. To ensure compliance with these requirements, the department will contract with an outside qualified and experienced drug and alcohol service agent.

**E. Consequences for an employee who has a positive drug, alcohol or controlled substance test:**

1. Employees who test positive will immediately be removed from all safety sensitive functions.

2. An employee who has a positive alcohol test result or a confirmed positive drug or controlled substance test result that is verified positive by a medical review officer will be subject to disciplinary action, up to and including dismissal. Action taken will be based on the incident that prompted the testing, including a violation of the drug and alcohol-free workplace rules.

3. Management may disclose the results at the employee's request or as necessary for the conduct of department business. This could include any challenge to the disciplinary action arising from the incident or behavior that led to the testing.

4. The employee will be advised of the test results:
    a. In the event of a positive test report, the employee may be required to receive an assessment from the Washington state employee assistance program (EAP) or other approved case management resource, such as the SUP or Washington health professional services, as assigned by the drug and alcohol program coordinator.
    b. The employee must sign a return to work agreement developed in cooperation with the CSUDP or other assigned resource.
    c. CDL drivers covered under federal testing programs must comply with all federal requirements following a positive drug test.

5. An employee who violates the terms of the return to work agreement will be subject to further disciplinary action, up to and including dismissal. The employee may also be required to sign a consent for release of information giving the assigned case management resource permission to notify the supervisor of any non-confidential requirements affecting the employee's position and cooperation with the return to work agreement.

**F. Provisions for payment and other compensation for testing:**

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1. The department will compensate employees for their time and reimbursable expenses related to providing samples for reasonable suspicion and post-accident testing.

2. If an employee's drug test is confirmed positive and the employee requests that the split sample be tested, the test of the split sample will be at the employee's expense.
    a. The department will approve the request, provided the request is submitted within 72 hours of the notification of the positive test result to the department by the MRO.
    b. If the result of the split sample testing is negative, the department will reimburse the employee for the cost of the test.

**G. Provisions for receiving and safeguarding test results:**

1. All results of drug, alcohol, or controlled substance testing will be maintained confidentially. Supervisors will be notified only of a positive or negative result. The type or quantity of the substance will not be disclosed.

2. Results of testing will be given to the drug and alcohol program coordinator, who will release them only as necessary for conduct of department business. The coordinator will keep testing records in a confidential and locked file. The test results will not be included in the employee's personnel file.

3. If an employee who tests positive chooses to resign rather than meet with the resource as directed, or if an employee is dismissed, a copy of the resignation or dismissal letter must be forwarded to the drug and alcohol program coordinator for inclusion in the record.

**H. Employee Training**

Provisions for training employees in this policy:

1. Training will be made available to all managers, supervisors, shop stewards, and lead workers. The training will include at a minimum:
    a. The elements of the department's drug and alcohol-free workplace program;
    b. The effects of drugs, alcohol, and controlled substances in the workplace; and
    c. Behavioral symptoms of being affected by drugs, alcohol, or controlled substances (reasonable suspicion).

2. Training will be required for all department managers, supervisors, and lead workers who are in a position to require testing of CDL, safety sensitive positions, and other designated employees once every three years.
    a. The focus of this training will be the criteria for requiring a reasonable suspicion drug, alcohol or controlled substance test, and the procedures for executing the testing.
    b. The drug and alcohol coordinator will keep a record of all who have completed the training, and the training records will be made available to managers and supervisors at their request, to substantiate reasonable suspicion observations.

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3. Specific training or educational material concerning drug, alcohol and controlled substance testing will be provided to CDL employees, other safety sensitive employees, and to all employees subject to drug, alcohol or controlled substance testing.

4. Since compliance with the policy is a condition of employment, an employee awareness program will be made available to all department managers, supervisors, and employees, with a focus on the elements listed in the federal drug-free workplace act of 1988.

**Contact your human resources division point of contact for additional information or questions regarding this policy**.

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