

DRUG-FREE WORK PLACE

SECTION 1. PURPOSE: The Agency and the Union agree on the importance of promoting a Drug-Free Workplace. The Agency will implement and conduct the Drug-Free Workplace Program (DFWP) in accordance with the applicable Executive Order, laws, rules and regulations, Health and Human Services guidelines, Office of Personnel Management (OPM), Department of Defense (DoD) regulations.

SECTION 2. TRAINING FOR EMPLOYEES AND SUPERVISORS: All materials to be used in training bargaining unit employees regarding drug testing shall be provided to the Union for review and comment. Union representatives shall be allowed to attend and take part in such training.

SECTION 3. RELEASE OF INFORMATION PERTINENT TO THE DRUG TESTING PROGRAM: Upon written request by the Union, the Agency agrees to provide information pertinent to the drug testing program, but only to the extent that the release of such information is allowed by applicable laws and regulations.

SECTION 4. DFWP NOTICE TO EMPLOYEES: Prior to the implementation of or modification to the drug testing program, a written sixty (60) day Drug Testing Notice will be issued to all employees. An Employee who is not at work to receive the notice will be issued the notice by both regular and certified mail to their address of record. The Notice shall include:

1. The purpose of the Program;
2. Information regarding both voluntary and mandatory testing, and the circumstances under which both random and reasonable testing may occur;
3. The availability and procedures necessary to obtain counseling and rehabilitation through the EAP. That all medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient, an authorizing court order, or otherwise permissible by Federal law;
4. That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the Medical Review Officer (MRO);
5. That the employees will have the opportunity to submit medical documentation justifying lawful use of a drug that led to a positive test;
6. That positive test results verified by the MRO may only be disclosed as outlined in Section 10 below.
7. An individual notice will be provided to employees in a TDP prior to the commencement of testing.

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SECTION 5. TESTING DESIGNATED POSITIONS: A Testing Designated Position (TDP) is a position approved for random testing by the Department of Health & Human Service (DHHS) Interagency Coordinating Group Executive Committee, Substance Abuse and Mental Health Service Administration (SAMHSA). The Union will be provided a copy of the current TDP positions. If the Agency proposes to add additional TDP, it will notify the Union and provide the proposed justification which will be submitted to SAMHSA, and consider the Union's comments prior to submission.

SECTION 6. TESTING CATEGORIES: The Parties agree that the testing referred to by the term "drug test" currently means "urinalysis." Employees may be subject to:

A. Random Testing: Only employees on the TDP list will receive a 30 day written notice:

1. That the employee's position has been designated a Testing Designated Position;
2. Informing them that they are subject to random drug testing to begin no earlier than thirty (30) days from receipt of such notice;
3. An explanation of the types of drugs for which testing will be conducted, the consequences of failure to report for testing as directed or refusal to furnish a urine specimen, and consequences of a positive drug test.
4. An explanation of the provisions of "Safe Harbor" including that the employee will have the opportunity to voluntarily admit to being a user of illegal drugs and to receive counseling or rehabilitation, in which case disciplinary action is not required (see below, Safe Harbor);
5. Notice of Test: An individual selected for random testing shall be notified the same day the test is scheduled. The Supervisor will notify the employee with the Employee Notification Form in private and in person, no earlier than two (2) hours before they must report to the test. The supervisor shall explain to the employee that they are under no suspicion of taking drugs and that their name was selected randomly.
6. Deferral of Testing: An employee selected for random drug testing may obtain a deferral of testing if the employee's first-line and higher-level supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:
 - a. In a leave status (sick, annual, administrative, or leave without pay), or

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- b. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification;
- c. Engaged in duties such that absence of the employee for testing could potentially cause undue harm to an individual patient's care;
- d. Off-Site, and unable to report to the test site within the window provided.

7. Post Deferral: An employee whose random drug test is deferred will be subject to an unannounced test within the following 60 days.

B. Reasonable Suspicion Testing: All employees, regardless of TDP designation, may be subject to testing based on a reasonable suspicion that the employee used or uses illegal drugs. Reasonable suspicion testing may be conducted on employees for on-duty or off-duty use, possession, or physical symptoms of drug impairment while on duty. Employees may also be subject to drug testing due to involvement in a work related incident or safety mishap, and as part of a follow-up to rehabilitation and/or counseling program.

1. In the event that drug testing is ordered based on reasonable suspicion, the Agency agrees to provide written notice to the affected employee. The notice will explain the basis of the reasonable suspicion, the consequences of refusal to submit to the drug test, and the consequences of a positive drug test.
2. Reasonable suspicion does not require certainty; however "hunches" or "rumors" are not sufficient to meet this standard. The suspicion must be based upon specific objective facts and inferences drawn from these facts such as:
 - a. Observable phenomena such as direct observation of drug use or possession of drugs or paraphernalia and/or the physical symptoms of being under the influence of a drug.
 - b. A pattern of abnormal conduct or erratic behavior that evidence symptoms of drug use.
 - c. Information provided by credible sources or independently corroborated.
 - d. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.
 - e. Newly discovered evidence that the employee has tampered with a previous drug test, such as the temperature or color of the urine sample.

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3. Procedures:

- a. If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. This information will be presented to the next level supervisor or a higher-level individual above the supervisor making the finding that a reasonable suspicion of illegal drug use exists. The Drug Program Coordinator and the DHA Office of General Counsel shall be informed immediately.
- b. When higher-level concurrence (e.g., usually 2nd level supervisor) of a reasonable suspicion determination has been made, the appropriate supervisor will promptly prepare a written report detailing the circumstances which formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug related incidents, reliable and/or credible sources of information, rationale leading to the test, and the action taken.

C. Safe Harbor (Follow-up) Testing: Safe Harbor provides that Agency will not take disciplinary action against an employee who voluntarily admits to illegal drug use, obtains counseling or rehabilitation under the Employee Assistance Program and thereafter refrains from using illegal drugs. In addition, employees may be tested for the purposes of counseling or rehabilitation (outside of Safe Harbor).

1. It is understood that, in the case of voluntary self-referral for "Safe Harbor" the employee consents in writing regarding the sharing of information with the appropriate management and EAP officials of all counseling and rehabilitation records and information related to the illegal use of drugs.
2. Upon such voluntary disclosure, a Safe Harbor determination is made which protects the employee from discipline or further adverse actions from the voluntary disclosure.
3. The Safe Harbor option shall not be available to an employee after notification of a random drug test request or drug usage being identified through other means, such as reasonable suspicion drug testing directed by a supervisor, or upper level management.

D. Voluntary Testing: Participation or non-participation in voluntary testing will neither advantage nor disadvantage employees.

SECTION 7. CONSENT FORMS: No Employee shall be required to sign any document associated with the drug abuse testing program stating he or she agrees with it, when, in fact, he or she does not agree with it. This does not preclude employees from being required to sign documents indicating that drug testing is compulsory and informing the employee of the consequences of refusing to cooperate in the program. Employee signature on such documents will signify notice and understanding of the terms of the document.

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SECTION 8. TESTING SITE:

A. Duty to Report: Upon the direction of the Agency, an employee who is to be tested will report to the designated location where the drug test will be conducted.

B. Conduct of Test: The test site (collection) and Collection Personnel will conform to DHHS guidelines which also state that only civilians (including contractors) will conduct the test. All tests will be conducted on NCR premises, normally at employee's duty location. If a conforming testing site is unavailable at an NCR work location the bargaining employees will be directed to another NCR facility on duty time, and may request travel expenses through the Defense Travel System. DTHC Employees may be directed to the Pentagon test site on duty time.

C. Instructions: The Agency will provide step-by-step instructions for collection to employees at the testing site.

SECTION 9. COUNSELING AND REHABILITATION:

A. Referral and Testing: The Agency agrees that an employee found to use illegal drugs will be referred to the Employee Assistance Program (EAP). The employee will be notified of the consequences of refusal to obtain counseling or rehabilitation through the EAP after a finding of illegal drug use. If the employee chooses to participate in a drug treatment and rehabilitation program, further urinalysis may be conducted as recommended or required by the treatment program.

B. Return to Duty: The Agency shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs prior to successful completion of rehabilitation through the EAP. However, as part of a rehabilitation or counseling program, the Agency may, at its discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or the national security.

SECTION 10. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION:

A. General:

1. The Agency agrees that the results of an individual employee's drug test may be released only to those officials with a "need to know" such as the Medical Review Officer (MRO), the Drug Program Coordinator (DPC), the Employee Assistance Program Administrator (EAP), the Employee's Union representative, any supervisor or management official within DOD who has authority to recommend, decide, or process an adverse action against the employee, a court of law or administrative tribunal, or to any other authorized personnel as outlined in applicable laws and regulations.

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2. Except for disclosure to those officials with a "need to know", an employee's test results may not be disclosed without the prior written consent of the employee.
3. The Agency agrees that an employee who is the subject to a drug test will, upon written request to the Drug Testing Program Coordinator, have access to any records relating to such drug test and the result of any relevant certification, review or revocation of certification proceedings of the drug testing laboratory, as referred to in Section 503 of Public Law 100-71.
4. Counseling and rehabilitation records and information not related to the illegal use of drugs shall not be released.

B. Confidentiality of Rehabilitation Records: Procedures for release of information about treatment to medical personnel and courts will be governed by this Agreement and applicable law. Release of information to supervisors and/or managers will strictly be limited to the employee's successful continuation in the program, except in the following circumstances:

1. Where there is a direct and immediate impact of the employees treatment information upon the health and safety of the employee or others;
2. Where the employees written consent is obtained;
3. Where the employee is under investigation for serious misconduct, such as theft, acts of violence, or threats.

SECTION 11: ADVERSE ACTIONS: Disciplinary actions may be taken for such cause as will promote the efficiency of the service and for just cause. The Parties recognize the principles of progressive discipline and agree to endeavor to follow those principles in both disciplinary and adverse actions. Employees who fail a drug test may be offered a Last Chance Agreement (LCA) under the provisions of Section 5C of Adverse and Disciplinary Actions Article of this CBA.

SECTION 12. OFFICIAL TIME: Should the Agency propose or take disciplinary action against an employee relative to the DFWP, the employee will be allowed to prepare his or her response or grievance, in accordance with the negotiated grievance procedure. Should the employee request a Union representative's assistance in preparing such a response or grievance, the Union representative will be allowed official time for such representational duties consistent with the Official Time Article of this CBA.

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