

Approved:

Effective: February 11, 2020
Review: August 20, 2019
Office: Human Resources
Topic No.: 250-013-001-b



Department of Transportation

DRUG-FREE WORKPLACE AND DRUG TESTING

AUTHORITY:

- Sections 20.23(3)(a) and 334.048(3), Florida Statutes (F.S.)

REFERENCES:

- Sections 110.1091 and 112.0455, F.S.
- Rule 59A-24 and Rule 60L-36.005, Florida Administrative Code (F.A.C.)
- 49 CFR Part 32; 49 CFR Part 40; 49 CFR Part 382

PURPOSE:

It is the goal of the Florida Department of Transportation (Department) to provide employees with a safe working environment free from the effects of drugs and to assure employees are not impaired but able to perform assigned duties in a safe, productive, and healthy manner; create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse; prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and encourage employees to seek professional assistance whenever alcohol or drug dependency problems adversely affect or impair their ability to perform assigned duties.

The purpose of this procedure is to assure worker fitness for duty and to protect the Department's employees and the public from the risks posed by the misuse of alcohol and controlled substances, and to comply with all applicable Federal and State regulations governing workplace anti-drug programs.

SCOPE:

This procedure applies to all Department employees, including part-time and Other Personal Services (OPS) employees, when performing job or business-

related activities. This procedure also applies to off-site lunch or break periods when the employee is scheduled to return to work.

1. PROHIBITIONS FOR ALL EMPLOYEES

- 1.1 No employee of the Department may work under the influence of alcohol, any controlled substance or drug, to the extent that the employee is prevented from satisfactorily carrying out his/her duties or responsibilities. This includes exhibiting signs of impairment such as slurred speech, odor of alcohol on one's breath, incoherence, reduced mental faculties or other signs of impairment normally associated with drunkenness or abuse of drugs to the extent that the employee presents an unacceptable image of the Department to the public, his/her colleagues, supervisors, or subordinate employees. The Department may require an employee to take authorized leave if, as a result of taking prescribed medication, an employee is unable to satisfactorily perform his/her assigned duties.
- 1.2 No employee may, during working hours within any Department vehicle or at any Department facility, worksite, building or office or on any adjacent yard, grounds, driveway or parking lot, use or be in the possession of any unlawful drug, consume any alcoholic beverage, or be in the possession of any open or unsealed container of alcoholic beverage.
- 1.3 The possession, with the intent to disburse, sell or distribute alcoholic beverages or controlled substances (drugs, including prescription medication) on State property or on the job is prohibited. The actual sale or attempted sale (dealing) of a controlled substance (drugs) as defined in **Section 893.03, F.S.** in the workplace or on the job shall be grounds for immediate dismissal.
- 1.4 Additional prohibitions for Commercial Driver's License (CDL) drivers are covered under the provisions of the **United States Department of Transportation Regulation 49 CFR Part 40** and **Federal Highway Administration Regulation 49 CFR Parts 382, et.al.**

2. REQUIREMENT TO REPORT WORKPLACE CRIMINAL DRUG STATUTE CONVICTIONS

For the purposes of this section the following definitions apply:

- "**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of a sentence or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug laws.
- "**Criminal Drug Law**" means a federal or state criminal law involving the manufacture, distribution, dispensing, use or possession of any controlled substance.

- **“Employee Assistance Program (EAP)”** means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services, with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an EAP provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to **Section 397.311(33), F.S.**

The requirement to report workplace criminal drug statute convictions is applicable to the Department, which is a recipient of federal funding.

A Department employee must notify, in writing, his/her supervisor and the Human Resources Office within one working day of any personal criminal drug law conviction.

3. GENERAL INFORMATION

The Human Resources Office will be responsible for overseeing the drug testing program for the Department. As part of the implementation and maintenance of the drug testing program for its employees, the Department has procured the services of a Medical Review Officer (MRO), who will serve as the third-party administrator (TPA). The MRO/TPA shall contract for the required drug testing laboratory, collection sites, and local substance abuse professional (SAP) services. The requirements and services to be provided are contained in the contract's scope of services. Drug testing standards set forth in **Section 112.0455(12), F.S.**, are followed.

The Department tests for the following drugs and their metabolites (Substance Abuse DHHS (NIDA) Panel 5 Drug Screen):

- * Amphetamines
- * Cannabinoids (Marijuana) (THC)
- * Cocaine
- * Opiates (including heroin)
- * Phencyclidine (PCP)
- * Semi-synthetic opioids (hydrocodone, oxycodone, hydromorphone, oxymorphone)
Some common names for these semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.

Any questions concerning the procedures may be directed to the Department's Human Resources Office.

In addition to the guidelines outlined in the **Florida Statutes, Florida Administrative Code, and the Code of Federal Regulations**, specific requirements for Department employees are described below.

4. TYPES OF TESTING

4.1 PRE-EMPLOYMENT

All vacancy announcements for positions requiring drug testing shall include a statement that successful completion of a drug test is a condition of employment. Once an applicant has been recommended for such a position, she/he will be required to sign a drug testing consent form and undergo successful pre-employment drug testing. The drug test must be completed forthwith, when requested. The Department may not hire any applicant for a position required to undergo pre-employment drug testing who has failed to consent and/or submit to pre-employment testing or for whom a positive test result is returned, unless the applicant is able to demonstrate to the satisfaction of the MRO that the positive result is caused by legitimate prescription or over-the-counter medication(s).

4.2 Reasonable Suspicion

The Department shall require an employee to submit to drug testing when there is a reasonable suspicion of drug use in violation of this policy. Reasonable suspicion drug testing shall not be required except upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question. The supervisor should contact the Human Resources Office for direction.

In instances of reasonable suspicion drug testing, the supervisor shall document the objective evidence, articulable facts and inferences giving rise to the reasonable suspicion of drug use. Among other things, such facts and inferences may be based upon:

1. Observable phenomena while at work, such as direct observation of drug use, or of the physical symptoms or manifestations of being under the influence of a drug;
2. Abnormal conduct or erratic behavior while at work, or a significant deterioration in work performance;
3. A report of drug use in violation of this policy, provided by a reliable and credible source, which has been independently corroborated;
4. Evidence that an employee has tampered with a drug test during his/her employment with the Department;
5. Information that an employee has caused, or contributed to, an accident while at work; or

6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working, or while in the Department's workplace, or while operating a State owned or leased vehicle, machinery, vessel or equipment.

When information is present that an employee has caused, or contributed to, an accident while at work, "reasonable suspicion" drug testing will be required if:

1. The employee has caused or contributed to an on-the-job accident which resulted in injury to the employee or others, requiring professional medical treatment beyond first aid, and the employee exhibits any sign(s) of impairment and/or any of the "reasonable suspicion" criteria is observed and documented;
2. The employee has caused or contributed to a vehicular accident and the employee exhibits any sign of impairment, or any other "reasonable suspicion" criteria is observed and documented;
3. The employee has caused or contributed to any accident which resulted in a fatality to another; or
4. The supervisor, who first has knowledge that an employee may be involved in an event as described above, shall immediately contact their local Human Resources Office, the Employee Relations Manager, or designee, for assistance in determining whether a drug test is appropriate, and if so, what steps should be taken in completing the required drug test.

4.3 Routine Fitness for Duty

The Department shall require an employee to submit to a controlled substances (drug) test, if the test is conducted as part of a routinely scheduled selection employee fitness-for-duty medical examination that is part of the Department's established policy, or is scheduled routinely for all members of an employment classification or group.

4.4 Random Testing

The Department shall conduct random testing. The random sampling of employees chosen for testing must be computer-generated by an independent TPA.

4.5 Follow-Up Testing

If the employee enters an EAP for drug related problems, or an alcohol and drug rehabilitation program, the Department may require the employee to submit to a drug test as a follow-up to such program, and additional testing as prescribed by the SAP for up to two (2) years thereafter. If any subsequent test is positive, the employee is subject to disciplinary action up to and including dismissal.

5. CONFIRMED POSITIVE TEST RESULT REVIEW PROCESS

5.1 The Department may not discharge, discipline, or discriminate against an employee on the **sole** basis of the employee's first positive confirmed drug test, unless the Department has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under a health insurance plan, EAP, or an alcohol and drug rehabilitation program, and:

1. The employee has either refused to participate in EAP or an alcohol and drug rehabilitation program, or has failed to successfully complete such program, as evidenced by withdrawal from the program before its completion, or a report from the program indicating unsatisfactory compliance, or by a positive test result on a confirmation test after completion of the program; or
2. The employee has failed or refused to sign a written consent form allowing the Department to obtain information regarding the progress and successful completion of EAP, or alcohol and drug rehabilitation program.

Failure on the part of the employee to comply with the above provisions is sufficient grounds for dismissal. A second confirmed positive drug test result is grounds for immediate dismissal.

5.2 Any employee in a safety-sensitive position will be placed in a non-safety sensitive position, or if such position is unavailable, on leave status while participating in an EAP, or an alcohol and drug rehabilitation program. For purposes of this subsection, "safety-sensitive position" means any position, including a supervisory or management position, in which a drug-impairment would constitute an immediate and direct threat to public health or safety.

5.3 Upon successful completion of an EAP, or an alcohol and drug rehabilitation program, including a negative test result on a confirmation test after program completion, the employee shall be reinstated to the same or equivalent position that was held prior to such rehabilitation.

6. CORRECTIVE ACTION / PENALTIES

6.1 First Violation: In all cases of the employee's first violation of the alcohol and drug use prohibitions contained in this policy, the employee shall be referred to an alcohol and drug rehabilitation program, where such violation did not:

1. Cause or constitute an immediate and direct threat to human safety;
2. Constitute conduct unbecoming a state employee;
3. Violate any possession of illegal drug laws; or
4. Violate any other Department Disciplinary Standards of Conduct .

6.2 Other Cases: Appropriate disciplinary action will be taken up to and including dismissal in accordance with the Disciplinary Standards of Conduct and disciplinary provisions contained in **Rule 60L-36.005**, F.A.C. and the Department's **Disciplinary Actions, Procedure No. 250-012-011**. If injury to oneself or another person results, more severe disciplinary action will be considered. Injury to oneself resulting from being under the influence of alcohol or abuse of drugs may also result in the loss of all Workers' Compensation benefits for such injury.

6.3 If an employee is referred to EAP or an alcohol and drug rehabilitation program based on a positive confirmed test result, the employee may be placed on leave status while participating in such a program. If placed on leave status, the employee shall first be permitted to use any accumulated paid leave credits prior to being placed on leave without pay. Failure on the employee's part to successfully complete any required EAP, or alcohol and drug rehabilitation program, will lead to the employee's dismissal due to his/her inability to perform all the duties of his/her position, in accordance with the provisions of **Procedure No. 250-012-011, Disciplinary Actions**.

6.4 Any CDL driver, required to take a post-accident alcohol test, who uses alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, shall be deemed to have "refused to submit" to a drug test.

6.5 Any refusal by a CDL driver, or any other employee, to submit to or report for a required alcohol or controlled substances test as authorized and established under the provisions of **Section 112.0455, F.S.**, or as required by any applicable Federal regulation, is grounds for dismissal in accordance with the Department's *Disciplinary Standards* as set forth in **Rule 60L-36.005(3)(h), F.A.C.**

- 6.6** No employee may be forcibly compelled to provide specimens for required drug tests. However, such refusal shall be considered a violation of ***Disciplinary Standards Rule 60L-36.005(3)(h), F.A.C.***, and this procedure.

7. EMPLOYEE RIGHTS

- 7.1** An employee who receives a positive confirmed drug test result may contest or explain the result to the Department within five working days after written notification of the positive test result. If an employee's explanation or challenge is unsatisfactory to the Department, the employee may contest the drug test result as provided by ***Sections 112.0455(14) and (15), F.S.***
- 7.2** An employee of the Department who is disciplined, or who is a job applicant for a special risk or safety-sensitive position and is not hired pursuant to the ***Drug-Free Workplace Act***, may file an appeal with the Public Employees Relations Commission. Appeals must be filed within 30 calendar days of receipt by the employee of the notice of discipline, or refusal to hire. The notice shall inform the employee of the right to file an appeal, or if available, the right to file a collective bargaining grievance pursuant to ***Section 447.401, F.S.***
- 7.3** Employees have the right to consult with the MRO for technical information regarding prescription and nonprescription medication. The MRO may be contacted at toll-free phone number 800-269-0502, extension 107. The Department will provide employees, at the time of a required drug test, a current list of drug testing laboratories (and their addresses) certified by the Agency for Health Care Administration.

8. OTHER EMPLOYEE PROVISIONS

- 8.1** All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the Department through a drug testing program are confidential communications, exempt from the provisions of ***Section 119.07(1), F.S.***, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with ***Section 112.0455 (11), F.S.***, the ***Drug-Free Workplace Act***, and as required by appropriate USDOT regulations.

The Human Resources Office is the sole official custodian of all records relating to a job applicant's or employee's drug test. No other records or copies of records relating to drug testing will be maintained.

- 8.2** Employees are able to confidentially report the use of prescription or nonprescription medications, both before and after being tested. Employees may contact the MRO at the Department's third-party drug testing administrator,

NMS Management Services, for information about the possible effects that taking any prescription or nonprescription medication may have on a Department required drug test at toll-free phone number 800-269-0502, extension 107.

- 8.3 Employees may contact the Department's EAP provider for information about local alcohol and drug rehabilitation resources.
- 8.4 It is the employee's or job applicant's responsibility to notify the drug testing laboratory of any administrative or civil action pursuant to the ***Drug-Free Workplace Act***.
- 8.5 Any questions regarding this drug testing policy and procedure for drug testing should be directed to the local Human Resources Office.

9. REPORTING USDOT DRUG TESTING RESULTS

The Department must prepare and maintain an annual calendar year summary of the results of its USDOT-required alcohol use and controlled substances testing programs. This report will be maintained in a Management Information System maintained by the TPA.

If the Department is notified to report during the month of January of a given year, the annual calendar year summary report must be submitted to the USDOT by March 15th of that year.

10. TRAINING FOR SUPERVISORS

Supervisors or persons designated to make reasonable-suspicion determinations must receive at least 60 minutes of training on alcohol abuse and at least an additional 60 minutes of training on controlled-substances abuse. Training covers the physical, behavioral, speech and performance indicators of alcohol abuse and drug abuse and is located in the Department's Learning Management System.

11. EDUCATIONAL MATERIALS FOR CDL DRIVERS

The Department will provide educational materials that explain the requirements of ***USDOT Regulation 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing***, and how the Department will meet the USDOT requirements. The Department will ensure a copy of the required material is distributed to each CDL driver prior to the start of the required testing, and to each CDL driver subsequently hired or transferred to a position that requires driving a commercial motor vehicle.

12. RESPONSIBILITIES

Individual or Group	Responsibilities
Employees	<ul style="list-style-type: none">• Adhere to this policy.• Advise supervisor and Human Resources Office if they are arrested and/or convicted. Notification is required within one working day following the occurrence.
Supervisors	<ul style="list-style-type: none">• Consult the Human Resources Office for guidance related to all drug testing, or suspicious alcohol or drug related activities in the workplace.• Handle confidential documents appropriately.
Human Resources Office	<ul style="list-style-type: none">• Serve as the primary contact for questions related to this policy, and provide coordination and support.• Review this policy at new employee orientation or during new hire activities. Either of these reviews serves as the “notice of this policy” to new employees.

13. FORMS

The following forms are available from the Department’s Forms Library or from the Human Resources Office:

- 250-013-12 Drug Test Notification / Authorization (DTNA)
- 250-013-13 Reasonable Suspicion Observation
- 250-013-14 Drug Testing Authorization Number Control Log
- 250-013-23 Authorization for Release of Medical Records
- 250-013-31 CDL Driver – Applicant’s Previous Employer Alcohol and Drug Testing Record