

COMMENT DUE DATE: November 29, 2021

Date: November 11, 2021

Brent Oldland	405-522-6008
Holli Kyker, Policy Specialist	405-885-7805
Dena Thayer, Programs Administrator	405-693-6542

It is important that you provide your comments regarding the **draft copy** of rules by the comment due date. Comments are directed to *STO.LegalServices.Policy@okdhs.org.

SUBJECT: OKDHS:2. ADMINISTRATIVE COMPONENTS
Subchapter 1. Human Resources Management
Part 5. Risk Management and Safety
OKDHS:2-1-180 [ISSUED]
(WF 21-L)

SUMMARY:

OKDHS:2-1-180 is revised to update OKDHS Regulations regarding a drug and alcohol free workplace and drug and alcohol testing.

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT

PART 5. RISK MANAGEMENT AND SAFETY

OKDHS:2-1-180. Drug and Alcohol Free Workplace/Drug and Alcohol Testing. **Issued 11-29-2021**

(a) Authority. Section 551 of Title 40 of the Oklahoma Statutes (40 O.S. § 551, et seq.), Standards for Workplace Drug and Alcohol Testing Act; 63 O.S. §§ 420 and 425; 63 O.S. §427.1, et seq., Oklahoma Medical Marijuana and Patient Protection Act; Section 8101 of Title 41 of the United States Code (41 U.S.C § 8101, et seq.), Drug-Free Workplace Act of 1988.

(b) Purpose. To inform employees and applicants on Oklahoma Human Services (OKDHS) expectations regarding drugs and alcohol in the workplace.

(c) Policy. OKDHS is a drug and alcohol-free workplace. All OKDHS employees are also prohibited from soliciting prescription medication from employees, vendors, or customers. Employees who are under the influence of, use, or possess alcohol or controlled substances in the workplace or who otherwise violate this policy will be subject to disciplinary action up to and including termination. Per 63 O.S. § 425, employers may take action against a medical marijuana license holder if he or she uses or possesses marijuana at his or her place of employment or during employment hours. All OKDHS employees are prohibited from unlawfully manufacturing, distributing, dispensing, possessing, using, or being under the influence of a controlled substance or alcohol during the course and scope of their employment, including, but not limited to:

- (1) during scheduled workhours;
- (2) while operating a state vehicle;
- (3) while on state property; or
- (4) while at the employee's workplace.

(d) Definitions. The following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Applicant" means a person who applies for initial hire, reinstatement, or transfer from a state agency, for any position within OKDHS, or for transfer, demotion, promotion, or reinstatement into the direct care specialist position.

(2) "Alcohol" means and includes hydrated ethyl oxide, ethyl alcohol, ethanol, or wine spirits per 37A O.S. § 1-103. This is commonly referred to as any intoxicating beverage or liquor.

(3) "Controlled substance" means substances listed in Schedule I through V of 21 U.S.C. § 812, and is further defined by applicable federal and state regulations. Controlled substances include, but are not limited to:

- (A) unlawfully consumed or possessed marijuana;
- (B) cocaine;
- (C) opiates;
- (D) phencyclidine; and
- (E) amphetamines.

(4) "Conviction" means a guilty finding, including a nolo contendere plea or sentence, imposed by any judicial body charged with the responsibility of determining federal or state criminal drug statute violations.

(5) "Medical marijuana license" means the license issued by the Oklahoma Medical Marijuana Authority, a division of the Oklahoma State Department of Health, which allows a person to consume and possess marijuana legally within Oklahoma subject to statutory restrictions and conditions.

(6) "Workplace" means any and all properties owned or leased by the state including buildings, land, and vehicles, and any and all sites where OKDHS employees conduct official state business or oversee and administer programs on behalf of the State of Oklahoma.

(e) Implementation.

(1) Prescribed drug use is legal and is permitted in the workplace so long as the utilization does not impair an employee's ability to perform essential job functions effectively and in a safe manner or does not endanger the employee or other individuals. Prescribed drugs do not include marijuana that is consumed and possessed legally with a valid medical marijuana license.

(2) All OKDHS supervisors are required to complete OKDHS training offered regarding signs of impairment and influence of controlled substances and alcohol.

(3) In the event the supervisor suspects that an employee uses, possesses, or is under the influence of controlled substance(s) or alcohol in the workplace, the supervisor documents all facts and observations supporting such conclusion and informs OKDHS Human Resource Management (HRM) as soon as possible. HRM then advises the supervisor and other relevant personnel what appropriate disciplinary action is taken.

(5) Under the Drug-Free Workplace Act, an employee must notify his or her employer of any criminal federal or state drug law violation convictions. The report must be made to OKDHS HRM within five-calendar days of the conviction.

(6) Any administrator operating programs involved in federal contract or grant performance notifies the appropriate federal agency within 10-calendar days after receiving an employee's conviction notice for violating federal or state drug laws when the:

(A) employee is involved in federal (A) contract or grant performance; and

(B) violation occurred in the workplace.

(f) Treatment. Employees are encouraged to voluntarily seek treatment for alcohol or drug dependency. The Employee Assistance Program (EAP) offers free and confidential evaluation and assessment services. The EAP can also provide referrals to appropriate resources. However, seeking assistance from the EAP or a treatment or rehabilitation program does not protect an employee from disciplinary action for violating this policy.

(g) Alcohol and Drug Testing.

(1) All OKDHS employees and applicants are subject to testing for alcohol or drug use in the workplace. OKDHS may require an employee to submit to an alcohol or drug test:

(A) for cause;

(B) following an accident in the workplace; or

(C) as a condition for employment for employees in, or those seeking to become employed in, a safety sensitive position.

(2) Circumstances which may result in an employee being required to take an alcohol or drug test for cause include, but are not limited to:

(A) drugs or alcohol on or about the employee's person;

- (B) employee conduct which suggests impairment or influence of drugs or alcohol;
- (C) a reliable report of drug or alcohol use in the workplace;
- (D) information that the employee has tampered with drug or alcohol testing at any time;
- (E) negative performance patterns; or
- (F) excessive or unexplained absenteeism or tardiness.

(3) OKDHS may require an employee to submit to post-accident alcohol or drug testing if the employee or another person is injured in the workplace, or if property or equipment has been damaged in the workplace. A positive drug or alcohol test following a work-related injury may prevent the employee from being eligible for workers' compensation benefits.

(4) OKDHS pays for all required alcohol and drug testing costs. The time spent travelling to the test site and during the test is considered work time.

(5) OKDHS may utilize any State Board of Health licensed testing facility per 40 O.S. § 557. Refusal to undergo testing as an employment condition, or a positive test, may result in the rescission of a conditional offer of employment or, for existing employees, discipline up to and including termination. Employees are afforded the opportunity to explain a positive test. To the greatest extent possible, this explanation will be made in confidence.

(6) As a consequence of their job responsibilities, a segment of OKDHS employees are subject to the United States Department of Transportation (U.S. DOT) regulations for alcohol and drug testing per 49 C.F.R. § 382-101 et seq., Controlled Substances And Alcohol Use And Testing, and other applicable federal statutes and regulations. These employees are considered safety-sensitive and tested according to U.S. DOT regulations. If an OKDHS employee who falls under U.S. DOT regulations for alcohol and drug testing and tests positive for marijuana, even if he or she has a valid state issued medical marijuana license, the employee is removed from performing his or her safety-sensitive functions and appropriate disciplinary action is taken.

(h) **Records.** Alcohol and drug testing result records are OKDHS property. Such records are confidential in accordance with State statute and therefore are not subject to release under the Oklahoma Open Records Act, 51 O.S. § 24A.1 et seq. OKDHS maintains the records as confidential with the exceptions outlined in (1) through (4) of this subsection.

(1) Upon employee request, OKDHS makes the records available for the employee to inspect and copy.

(2) OKDHS or the employee may admit the records as evidence in a proceeding before a court or administrative agency if either OKDHS or the employee is a named party to the proceeding.

(3) Records are released in compliance with valid judicial or administrative orders.

(4) Records are made available for review to OKDHS employees who require access to administer the Standards for Workplace Drug and Alcohol Testing Act.

(i) **Appeals.** Disciplinary action taken as a result of this regulation may be appealed through the OKDHS Internal Grievance Resolution Policy per OKDHS:2-1-152.