



OKLAHOMA
**Office of Management
& Enterprise Services**

State of Oklahoma
Office of Management and Enterprise Services
Policies and Procedures

Drug and Alcohol Free Workplace/Drug and Alcohol Testing Policy

Effective Date of Policy: 04/22/2019	Next Scheduled Review: 09/20/2020
Prior Policy: n/a	Policy Number: OMES-021
Last Reviewed: 02/25/2019	Replaces Policy Number: N/A
Date Policy Last Revised: 09/19/2018	
Approved: Dana Webb, as Designee of OMES Director John Budd	Approval Date: 02/25/2019

Reference

Drug-Free Workplace Act of 1988; 40 O.S. § 551 et seq., Standards for Workplace Drug and Alcohol Testing Act; Merit Rule 455:10-11-1, Discipline; Merit Rule 260:25-21-1, Employee Assistance Program; 63 O.S. § 420A et seq.; 63 O.S. § 425A; 63 O.S. § 427.8.

Purpose

The purpose of this policy is to inform employees of the expectations of OMES regarding drugs and/or alcohol in the workplace.

Policy

The Office of Management and Enterprise Services is a drug- and alcohol-free workplace. All OMES employees are prohibited from unlawfully manufacturing, distributing, dispensing, possessing, using or being under the influence of a controlled substance or alcohol during scheduled work hours; while operating a state vehicle; on state property; or at the employee’s workplace. In the case of medical marijuana “under the influence of” shall be replaced with “impaired by.” All OMES 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 otherwise violate this policy will be subject to disciplinary action up to and including termination. Pursuant to 63 O.S. § 425, employers may take action against a holder of a medical marijuana license if the license holder uses or possesses marijuana at the license holder’s place of employment or during the hours of employment. OMES prohibits the possession and use of medical marijuana during scheduled work hours; while operating a state vehicle; on property; or at the employee’s workplace.

Definitions

Alcohol – Any intoxicating beverage or liquor.

Controlled substance – A controlled substance in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.812), and as further defined by regulations at 21 CFR 1300.11 through 1300.15. Controlled substances include but are not limited to marijuana, including marijuana consumed or possessed with a medical marijuana license; cocaine; opiates; phencyclidine (PCP); and amphetamines.

Conviction – A finding of guilt (including a plea of *nolo contendere*) and/or imposition of sentence, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

Medical marijuana license – The license issued by the Oklahoma State Department of Health which allows a person with such a license to consume and possess marijuana legally within the State of Oklahoma subject to statutory restrictions and conditions. Only individuals with a medical marijuana license may legally use and possess marijuana in the State of Oklahoma.

Workplace – Any and all properties owned or leased by the state including buildings, land, vehicles and any and all sites where OMES employees conduct official state business or oversee and administer programs on behalf of the State of Oklahoma.

Implementation

The legal use of prescribed drugs is permitted in the workplace only if they do not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that 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.

OMES employees shall not unlawfully manufacture, distribute, dispense, possess, use or be under the influence of controlled substances or alcohol during scheduled work hours, while operating a state vehicle, on state property or in the workplace. As mentioned above, in the case of medical marijuana, “under the influence of” shall be replaced with “impaired by.” Violations may lead to disciplinary action up to and including immediate termination. Violations may also result in arrest and criminal penalties.

All OMES supervisors are required to complete training offered by OMES regarding signs of impairment and influence of controlled substances and alcohol.

In the event the supervisor concludes that an employee uses, possesses or is under the influence of controlled substance(s) or alcohol in the workplace, the supervisor shall document all facts and observations supporting such conclusion, inform OMES Human Capital Management as soon as possible, and take appropriate disciplinary action.

Under the Drug-Free Workplace Act, an employee must notify his or her supervisor of any criminal conviction for violation of any federal, state or municipal drug or alcohol law. The report must be made within five days of the conviction. Upon notification, the supervisor shall inform OMES Human Capital Management as soon as possible.

Any administrator operating programs involved, in whole or in part, in the performance of a federal contract or grant will notify the appropriate federal agency within ten 10 days after receiving notice of the conviction of any employee who is involved in performance of the contract or grant for violation of any federal, state or municipal drug or alcohol law provided such violation occurred in the workplace.

Treatment

Employees are encouraged to voluntarily seek treatment for alcohol or drug dependency. Evaluation and assessment services performed by the Employee Assistance Program are free and confidential. The EAP can also provide referrals to appropriate resources. Successful completion of a voluntary rehabilitation or treatment program will in no way jeopardize an employee's job opportunities at OMES. However, seeking assistance from the EAP or a treatment or rehabilitation program will not protect an employee from disciplinary action for violation of this policy.

Alcohol and Drug Testing

All OMES employees are subject to testing for alcohol or drug use in the workplace. OMES may require an employee to submit to an alcohol or drug test for cause or following an accident in the workplace.

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

- Drugs or alcohol on or about the employee's person or vicinity.
- Employee conduct which suggests impairment or influence of drugs or alcohol.
- A report of drug or alcohol use in the workplace.
- Information that the employee has tampered with drug or alcohol testing at any time.
- Negative performance patterns.
- Excessive or unexplained absenteeism or tardiness.

OMES 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.

All costs of required alcohol and drug testing will be paid by OMES. The time during which the employee is being transported and tested will be considered work time.

OMES reserves the right to use any testing method or collection procedure authorized by the State Board of Health or permitted by 40 O.S. § 557. Refusal to undergo testing or a positive test may

result in discipline up to and including termination. Employees will have the opportunity to explain a positive test in confidence.

A small number of OMES employees fall under U.S. Department of Transportation regulations for alcohol and drug testing, specifically Controlled Substance Testing (49 CFR § 391.81 et seq.), Procedures for Transportation Workplace Drug Testing Programs (49 CFR § 40.1 et seq.) and other applicable federal statutes and regulations. These employees will be tested according to the U.S. DOT regulations. The following job titles are subject to the U.S. DOT drug testing regulations: Occupational Job Code F16A – Surplus Property Agent.

If an OMES employee who falls under U.S. Department of Transportation regulations for alcohol and drug testing mentioned above test positive for marijuana, even if such employee has a valid medical marijuana license issued by the State of Oklahoma, the employee will be removed from performing his or her safety-sensitive functions and appropriate disciplinary action will be taken.

Records

Records of alcohol and drug testing results are the property of OMES. It is the position of OMES that such records are confidential and not subject to release under the Open Records Act. OMES will maintain the records as confidential with the following statutory exceptions:

- Upon request by the employee, OMES will make the records available for inspection and copying by the employee.
- OMES or the employee may admit the records as evidence in a proceeding before a court or administrative agency if either OMES or the employee is a named party to the proceeding.
- Records will be released in compliance with a valid judicial or administrative order.
- Records will be released to OMES employees who require access in the administration of the Standards for Workplace Drug and Alcohol Testing Act.

Appeals

Disciplinary action taken as a result of this policy may be appealed through the OMES Internal Grievance Resolution Policy (Policy Number OMES-33).