



Policy and Procedures
Human Resources

Drug and Alcohol Abuse

I. PURPOSE AND GOAL

The New Mexico Department of Finance and Administration ("DFA") is committed to protecting the health, safety, and well-being of DFA Employees in the DFA workplace. The DFA recognizes that alcohol abuse can be a pervasive problem in a workplace, seriously injure the health of employees; adversely impair job performance; endanger the safety and well-being of other employees, clients; and members of the community; and drug use pose a significant threat to the DFA's goals. To reduce the significant harm to individuals and the community caused by substance abuse, the DFA is committed to the enforcement of policies promoting a drug-free workplace.

The DFA Drug and Alcohol Abuse Policy ("Policy") establishes a drug-free workplace program that balances our respect for Employees with the need to maintain an alcohol and drug-free environment, in accordance with N.M.S.A. (1978) § 10-9-10 *et seq.* and NMAC 1.7.8.1.

II. DEFINITIONS

- A. "**Agency**" means any New Mexico government department, bureau, division, and branch.
- B. "**Alcohol**" means all consumable non-prescription substances which contain alcohol, specifically including, without limitations, spirits, wine, malt beverages, and other intoxicating liquors.
- C. "**Aliquot**" means a portion of a urine specimen used for testing.
- D. "**Board**" means a committee comprised of the cabinet secretary and all deputy cabinet secretaries charged with making certain appointments and decisions related to this policy.
- E. "**Chain of Custody**" refers to procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. In any dispute regarding chain of custody, the identity and integrity of the sample at issue may be established by a preponderance of the evidence.
- F. "**Confirmatory Test**" means a second analytical procedure to identify the presence of a specific drug or metabolite of those drugs, or any non-prescription substance containing those drugs.

- G. **"Drug"** means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines; a metabolite of those drugs; alcohol; or any non-prescription substance containing these drugs.
- H. **"Employee"** means an individual employed by the DFA, receives wages from DFA, and whose work is under the direct control and supervision of DFA. "Employee" includes term, probationary, temporary, permanent, and exempt positions, but does not include independent contractors who perform work for the state. Employee includes an applicant for employment within DFA.
- I. **"Initial Test"** means an immunoassay screen which meets the requirements of the food and drug administration to eliminate negative specimens from further consideration.
- J. **"Medical Review Officer"** means a New Mexico based and licensed physician knowledgeable in the medical use of prescription drugs and alcohol, and the pharmacology and toxicology of illicit drugs and alcohol.
- K. **"Non-prescription"** refers to all substances other than a substance prescribed by a doctor or licensed health professional to the employee or candidate for employment.
- L. **"On Duty"** means any time during an employee's regular workday or other period during which the employee is required or permitted to work by the employer, including overtime, lunch and other breaks, and any time while operating or riding in a state vehicle.
- M. **"Possession"** means to knowingly have, own, or have on oneself the Drug, the alcohol, or both.
- N. **"Random Selection Basis"** means a system for selecting employees or groups of employees for drug testing in a statistically random system based on a neutral criterion, such as employment or position numbers, without individualized suspicion that a particular employee is using drugs.
- O. **"Drug and Alcohol Abuse Regulations"** means New Mexico Administrative Code at 1.7.8.1.
- P. **"Reasonable Suspicion"** means a belief drawn from specific objective and articulable facts, and the reasonable inferences drawn from those facts.
- Q. **"Safety-Sensitive Position"** means a position approved as such by the board, including a supervisory or managerial position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is not limited to, health care providers, peace officers, pilots, correctional officers, employees who are required to regularly carry a firearm, employees who regularly transport other people as their principal job; and positions involving use of equipment that could pose a risk to public health or safety.

III. POLICY

A. Employees who violate this Policy, such as with positive test results, may be disciplined, up to and including reprimand, suspension with or without pay, termination, or referral for investigation and/or prosecution by law enforcement agencies for violation of the standards and conduct. In addition, or alternatively, Employees may be required to participate in and satisfactorily complete a drug abuse assistance or rehabilitation program.

B. Substance Abuse Coordinator.

1. The Cabinet Secretary will appoint a Substance Abuse Coordinator. The appointee will be responsible for the drug and alcohol abuse program, and will provide Employees with drug awareness information including, but not limited to:
 - a) Dangers of drug and alcohol abuse;
 - b) Availability of counseling, rehabilitation, and employee assistance programs; or
 - c) Sanctions that may be imposed by 1.7.8.19 NMAC.
2. The Substance Abuse Coordinator is responsible for ensuring the DFA has contracted or made arrangements with a medical review officer to perform the duties required by 1.7.8 NMAC

C. Substance Abuse Testing.

1. All candidates for safety-sensitive positions are required to submit to drug testing after an offer of employment is made and prior to final selection.
2. Agencies that require employees in safety-sensitive positions to undergo regular physical examinations shall require such employees to undergo drug testing as part of those physical examinations.
3. Agencies shall require employees to undergo drug, alcohol testing or both if the agency has a reasonable suspicion that the Employee has committed drug or alcohol abuse based on, but not limited to: (i) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty; such symptoms may include, but are not limited to liquor on breath, slurred speech, unsteady walk, or impaired coordination; or (ii) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

4. Employees shall submit to a reasonable suspicion drug or alcohol test provided the requesting supervisor has secured the next level's supervisor's approval, unless the requesting supervisor is the agency head. Requesting supervisor shall prepare a contemporaneous memorandum outlining the details leading up to the reasonable suspicion drug or alcohol test. The memorandum shall be submitted to the Substance Abuse Coordinator within twenty-four (24) hours of the request for testing.
5. At least ten percent (10%) of employees in safety-sensitive positions in each agency shall be required to undergo drug testing on a yearly basis.
 - a) The director shall identify the safety-sensitive positions on a random selection basis.
 - b) At the discretion of the Cabinet Secretary or substance abuse coordinator, Employees may be excused from random drug testing if:
 - (1) Previously requested referral in accordance with Subsection B of 1.7.8.19 NMAC;
 - (2) Selection for random drug testing is made during the first 30 calendar days following the request for referral; or
 - (3) On an authorized absence for 30 calendar days or more.
6. The Cabinet Secretary may authorize more than ten percent (10%) random drug testing on employees in safety sensitive positions upon receipt of a written request that would include justification of how the additional testing is related to the conditions of employment and the use of equipment that could pose a risk to public health or safety.

D. Collection of Specimens:

1. Aliquots shall be collected by a laboratory meeting state licensure requirement and certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.
2. Breath specimens may be collected by a certified person, a medical or a laboratory facility. Should the medical or laboratory not be available, or should the equipment fail, the substance abuse coordinator or designee shall designate another testing facility and report this referral to the director within ten working days of taking the breath specimen.

E. Drug Tests:

1. The Initial Test and confirmatory drug tests shall be performed by a state licensed laboratory in accordance with the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.
2. The laboratory shall have the capability of performing Initial Test and confirmatory tests for each drug or metabolite for which service is offered. See 1.7.8.13 NMAC for cutoff concentrations and types of drugs tested.
3. The laboratory shall report as negative all specimens that are negative on the Initial Test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.
4. The laboratory shall retain and place those specimens confirmed positive in properly stored long-term frozen storage for at least 365 calendar days. DFA may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

F. Alcohol Tests:

1. A test for alcohol shall be administered by a legally recognized and approved method.
2. A test by a legally recognized or approved method with results of blood alcohol content (BAC) level of .04 or more shall be deemed positive for alcohol.

G. Reporting of Test Results:

1. Drug and alcohol test results shall be reported only to the Substance Abuse Coordinator or designee.
2. The Substance Abuse Coordinator shall advise candidates and employees in writing of positive test results, which constitute a violation of this policy.
3. Only those members of management who need to know shall be made aware of the test results. Breach of confidentiality may be grounds for disciplinary action.

H. Explanation of Positive Test Results:

1. The test results for all employees who test positive for drugs shall be referred by the DFA's substance abuse coordinator or designee to the medical review officer.
2. If the candidate does not request a review of the test results within two workdays, the candidate waives review by the medical review officer and any retesting of the sample and consents to rejection for selection.
3. The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications for medical or dental treatment.
4. Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the state to order a reanalysis of the original sample and such retests are authorized to be performed only at a laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.
5. Prior to making a final decision to verify a positive test result, the medical review officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the medical review officer and the candidate or employee may be in person or by telephone.
6. The medical review officer shall advise the appropriate Substance Abuse Coordinator of his or her medical conclusions from the review of the results.

I. Retesting:

Employees who have sought review of their positive drug urine tests by the medical review officer and Employees who tested positive for drugs urine tests may elect to have, at their own expense, an aliquot of the original urine specimen retested by another laboratory that meets applicable provisions of any state licensure requirements.

J. Confidentiality:


No laboratory reports or test results shall appear in the employee's personnel file unless he or she is the subject of a disciplinary action. Laboratory reports or test results shall be placed in a special locked file maintained by the substance abuse coordinator. Files relating to laboratory reports or test results maintained by the substance abuse coordinator are confidential.

K. Rehabilitation and Sanctions:

1. Employees shall be treated in accordance with the provisions of NMAC 1.7.8.19.

IV. REVIEW AND APPROVAL

The New Mexico Department of Finance and Administration's Drug and Alcohol Abuse Policy is effective upon the signature of the Cabinet Secretary, below.


Wayne Propst, **Cabinet Secretary**

12/29/23
Date