

DEPARTMENT OF NATURAL RESOURCES

HUMAN RESOURCES POLICY NO.: 23

EFFECTIVE DATE: APRIL 1, 2019

SUBJECT: SUBSTANCE ABUSE AND DRUG-FREE WORKPLACE

AUTHORIZATION: THOMAS F. HARRIS, SECRETARY

I. POLICY

Employees are our most valuable resource and their health and safety are of utmost concern. The Department of Natural Resources (DNR) will not tolerate substance abuse or use which imperils the health and well-being of our employees or threatens the quality of our service to the public. Employees who use illegal drugs or abuse alcohol are a danger to themselves and others, and tend to be less productive, less reliable and prone to greater absenteeism. The use, possession or presence in the body of illegal/prohibited drugs, on or off duty, is inconsistent with law-abiding behavior expected of all citizens, especially public servants.

II. PURPOSE

Deterring and detecting substance abuse furthers DNR's obligation to maintain a safe, healthy and productive working environment for its employees. To accomplish this goal, DNR has implemented this policy, in compliance with Executive Order BJ 08-69, which requires that executive agencies promulgate written policies which mandate drug testing in accordance with La. R.S. 49:1001 et seq.

III. APPLICABILITY

This policy applies to all employees and appointees of DNR, as well as potential employees, potential appointees, individuals providing service through a contract with a third party employer (i.e., temporary agency employees), and all other persons having an employment relationship with DNR, whether classified, unclassified, student, full-time, part-time or temporary.

Following a job offer, potential employees and potential appointees are required to submit to pre-employment drug testing. All employees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who encumber safety-sensitive positions and applicants who apply for such positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or

demoted to a safety-sensitive position, an employee is required to undergo drug testing. A list of these positions within DNR is attached as Appendix A.

IV. REQUIREMENTS

To maintain a safe and productive work environment, all DNR employees are required:

- 1) To report for duty in the physical and mental condition which maximizes their ability to perform assigned tasks in a competent and safe manner;
- 2) To promptly and cooperatively submit to drug/alcohol testing when instructed to do so, in accordance with this policy, by directive of an appointing authority;
- 3) To notify a supervisor, prior to or immediately upon reporting for duty, when they have reason to believe that prescribed or over-the-counter medication may impair their ability to perform customary job duties or otherwise create a safety hazard. While the duration the medication will be taken should be disclosed, employees should know that it is not necessary to disclose to the supervisor the medication being taken or the condition for which it was prescribed. Such information may be required to be disclosed to the Department's Medical Review Officer should circumstances or the nature of the employee's job duties warrant, as determined by the appointing authority; and
- 4) To notify a supervisor on the first scheduled workday following an arrest or conviction for DWI, drug or drug-related offense, regardless of whether such occurs on or off duty.

V. PROHIBITIONS

To maintain a safe and productive work environment, DNR employees are prohibited:

- 1) From using, possessing, dispensing, distributing, manufacturing, buying or selling illegal or unauthorized drugs or other prohibited substances while on duty or engaged in DNR business, on or off premises;
- 2) From having in their bodies illegal or unauthorized drugs or other prohibited substances while on duty, scheduled on-call or engaged in DNR business, on or off premises;
- 3) From possessing illegal or unauthorized drugs or other prohibited substances in a DNR vehicle while on or off-duty;

- 4) From possessing drug paraphernalia, as defined by La. R.S. 40:1021, while on duty or engaged in DNR business, on or off premises, or within a DNR vehicle while on or off duty;
- 5) From consuming alcohol or having a prohibited concentration of alcohol in their bodies while on duty, on or off premises;
- 6) From possessing alcohol while on duty or engaged in DNR business, on or off premises, or within a DNR vehicle while on or off duty; and
- 7) From operating a state, leased or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of this policy.

VI. DEFINITIONS

- 1) "Illegal or unauthorized drug" includes any drug which is not legally obtainable; any drug which is legally obtainable, but has been illegally obtained; prescription drugs not being used in accordance with the prescription; or any substance which affects the employee's ability to safely and competently perform assigned duties.
- 2) "Reasonable suspicion" is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent, objective person to suspect that an employee has engaged in drug or alcohol use.
- 3) "Medical Review Officer" (MRO) is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information.
- 4) The presence of alcohol prohibited by this policy is indicated by a confirmed blood alcohol concentration of 0.04% or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

VII. DRUG/ALCOHOL TESTING

All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances:

- 1) **Pre-Employment:** Drug tests are required of all prospective employees and appointees of DNR, except if transferring from another State agency without a break in service. If required, drug testing must be conducted at a State-approved drug testing facility within 48 hours of contacting the prospective employee to extend a job offer. (This is not 48-hours from acceptance of the job offer.)

Absent exceptional circumstances, failure by the applicant to be tested within 48 hours of being contacted with the employment offer shall result in the employment offer being withdrawn, even if the test result is negative. In the event an applicant fails to test within 48 hours, he/she cannot reapply for employment with DNR for six months.

It is the responsibility of the hiring manager to fully inform the prospective employee of the 48-hour testing requirement and the potential consequences related thereto should the prospective employee fail to comply.

A prospective employee/appointee testing positive for the presence of a prohibited substance shall by law be eliminated from consideration for employment. In the event an applicant tests positive, he/she cannot reapply for employment with DNR for one year.

- 2) **Post-Accident/Incident:** Any employee directly involved in an on-duty accident or incident, and whose action or inaction may have been a causative factor of same, shall be required to immediately submit to drug and alcohol testing if:

- a) Reasonable Suspicion: Circumstances give rise to a reasonable suspicion of the employee's drug or alcohol use or impairment; or
- b) Fatality: The accident or incident resulted in a fatality; or
- c) Hazardous Materials Release: The accident or incident resulted in or caused the release of hazardous waste as defined by La. R.S. 30:2173(2) or hazardous materials as defined in La. R.S. 32:1502(5).

NOTE: Employees should be aware of the legal presumption of impairment under La. R.S. 23:1081 if an employee refuses to submit to drug or alcohol testing as a result of an on-duty accident or incident. As a consequence of such refusal, benefits under the workers' compensation laws of the State of Louisiana may be denied.

- 3) **Random:** Only employees performing the safety-sensitive functions listed in Appendix A are subject to random alcohol and drug testing. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.
- 4) **Promotion/Reassignment/Detail/Demotion to a Safety-Sensitive Position:** Current employees are required to undergo drug testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position defined in Appendix A. An offer of reassignment, temporary detail, promotion or demotion will be withdrawn if a positive drug or alcohol test result is reported, and the employee is further subject to disciplinary action as specified in this policy.
- 5) **Reasonable Suspicion:** An employee shall be required to submit to drug and alcohol testing if he/she exhibits behavior or appearance that is characteristic of drug/alcohol use or impairment. The decision to test will be made by an appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations.
- 6) **Return-to-Duty/Rehabilitation Monitoring:** Any employee who retains employment following a violation of this policy shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of a Rehabilitation Covenant as a condition of returning to work.

VIII. AUTHORIZATION

Pre-employment and random alcohol/drug testing will be handled by designated personnel within the Human Resources Division. Post-accident/incident, reasonable suspicion and return-to-duty rehabilitation alcohol/drug testing will be handled by the appointing authority in consultation with the Human Resources Director. That is, **only** an appointing authority possesses the authority to direct an employee to submit to such testing.

NOTE: When post-accident/incident or reasonable suspicion testing is ordered, a DNR representative shall transport the individual being tested to and from the

testing site. Under no circumstance should any employee reasonably believed to be impaired or under the influence of any drug or alcohol be required or permitted to operate a motor vehicle.

IX. DRUG TESTING PROCEDURES

Drug testing pursuant to this policy shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with La. R.S. 49:1001 *et seq.* Testing shall be performed by a contractor chosen by the Division of Administration. At a minimum, the testing procedure shall assure:

- 1) That all samples for drug testing are collected, stored, transported and tested in compliance with all applicable federal and state laws, guidelines and regulations to ensure integrity of the testing process;
- 2) That the urine samples are collected with emphasis upon the privacy rights of the employee;
- 3) That the split sample collection methodology is used as required by law;
- 4) That appropriate chain of custody forms and protocols are utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;
- 5) That testing is performed by laboratories certified for forensic urine drug testing in compliance with all applicable federal and state laws, guidelines and regulations;
- 6) That the dual testing procedure is used for all samples. Each primary sample testing positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);
- 7) That all positive test results, as defined by law, are first reported by the testing laboratory to DNR's qualified Medical Review Officer (MRO). The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result; and
- 8) That once a positive test is confirmed and reported to Human Resources by the MRO, an employee in a safety-sensitive position is prohibited from performing customary duty assignments.

X. ALCOHOL TESTING PROCEDURES

- 1) Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.
- 2) The employee will be advised of the results of the breath-screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed. If the confirmatory test indicates a blood alcohol concentration of 0.04 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the results will be reported as positive to Human Resources.
- 3) An employee occupying a safety-sensitive position will be immediately removed from performing his/her customary duty assignments in the event of a positive alcohol test.
- 4) A positive test result will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

XI. ENFORCEMENT

The use of illegal or unauthorized drugs or other prohibited substances by DNR employees will not be tolerated. While maintaining a philosophy of zero tolerance for violations of this policy, DNR will resolve any reasonable doubt regarding the testing procedure or test result in the employee's favor.

Disciplinary action, including the possibility of termination, will be imposed for violations of this policy, but only after a complete and thorough review of all available information. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action as required by Chapter 12 of the Civil Service Rules. Factors to be considered in determining the appropriate sanction include, but are not limited to the circumstances under which testing was required, the circumstances under which drug usage occurred, the employee's candor and cooperation during the investigative process, the employee's work history, length of service, current job performance and the existence of prior corrective action.

Although DNR generally subscribes to a philosophy of progressive discipline, employees are hereby placed on notice that termination will be the recommended penalty for the following violations:

- 1) Second positive drug test result or confirmed blood alcohol level above the applicable threshold;
- 2) Refusal to submit to a drug or alcohol test;
- 3) Failure to cooperate in any way which prevents the completion of a drug or alcohol test;
- 4) Submission of an adulterated or substitute sample for testing;
- 5) Using, possessing, dispensing, distributing, manufacturing, buying or selling illegal or unauthorized drugs or other prohibited substances while on duty or engaged in DNR business, on or off premises, or within a DNR vehicle while on or off duty; and
- 6) Operating a state, leased or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of this policy.

Employees also are hereby placed on notice that certain conditions must be satisfied if their appointing authority determines that a first positive test (drug or alcohol) will not result in the penalty of termination. These conditions include, but are not limited to:

- 1) The employee will be required to obtain a substance abuse evaluation from a certified substance abuse professional at his/her own expense;
- 2) The employee will be required to satisfy any treatment regimen recommended by the substance abuse professional at his/her own expense;
- 3) The employee will be required to accept, without challenge, the recommended disciplinary action; and
- 4) The employee will be required to submit to periodic testing for prohibited substances.

NOTE: The conditions under which continued employment will occur will be memorialized within a Rehabilitation Covenant to be signed by the employee. Compliance with the conditions within this agreement is required, especially satisfaction of the evaluation/treatment process.

XII. CONFIDENTIALITY/EMPLOYEE RIGHTS

All drug and alcohol testing results and records (including information, interviews, reports and statements) are considered confidential communications, pursuant to La. R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent, governmental agencies when licensure or certification actions are required or as otherwise required by law.

In compliance with La. R.S. 49:1011, any employee, upon learning of a confirmed positive test result, upon written request, shall have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

DNR has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in this policy will be construed to preclude the delivery of any illegal drug, controlled dangerous substance or other substance prohibited by this policy, discovered in/on DNR property, or upon the person of a DNR employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on DNR property shall be referred to appropriate law enforcement authorities.

XIII. EMPLOYEE ASSISTANCE

Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from Human Resources. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

Employees referred to Human Resources by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the Return-to-Duty/Rehabilitation Monitoring testing set forth in this policy.


XIV. GENERAL PROVISIONS

DNR reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, DNR will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

Although the substance abuse testing defined in this policy is restricted to five specified drugs and alcohol, DNR reserves the right to require employees to submit to additional testing, if warranted. Such tests will be administered only when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

XV. QUESTIONS

Questions regarding this policy should be addressed to the Human Resources Director.



THOMAS F. HARRIS, SECRETARY

3-28-2019

DATE

INITIAL ISSUE DATE: 10/99

REVISED DATE: 02/02; 08/12; 04/15; 10/15; 04/17; 11/17; 04/19

APPENDIX "A"

The Department does not have any designated safety-sensitive positions.