

PPM #11

Policy Name: *Substance Abuse and Drug-Free Workplace*
Effective Date: *November 1, 1998*
Revision Date: *January 31, 2003; January 4, 2010; September 1, 2011;
December 1, 2011; December 13, 2012; January 25, 2013, May 1, 2018;
June 18, 2019; September 23, 2020; April 23, 2021*

Authorization: 
Nancy Watkins, Undersecretary

PHILOSOPHY

The Office of the Lieutenant Governor (OLG) and the Department of Culture, Recreation and Tourism (DCRT) are fully committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this State. To accomplish this, the OLG/DCRT hereby adopt this Substance Abuse and Drug-Free Workplace Policy which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of the OLG/DCRT and its employees.

The OLG/DCRT's philosophy is consistent with the State of Louisiana's long-standing commitment to establishing a drug-free workplace and to deter the use of illegal drugs by employees of the State of Louisiana.

APPLICABILITY

This policy applies to all employees and appointees of the OLG/DCRT, as well as potential employees (applicants), potential appointees, individuals providing service to us through a contract with a third party employer (i.e., temporary agency employees), and all other persons having an employment relationship with the OLG/DCRT, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary (hereinafter "employee(s)" unless otherwise noted).

REQUIREMENTS

To maintain a safe and productive work environment, all OLG/DCRT employees are required to:

1. Report for duty in the physical and emotional condition that maximizes their ability to perform assigned tasks in a competent and safe manner;
2. Promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;

3. 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 that the medication will be taken should be disclosed, employees should know that it is not necessary to disclose to the supervisor the specific medication being taken or the condition for which it was prescribed.
4. Notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off duty.

PROHIBITIONS

To maintain a safe and productive work environment, OLG/DCRT employees are prohibited from:

1. Using, possessing, dispensing, distributing, manufacturing, buying and selling illegal or unauthorized drugs or other prohibited substances while on duty or engaged in OLG/DCRT business, on or off premises;
2. Having in their bodies illegal or unauthorized drugs or other prohibited substances while on duty, scheduled on-call or engaged in OLG/DCRT business, on or off premises;
3. Possessing illegal or unauthorized drugs or other prohibited substances in an OLG/DCRT vehicle or at OLG/DCRT facilities/premises while on or off-duty;
4. Possessing drug paraphernalia, as defined by La. R.S. 40:1021, while on duty or engaged in OLG/DCRT business, on or off premises, or within an OLG/DCRT vehicle while on or off-duty;
5. Consuming alcohol and having a prohibited concentration of alcohol in their bodies while on duty or engaged in OLG/DCRT business, on or off premises;
6. Possessing alcohol while on duty or engaged in OLG/DCRT business, on or off premises, or within an OLG/DCRT vehicle while on or off-duty;
7. Operating an OLG/DCRT vehicle 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;

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. Controlled dangerous substances are listed in Schedule I, II, III, IV and V of La. R.S. 40:964.
2. The presence of alcohol prohibited by this policy is indicated by a confirmed blood alcohol concentration of 0.04 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.
3. “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), and/or from a credible third person report, which would cause a prudent person to suspect that an employee has engaged in drug or alcohol use.

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 or designated position. Whether announced or unannounced, tests will be administered under the following circumstances:

- A. **Pre-Employment:** Drug tests are required of all prospective employees and appointees of the OLG/DCRT. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. The conditional job offer may be withdrawn from a prospective employee/appointee who tests positive for the presence of a prohibited substance in the initial screening.

Employees and appointees transferring from state agencies that required pre-employment drug testing will not have to drug test, prior to transfer to OLG/DCRT, if there has been no break in service.

Drug testing is not required for employees transferring from one state agency to another as a result of a merge or reorganization, if there is no break in service.

Once a conditional offer is made, the applicant has only 48-hours to be tested. If testing is not completed in 48-hours, the employment offer shall be withdrawn even if the test result is negative. If the supervisor fails to advise the applicant of the 48-hour testing period, and the test is administered after 48-hours, it is the supervisor’s responsibility to contact the applicant to advise them they cannot be employed due to the supervisor’s failure to inform them of this special stipulation. In the event that an applicant fails to test within the 48-hour testing period, they cannot reapply for employment with OLG/DCRT for six months.

In accordance with applicable state law, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment. In the event that an applicant should test positive, they cannot reapply for employment with OLG/DCRT for one year. A list of applicants that test positive will be retained in Human Resources for one year.

- B. **Post-Accident/Incident:** Any employee directly involved in an on-duty or near miss accident or incident, and whose action or inaction may have been a causative factor of same, may be required to submit to drug and alcohol testing.
- C. **Random:** Random alcohol and drug testing is required of all employees holding the safety-sensitive or designated positions listed in Appendix A. Such testing shall be periodic and unannounced, and employee selection therefore shall be by a computer-generated or other random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.
- D. **Promotion/Reassignment/etc., to Safety-Sensitive Position:** Current employees are required to undergo drug testing prior to being reassigned, temporarily detailed, promoted or demoted to the safety-sensitive or designated positions as defined in Appendix A. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in this policy.
- E. **Temporary Employment:** Current employees who are on a part-time temporary appointment and work a rotating schedule, with breaks over two weeks between each period worked are not required to drug test again. Employees in a full-time temporary position that have a break in service longer than two weeks must take a pre-employment/return to duty drug test.
- F. **Reasonable Suspicion:** An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. Additionally, an employee may be required to submit to drug and alcohol based testing upon credible reports from third parties indicating potential, or actual, drug or alcohol use/abuse. 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 and/or credible information provided by third parties. Testing based upon direct observation should, when possible, be based upon direct observation by co-workers and/or supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.
- G. **Return-to-Duty/Rehabilitation Monitoring:** Any employee who retains his/her job 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 additionally 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 such a rehabilitation agreement as a condition of returning to work.

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 collaboration with the Human Resources Director. That is, **only** the appointing authority and/or his/her designee must be consulted and approve an employee to submit to such testing.

NOTE: When post-accident/incident or reasonable suspicion testing is ordered, an OLG/DCRT representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

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 Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

- A. That all specimens for drug testing are collected, stored, transported and tested in compliance with U.S. Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process.
- B. Urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:
 1. When there is specific, articulable reason to believe that the individual may alter or substitute the specimen;
 2. When the individual has provided a urine specimen which falls outside the acceptable temperature range;
 3. When collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process.
- C. The split sample collection methodology must be used in accordance with La. R.S. 49:1006(D) with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP).

- D. Appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition.
- E. Testing shall be performed by laboratories certified for forensic urine drug testing by the DHHS and in strict compliance with DHHS Guidelines.
- F. The dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry).

The OLG/DCRT reserves the right to require employees to submit to additional testing, if warranted or needed.

ALCOHOL TESTING PROCEDURES

- A. 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.
- B. 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 the OLG/DCRT representative.
- C. An employee occupying a safety-sensitive or designated position will be immediately removed from performing his/her customary duty assignments in the event of a positive alcohol test.
- D. Positive test results will also be reported to Human Resources and 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.

The OLG/DCRT reserves the right to require employees to submit to additional testing, if warranted.

ENFORCEMENT

The use of illegal or unauthorized drugs or other prohibited substances by OLG/DCRT employees will not be tolerated. Substance abuse and misuse endanger the health and well-being of our employees, prevent quality service to the public and are inconsistent with the OLG/DCRT's mission. While maintaining a philosophy of zero tolerance for violations of this policy, we will resolve any reasonable doubt regarding the testing procedure or test results 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. Disciplinary action may be based upon drug test results received/obtained from health care providers, public health safety personnel and/or other sources, in addition to results obtained from testing performed pursuant to, and accordance with, this policy. 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 process 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 disciplinary action.

Although OLG/DCRT 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 thresholds;
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 OLG/DCRT business, on or off premises, or within an OLG/DCRT vehicle while on or off-duty; and
6. Operating a State vehicle 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 it is determined 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;
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.

CONFIDENTIALITY/EMPLOYEE RIGHTS

All drug and alcohol testing results and records (including all 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; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

In compliance with La. R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, 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.

Employees should know that statistical records and reports of drug testing are maintained by OLG/DCRT, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug-testing program.

The OLG/DCRT 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 OLG/DCRT/State property, or upon the person of an OLG/DCRT 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 OLG/DCRT/State property shall be referred to appropriate law enforcement authorities.

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) would 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.

GENERAL PROVISIONS

The OLG/DCRT reserve 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, the OLG/DCRT 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, the OLG/DCRT reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when 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.

QUESTIONS

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

Summary of Changes: Revised policy number (December 1, 2011); added OSM Police to Appendix A for random testing due to agency requirement that employees certify for and carry a weapon as needed, reorganized content to include separate Prohibitions, Definitions and Authorization sections (December 13, 2012); expanded Prohibitions and Enforcement sections (January 25, 2013); changed post-accident/incident from shall be required drug and alcohol to may (May 1, 2018). Removed reference to Executive Order 98-38, Louisiana Revised Statute 49:1001; and removed references of DCRT Medical Review Officer (MRO) (June 18, 2019). Revised to add language that transferring state employees are not required to drug test (September 23, 2020). Added third party verbiage, parties that can report suspicion, cleaned up verbiage with legal consult (April 23, 2021).

NOTE: Employees should be aware of the legal presumption of impairment under La. R.S. 23: 1081 if an employee refuses, after being so directed, 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.

APPENDIX A

Office of State Museum

Carpenter
Carpenter Foreman
Carpenter Master
Electrician
Electrician Foreman
Police Captain-A
Police Lieutenant-A
Police Officer 1-A
Police Officer 2-A
Police Officer 3-A
Police Sergeant-A

Office of State Parks

Black Powder Certified Employees
Carpenter Master
Maintenance Foreman
Maintenance Repairer 1
Maintenance Repairer 2
Maintenance Superintendent
Mobile Equipment Operator 1
Park Manager 1*
Park Manager 2*
Park Manager 3*
Park Manager 4*
Park Manager 5*
Park Ranger 1
Park Ranger 2
Park Ranger Specialist
Parks Chief of Operations
Parks District Manager

** - Only those employees occupying these job titles that are POST-certified.*

Office of Tourism

Courier:
Administrative Coordinator 3
Administrative Coordinator 4
Tourist Information Regional Coordinator