

## **SUBCHAPTER 11. RISK MANAGEMENT**

### **PART 1. DRUG POLICY**

#### **377:3-11-1. Purpose of policy**

Use of alcohol or illegal drugs may jeopardize the safety of Office of Juvenile Affairs (OJA) employees, the juveniles for whom the Office of Juvenile Affairs is responsible, and the citizens of Oklahoma. Accordingly, it shall be the policy of the Office of Juvenile Affairs to maintain an alcohol and drug-free work environment for the employees and to test job applicants and employees for the use of alcohol and illegal drugs.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 15 Ok Reg 2659, eff 7-1-98; Amended at 20 Ok Reg 1293, eff 7-1-03]

#### **377:3-11-2. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Alcohol**" means ethyl alcohol or ethanol;

"**Employee**" means any person who works full-time, part-time, or on a temporary basis for OJA, including management staff;

"**Job Applicant**" means any person who has applied to be an employee of OJA;

"**Illegal Drugs**" means any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes.

"**OJA**" means the Office of Juvenile Affairs;

"**OSDH**" means the Oklahoma State Department of Health;

"**Transferred or reassigned employee**" means an employee who transfers to a different position or job, or who is reassigned to a different position or job.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 15 Ok Reg 2659, eff 7-1-98; Amended at 20 Ok Reg 1293, eff 7-1-03; Amended at 30 Ok Reg 137, eff 11-8-12 (emergency); Amended at 30 Ok Reg 700, eff 6-1-13]

#### **377:3-11-3. Rules for drug free workplace**

(a) **Illegal drugs.** OJA employees are prohibited from using, possessing, manufacturing, transferring, selling, or attempting to transfer or sell illegal drugs.

(b) **Alcohol.** OJA employees are prohibited from using or being impaired by alcohol in any OJA workplace or in the course of any work-related duty.

(c) **Prescription drugs.** Use of a drug shall not constitute a violation of this policy if the drug has been prescribed by a licensed physician, osteopath, or dentist and is taken as prescribed for that employee or applicant.

(d) **Violations.** Any employee who violates this policy will be subject to discipline, up to and including discharge.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 15 Ok Reg 2659, eff 7-1-98; Amended at 20 Ok Reg 1293, eff 7-1-03]

#### **377:3-11-4. Standards**

(a) An employee is considered to be in violation of this policy if that employee is convicted or has had sentencing deferred for any violation of the Uniform Controlled Dangerous Substances Act in Title 63 O.S. § 2-2-101 et seq, or any similar law in another jurisdiction. Any employee who is convicted or has had sentencing deferred for trafficking, manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled, dangerous substance shall be terminated.

- (b) Any employee who is convicted, or has had sentencing deferred, for driving under the influence of alcohol or drugs or driving while impaired will be considered in violation of this policy.
- (c) Each employee is required to provide written notification within five days after he or she is convicted or has had sentencing deferred for any crime involving illegal drugs or alcohol. Failure to provide written notification may be considered a violation of this policy.
- (d) OJA shall notify each of its federal granting agencies within ten days after receiving notice from an employee or otherwise receiving actual notice of a conviction of any drug statute for a violation occurring in the workplace.
- (e) Each employee must promptly report to his or her immediate supervisor of any medication which will impair the employee's ability to work safely. Failure to report may be considered a violation of this policy.
- (f) Employees will not be discharged for voluntarily seeking assistance for a drug or alcohol abuse problem prior to (1) notification or selection for any incident leading independently to a determination of reasonable suspicion of a violation of this policy. However, continued problems with performance, attendance, or behavior may result in discharge.
- (g) Each employee is required to read and sign a certificate of acknowledgment regarding this policy. Such signed certificate will be filed in the employee's personnel file.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 15 Ok Reg 2659, eff 7-1-98]

### **377:3-11-5. Substance screening**

Drug and alcohol testing may be required for employees and job applicants under the following circumstances:

(1) **Job applicant or transferred or reassigned employee testing.** Every job applicant or transferred or reassigned employee who is conditionally offered employment in the following job families shall be tested if:

(A) the position is in one of the following job families:

- (i) Juvenile Justice Specialist;
- (ii) Youth Guidance Specialist;
- (iii) Juvenile Security Officer;
- (iv) Recreational Therapist;
- (v) Institutional Safety & Security Coordinator;
- (vi) Registered Nurse;
- (vii) Licensed Practical Nurse;
- (viii) Nursing Manager;
- (ix) Food Service Personnel; and
- (x) Psychological Clinician.

(B) such person is employed in an administrative or instructional capacity in any charter school site.

(2) **For-cause testing.** Any employee, at the request of the Executive Director or, if he is unavailable, the Chief of Staff, may be requested or required to undergo drug or alcohol testing at any time it is reasonably believed that an employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

(A) Observable phenomena such as:

- (i) The physical symptoms or manifestations of being under the influence of a drug or alcohol while at work or on duty; or

- (ii) The direct observation of drug or alcohol use while at work or on duty;
  - (B) A report of drug or alcohol use while at work or on duty;
  - (C) Information that an employee has tampered with drug or alcohol testing at any time;
  - (D) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs while on duty or while on any OJA premises or premises with which OJA has contracted services, or operating any OJA vehicle, machinery, or equipment;
  - (E) Drugs or alcohol on or about the employee's person or in the employee's vicinity;
  - (F) Negative performance patterns; or
  - (G) Excessive or unexplained absenteeism or tardiness.
- (3) **Post-accident testing.** Any employee may be tested when the employee or another person has sustained an injury while at work or that property has been damaged while at work, including damage to equipment. No employee who tests positive for the presence of substances, as set forth in and in violation of 63 O.S., § 465.20, alcohol, illegal drugs or illegally used chemicals, or who refuses to take a drug or alcohol test required by OJA, shall be eligible for Workers' Compensation Benefits.
- (4) **Post-rehabilitation.** Any employee who has had a positive test or has participated in a drug or alcohol dependency treatment program may be tested for a period of up to two (2) years, commencing with the employee's return to work.

(5) **Random Testing.** The Executive Director may order random drug testing for OJA permanent, temporary or probationary employees referenced in paragraph one of this rule. The affected employees shall be notified of the effective date and process for testing.

(6) **Return from leave, fitness-of-duty, and other periodic testing.**

(A) The Executive Director may request or require an employee to undergo drug or alcohol testing as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or in connection with an employee's return to duty from leave of absence.

(B) The Executive Director may schedule periodic drug or alcohol testing for employees occupying a position in 377:3-11-5(1).

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 15 Ok Reg 2659, eff 7-1-98; Amended at 20 Ok Reg 1293, eff 7-1-03; Amended at 24 Ok Reg 1392, eff 7-1-07; Amended at 25 Ok Reg 1364, eff 7-1-08; Amended at 29 Ok Reg 319, eff 1-11-12 (emergency); Amended at 29 Ok Reg 648, eff 6-1-12; Amended at 30 Ok Reg 137, eff 11-8-12 (emergency); Amended at 30 Ok Reg 700, eff 6-1-13; Amended at 32 Ok Reg 707, eff 5-9-15 (emergency); Amended at 33 Ok Reg 1728, eff 9-11-16]

**377:3-11-6. Substances to be tested**

Testing for substances or their metabolites shall include, but not be limited to, the following:

- (1) alcohol;
- (2) marijuana;
- (3) opiates/synthetic narcotics such as:
  - (A) codeine (a.k.a. Tylenol #3 and #4, etc., cough syrups, Robitussin AC);
  - (B) hydrocodone (a.k.a. Vicodin or Lortab);
  - (C) hydromorphone (a.k.a. Dilaudid);
  - (D) meperidine (a.k.a. Demerol);
  - (E) methadone (a.k.a. Dolophine);
  - (F) oxycodone (a.k.a. Percodan or Percocet);
  - (G) propoxyphene (a.k.a. Darvon);
  - (H) heroin;
  - (I) morphine;

- (4) cocaine;
- (5) phencyclidine;
- (6) amphetamines:
  - (A) amphetamines (a.k.a. Dexadrine, Bensedrine);
  - (B) methamphetamines (a.k.a. Desoxyn);
  - (C) methylenedioxyamphetamines;
  - (D) methylenedioxymethamphetamines;
  - (E) phentermine (a.k.a. Adipex, Fastin, Ioamin);
- (7) barbiturates:
  - (A) amobarbital (a.k.a. Amytal);
  - (B) butalbital (a.k.a. Florinal, Fioricet);
  - (C) pentobarbital (a.k.a. Nembutal);
  - (D) secobarbital (a.k.a. Seconal; NOTE: Amobarbital and secobarbital combination to form Tuinal).
- (8) benzodiazepines:
  - (A) diazepam (a.k.a. Valium);
  - (B) chlordiazepam (a.k.a. Librium);
  - (C) alprazolam (a.k.a. Xanax);
  - (D) clorazepate (a.k.a. Tranxene); and
- (9) methaqualone (a.k.a. Quaalude, Parest, Sopor).
- (10) Any other substance approved for testing by the Commissioner of Health of the Oklahoma State Department of Health (OSDH).

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 29 Ok Reg 319, eff 1-11-12 (emergency); Amended at 29 Ok Reg 648, eff 6-1-12]

### **377:3-11-7. Testing methods**

- (a) Tests will be conducted by an outside testing facility according to Drug and Alcohol Testing Rules of Oklahoma State Department of Health (OSDH).
- (b) **Drug testing.** Drug testing shall be performed on urine samples or by other methods approved by OSDH.
- (c) **Alcohol testing.** Initial testing shall be performed on blood, breath, or saliva or by other methods approved by OSDH. Confirmation testing shall be performed on breath or blood or by other methods approved by OSDH. Rehabilitation/post-rehabilitation alcohol tests may be performed on urine or by other methods approved by OSDH.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97]

### **377:3-11-8. Collection procedures**

Collection of samples for drug and alcohol testing shall be in accordance with the Drug and Alcohol Testing Rules of the OSDH. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 29 Ok Reg 319, eff 1-11-12 (emergency); Amended at 29 Ok Reg 648, eff 6-1-12]

### **377:3-11-9. Consequences of refusal**

- (a) **Employees.** Any employee who refuses testing under this policy shall be subject to discipline up to and including discharge from employment. Inability to give an adequate urine sample shall be deemed a refusal, but the employee may overcome this conclusion by providing conclusive medical evidence of a pre-existing condition, which prevents the

production of an adequate sample. Adulteration of a specimen of a drug or alcohol test shall be considered as a refusal to test.

(b) **Job applicants.** Any job applicant who has received a conditional offer of employment from OJA and who refused to undergo drug and alcohol testing will not be hired by OJA.

Unreasonable delay in submitting to testing shall be deemed a refusal.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 15 Ok Reg 2659, eff 7-1-98; Amended at 20 Ok Reg 1293, eff 7-1-03; Amended at 25 Ok Reg 1364, eff 7-1-08; Amended at 29 Ok Reg 319, eff 1-11-12 (emergency); Amended at 29 Ok Reg 648, eff 6-1-12]

### **377:3-11-10. Consequences of positive test results**

(a) Any employee who has a positive test result will be subject to discipline up to and including discharge from employment. Such an employee will also be referred to the Administrator of Employee Assistance Program. After evaluation, the employee may be required to complete drug and alcohol education and/or treatment. Unsuccessful completion or refusal to participate will result in termination of employment.

(b) Any job applicant who has received a conditional offer of employment and who has a positive test result will not be hired by OJA.

(c) An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a positive drug or alcohol test shall be considered to have been discharged for misconduct for purposes of unemployment compensation benefits as provided for in Section 2-406 and 406.1 of Title 40.

(d) Any job applicant who has received a conditional offer of employment and any employee subject to OJA's drug testing policy shall be subject to the consequences set forth in this Rule even if the drugs found in the applicant's or employee's system were purchased and consumed in any state in which the controlled substance is legalized, as long as the drug in question remains illegal in Oklahoma.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 15 Ok Reg 2659, eff 7-1-98; Amended at 20 Ok Reg 1293, eff 7-1-03; Amended at 29 Ok Reg 319, eff 1-11-12 (emergency); Amended at 29 Ok Reg 648, eff 6-1-12; Amended at 30 Ok Reg 137, eff 11-8-12 (emergency); Amended at 30 Ok Reg 700, eff 6-1-13; Amended at 32 Ok Reg 1979, eff 9-11-15]

### **377:3-11-11. Job applicant and employee opportunities**

#### **(a) Explanation of test results.**

(1) Any job applicant who has received a conditional offer of employment or a transferred or reassigned employee who has a positive test result shall have an opportunity to confidentially explain the result orally and in writing to the Director of Safety and Risk Management.

(2) Any employee who has a positive test result shall have an opportunity to confidentially explain the result orally and in writing to the Director of Safety and Risk Management.

(3) An employee may challenge a positive test result within 24 hours of notice of a positive test result. The cost of such confirmation test shall be the responsibility of the employee unless the confirmation test reverses the findings of the challenged positive test.

(b) **Information.** Records of all drug and alcohol test results and related information shall be the property of OJA and, upon the request of the job applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. OJA will not release such records to any person other than the job applicant, employee, or the employee's review officer, except for any of the following purposes:

(1) As admissible evidence by an employer or the individual tested in a case or proceeding before a court of record or administrative agency if either the employer or the individual tested are named parties in the case or proceeding;

(2) In order to comply with a valid judicial or administrative order; or  
(3) To an employer's employees, agents and representatives who need access to such records in the administration of the Standards For Workplace Drug and Alcohol Testing Act.

(4) If OJA contracts with another employer, OJA may share drug or alcohol testing results of any tested person who works pursuant to such contractual agreement.

(c) **Appeal.** Any employee disciplined pursuant to this policy shall have grievance and appeal rights as provided by the OJA Rules and by the Oklahoma Merit Protection Commission in accordance with the Oklahoma Personnel Act, Title 74, Section 840.1 et seq.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 15 Ok Reg 2659, eff 7-1-98; Amended at 20 Ok Reg 1293, eff 7-1-03; Amended at 29 Ok Reg 319, eff 1-11-12 (emergency); Amended at 29 Ok Reg 648, eff 6-1-12; Amended at 30 Ok Reg 137, eff 11-8-12 (emergency); Amended at 30 Ok Reg 700, eff 6-1-13]

### **377:3-11-12. Severability**

If any portion of this policy is declared or adjudged unconstitutional, such declaration or adjudication shall not affect the remaining portions of the policy.

[Source: Added at 13 Ok Reg 757, eff 11-3-95 through 7-14-96 (emergency); Added at 14 Ok Reg 1860, eff 6-2-97; Amended at 29 Ok Reg 319, eff 1-11-12 (emergency); Amended at 29 Ok Reg 648, eff 6-1-12]