

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 137.00

EFFECTIVE DATE: 19 April 2023

**SUBJECT: DRUG- AND ALCOHOL-FREE
WORKPLACE**

POLICY DIRECTIVE

PURPOSE:

To provide guidelines in accordance with federal and state regulations, including provisions of the Drug-Free Workplace Act of 1988, in an effort to institute and maintain a drug- and alcohol-free workplace.

REFERENCE:

Drug-Free Workplace Act of 1988 (41 U.S.C. 81); Medical Cannabis Act, WV Code §16A-1-1 *et seq.*; and WV Division of Personnel Policy DOP – P02 Drug- and Alcohol-Free Workplace.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject including DCR Policy Directive 137.00, dated 01 August 2020; and DCR Commissioner's Instruction #DCR21-02, dated 08 February 2021.

APPLICABILITY:

All facilities and work units within the Division of Corrections and Rehabilitation. This Policy is available for general distribution.

DEFINITIONS:

Employee: For the purpose of this Policy Directive, this includes full time, part-time, temporary, provisional, probationary, and permanent status employees of the State of West Virginia; contractors and their employees; and volunteers.

Reasonable Suspicion: As defined in DOP Policy DOP-P02, the belief premised on facts and inferences based primarily upon, but not limited to: (1) Observable phenomena, such as direct observation of use, possession or distribution of alcohol or drugs, or of the physical symptoms of being under the influence of alcohol or drugs, such as, but not limited to, slurred speech, dilated pupils, odor of alcoholic beverage or drugs, changes in affect or dynamic mood swings; (2) a pattern of abnormal conduct, erratic or aberrant behavior or deteriorating work performance such as frequent absenteeism, excessive tardiness or recurrent accidents, that appears to be related to the use of alcohol or drug abuse and does not appear to be attributable to other factors; (3) the identification of an employee as the focus of a criminal investigation into unauthorized possession, use or trafficking of drugs; (4) a report of use of alcohol or drugs provided by a reliable and credible source; and (5) repeated or flagrant violations of safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appears to be related to the use of alcohol or drug and that does not appear attributable to other factors.

POLICY:

- I. The Division of Corrections and Rehabilitation (DCR) ensures its workplaces are free of alcohol, and illegal drugs by prohibiting the use, possession, purchase, manufacture, distribution, dispensing, sale of, or having such substances in the body system. This policy is applicable while employees (as defined above) are engaged in any work-/service-related activity which includes performance of agency business.
- II. Facilities and work units will maintain a copy of WV Division of Personnel Policy DOP-P02 Drug- and Alcohol-Free Workplace in an accessible location and display the poster available on the Division of Personnel website in a central location.
- III. Each new employee shall receive a copy of WV Division of Personnel Policy DOP – P02 Drug- and Alcohol-Free Workplace (**Attachment #1**) during pre-service/orientation training and sign Appendix A, Drug- and Alcohol-Free Workplace Employee Acknowledgement Form.
 - A. Signed acknowledgement forms will be maintained in each employee's personnel file with a copy provided to the employee.
 - B. The policy will also be communicated to all employees during annual in-service/refresher training.
- IV. Employees are required to notify the human resource department of the use of a controlled substance or legal drug, whether prescribed or over the counter, that may substantially affect the performance of job responsibilities and give rise to a safety issue. This information will be maintained by human resource staff in confidential files separate from the employee's personnel file, with restricted access or limited disclosure, and then only to

designated persons on a need-to-know basis. Contractors and their employees will comply with their company's policy on notification and reporting.

- A. The Medical Cannabis Act provides that employers may not discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee solely based on that employee's status as a registered medical cannabis cardholder.
 - B. The Medical Cannabis Act does prohibit the use or possession of medical cannabis in a state correctional facility including a facility owned or operated under contract with the DCR; nor is medical cannabis permitted in an employee's personal vehicle if the vehicle is parked at the workplace.
- V. When reasonable suspicion (see definition above) exists that an employee has reported to work under the influence of alcohol or an illegal drug or is impaired due to abuse or misuse of controlled substances or a legal drug, the employee may be subject to drug/alcohol testing.
- A. All such information will be reported confidentially through the chain of command to the Superintendent, or work unit director/supervisor as appropriate, who will consult with the appropriate Assistant Commissioner or Executive Officer to determine the appropriateness for drug/alcohol testing.
 - B. Testing will be administered by a trained staff member of the same gender using an agency-purchased field test kit or device approved by the Director of Security Services. If the test is negative, the sample is discarded appropriately, and no further action is required. If the test is positive, the testing will proceed to confirmation testing by an agency designated approved laboratory for confirmed analytical result.
 - C. Reasonable care will be provided to the employee including a safe ride home and information on resources for assistance available in the Employee Referral Program Booklet published by the West Virginia Division of Personnel and the Department of Health and Human Resources.

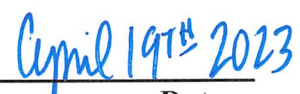
ATTACHMENT(S):

- #1 WV Division of Personnel Policy DOP – P02 Drug- and Alcohol-Free Workplace (7 pages)

APPROVED SIGNATURE:



William K. Marshall III, Commissioner



Date



DRUG- AND ALCOHOL-FREE WORKPLACE

I. PURPOSE

The purpose of this policy is to establish clear and uniform guidelines in accordance with federal and State regulations regarding alcohol, drugs, or controlled substances, including the provisions of the Drug-Free Workplace Act of 1988, as amended. Further, the purpose of this policy is to make every effort to institute and maintain a drug- and alcohol-free workplace by describing to all individuals (e.g., employees, visitors, vendors/independent contractors, and the general public) the prohibitions regarding alcohol and drugs in State and affiliated government workplaces as such use, abuse, and misuse of alcohol, drugs, and/or controlled substances may impact job performance and bring discredit upon the employer. The provisions of this policy apply to all employees of West Virginia Executive agencies or any affiliated political subdivision, including executive, administrative, classified, non-classified, exempt, volunteer, seasonal and temporary employees, and employees of county health departments affiliated with the West Virginia Division of Personnel, as well as vendors/independent contractors.

II. DEFINITIONS

- A. Agency: Any administrative department of state government or an affiliated political subdivision, including, but not limited to, executive, administrative, classified, non-classified, exempt, and county health departments affiliated with the West Virginia Division of Personnel.
- B. Alcohol: For the purposes of this policy, includes beer, fortified beer, nonintoxicating beer, wine and spirits, ethanol, isopropanol, or methanol alcohol, and any liquid, gel, gas or solid containing more than one half of one percent of alcohol by volume and capable of being used as a beverage or being ingested, inhaled or otherwise taken into the body.
- C. Assessment: An evaluation used to determine the presence of drug and/or alcohol use. A drug and/or alcohol assessment may include but is not limited to observation of behavioral indicators, self-disclosure, or clinical/laboratory testing.
- D. Controlled Substance: A federally-regulated substance listed in Schedules I through V or a controlled substance analogue as provided in the Controlled Substance Act (21 U.S.C. 801 *et seq.*) and/or a substance listed in West Virginia Code § 60A-2-201, *et seq.*, that when taken into the body, may or may not impair one's mental faculties and/or physical performance.
- E. Conviction: A finding of guilt, (including a plea of *nolo contendere*) or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or State criminal drug statutes.
- F. Criminal Drug Statute: A criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.
- G. Drug Paraphernalia: Drug paraphernalia as defined in West Virginia Code § 47-19-3.



- H. Drug Test and Alcohol Testing: A procedure using a sample of the human body capable of revealing the presence of alcohol or other drugs or other metabolites to determine if the individual ingested, injected, or was otherwise exposed to drugs or alcohol.
- I. Employee: Any person who lawfully occupies a permanent or temporary position with an Executive agency of the State, or any affiliated political subdivision, and who is paid a wage or salary including, but not limited to, executive, administrative, classified, non-classified, exempt, seasonal, temporary employees, and employees of county health departments affiliated with the West Virginia Division of Personnel. For the purpose of this policy, "employee" shall also include authorized students, interns and volunteers performing services for an agency under direct supervision irrespective of receipt of wages.
- J. Federal Agency: Any agency as that term is defined in 5 U.S.C. § 551.
- K. Grantee: Any department, division, unit, or any person responsible for the performance of work under the provisions of a federal grant.
- L. Illegal Drug: Any drug which is not legally obtainable or a drug available by prescription that is being used in a manner or for a purpose other than as prescribed. Illegal drugs include those controlled substances under federal or State law which are not authorized for sale, possession, or use, and legal drugs which are used, obtained, or distributed illegally.
- M. Legal Drug: Legal drugs include medications prescribed by a physician or, medications in West Virginia that have been legally obtained and that are being used solely for the purpose for which they were lawfully prescribed, and in the dosage and quantity for which they were prescribed. Legal drugs also include over-the-counter medications that have been legally obtained and that are being used for the purpose, and in the dosage and quantity, specified by the drug manufacturer.
- N. Reasonable Suspicion: The belief premised on facts and inferences based primarily upon, but not limited to: (1) Observable phenomena, such as direct observation of use, possession or distribution of alcohol or drugs, or of the physical symptoms of being under the influence of alcohol or drugs, such as, but not limited to, slurred speech, dilated pupils, odor of an alcoholic beverage or drugs, changes in affect or dynamic mood swings; (2) a pattern of abnormal conduct, erratic or aberrant behavior or deteriorating work performance such as frequent absenteeism, excessive tardiness or recurrent accidents, that appears to be related to the use of alcohol or drug abuse and does not appear to be attributable to other factors; (3) the identification of an employee as the focus of a criminal investigation into unauthorized possession, use or trafficking of drugs; (4) a report of use of alcohol or drugs provided by a reliable and credible source; and (5) repeated or flagrant violations of the safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appears to be related to the use of alcohol or drug and that does not appear attributable to other factors.
- O. Safety Sensitive Position: Any position determined by federal, State, or agency provisions where a lapse of attention or judgment, can lead to an accident that could cause loss of human life, serious bodily injury, or significant property or environmental damage.



- P. Vendor/Independent Contractor: Any entity or person responsible for the performance of work under a vendor agreement or contract.
- Q. Volunteer: Any authorized individual directly engaged in the performance of services for a State or affiliated agency without promise, expectation, or receipt of compensation.
- R. Workplace: A site where service or work is performed in connection with the employment or service of an employee or vendor/independent contractor, including sites of social functions and conferences. The workplace shall include, but is not limited to, facilities, property, buildings, offices, structures, automobiles, trucks, trailers, or other means of conveyance (either private or public, while engaged in the performance of duties), and parking areas provided by the agency, even if not owned, leased, or operated by the agency.

III. POLICY

It is the policy of West Virginia State government and its affiliated agencies to ensure that its workplaces are free of alcohol, and illegal drugs by prohibiting the use, possession, purchase, manufacture, distribution, dispensing, sale of, or having such substances in the body system. Attempting to obtain, possess, purchase, manufacture, distribute, dispense, or sell alcohol or illegal drugs in the workplace is also prohibited. Although the sale and use of alcohol by an adult may be legal, the use, possession, purchase, manufacture, distribution, dispensing, or sale of alcohol in the workplace is strictly prohibited. Employees violating this policy are subject to disciplinary action up to and including dismissal and may be required to participate in a drug rehabilitation program as a condition of continued employment or reemployment.

- A. This policy is applicable while employees or vendors/independent contractors, are engaged in any work-/service-related activities which include performance of agency business. Work/service-related activity includes, but is not limited to, conducting work/service, representing the State or the agency, participation in conferences or off-site meetings, receiving awards, speaking as a State or agency representative, and participation in receptions when invited as a result of employment/service with the State or the agency.
- B. The use, possession, purchase, manufacture, distribution, dispensing, or sale of alcohol; the reporting to work under the influence of alcohol, or having alcohol in the body system at work, whether the alcohol was consumed at work or away from work, attempting to obtain, possess, purchase, manufacture, distribute, dispense, or sell alcohol, are all prohibited in the workplace. Industrial, cleaning, or medical products containing alcohol are not prohibited by this policy when used in the manner in which intended.
- C. The unlawful use, possession, purchase, manufacture, distribution, dispensing or sale of a controlled substance, legal drug, or illegal drug in the workplace; the reporting to work under the influence of an illegal drug; having an illegal drug in the body system; or possession of drug paraphernalia (other than drug paraphernalia lawfully prescribed by a physician or other person licensed to prescribe and used for the lawful purposes for which it was prescribed) are all prohibited in the workplace. Attempting to obtain, possess, purchase, manufacture, distribute, dispense, or sell illegal drugs in the workplace is also prohibited.



- D. When reasonable suspicion exists that an employee or vendor/independent contractor has reported to work under the influence of alcohol or an illegal drug, or is impaired due to abuse or misuse of controlled substances or a legal drug, the individual may be subject to assessment, which may include a drug or alcohol test. Refusal of an employee to submit to an assessment or an assessment resulting in a positive result may result in disciplinary action up to and including dismissal.
- E. Exceptions to the provisions of this policy may be necessary in limited situations where employees or vendors/independent contractors are engaged in a lawful work-/service-related activity which may otherwise result in violation of this policy (e.g., law enforcement, regulatory enforcement, confiscation, collection and disposal of refuse, etc.). Appointing authorities may be required to conduct random testing in compliance with applicable state and federal law and/or for safety-sensitive positions. Exceptions to this policy approved by appointing authorities must be communicated in writing to the Director of Personnel.
- F. An appointing authority, or his or her designee, may issue specific safety reporting standards requiring reporting or notification of use of a controlled substance or legal drug, whether prescribed or over-the-counter, that may substantially affect the performance of job responsibilities and give rise to a safety issue (e.g., driving, operating machinery, etc.).
- G. Though legal intoxicants (e.g., glue, paint, etc.) are not specifically prohibited in this policy, unacceptable performance or conduct resulting from the misuse of such intoxicants may result in disciplinary action up to and including dismissal.
- H. As a condition of employment/service with the State of West Virginia or its affiliated agencies, employees and vendors/independent contractors shall:
 - 1. Abide by the terms of this policy;
 - 2. Notify their supervisor or appointing authority in writing of any criminal drug statute conviction for a violation occurring in the workplace, no later than five (5) calendar days after such conviction;
 - 3. Comply with agency-issued safety reporting standards if using a controlled substance or legal drug, whether prescribed or over-the-counter, that may substantially affect the performance of job responsibilities and give rise to a safety issue (e.g., driving, operating machinery, etc.); and,
 - 4. Acknowledge understanding of and compliance with this policy by signing the Drug- and Alcohol-Free Workplace Employee Acknowledgment Form (Appendix A) or appropriate volunteer/service agreement, as applicable.

IV. RESPONSIBILITIES

- A. It shall be the responsibility of the West Virginia Division of Personnel to establish a drug awareness program and to provide training to employees of Executive and affiliated agencies on the following:



1. The establishment and maintenance of a drug- and alcohol-free workplace in compliance with this policy;
 2. The dangers of alcohol use or drug abuse in the workplace;
 3. Availability of the State's Employee Referral Program;
 4. The consequences of violation of this policy; and,
 5. The utilization of resources concerning the abuse and misuse of alcohol and/or drugs.
- B. It shall be the responsibility of each agency to:
1. Maintain a copy of the Drug- and Alcohol-Free Workplace policy in an accessible location and display the poster in a central location.
 2. Ensure that each new employee receives a copy of the policy during orientation.
 3. Maintain the signed Drug- and Alcohol-Free Workplace Employee Acknowledgment Form (Appendix A) in each employee's agency personnel file.
 4. Enforce the policy and take appropriate action against individuals who are convicted or violate the policy within 30 calendar days from the date of the conviction or violation.
 5. In accordance with applicable legal and administrative disciplinary procedures, promptly address any attempted or unlawful use, possession, purchase, manufacture, consumption, distribution, dispensing or sale of alcohol, a legal drug, or an illegal drug; an employee found to be, or suspected of being, under the influence of alcohol or an illegal drug in the workplace; an employee having alcohol or an illegal drug in the body system; or an employee being impaired due to use, abuse or misuse of a legal drug, intoxicant, or controlled substance in the workplace. Supervisors should contact their respective agency personnel office or individual designated by the appointing authority for guidance. However, in emergency situations supervisors should first ensure the safety of the employee and others and then immediately contact 911, appropriate law enforcement officials, or agency security. Agencies in Kanawha County may also contact the Division of Protective Services at (304) 558-9911 for assistance. Prior to an incident occurring, agencies in outlying areas should ascertain if assistance is available with emergency response and drug and/or alcohol testing through other related services and in compliance with existing agency policy.
 6. Pursuant to the Drug-Free Workplace Act, State agencies that are independent contractors or grantees of federal contracts or recipients of federal grants amounting to at least \$100,000 shall notify, in writing, the federal agency administering the grant, within ten (10) calendar days after receiving notice from an employee of his or her conviction for a violation of a criminal drug statute occurring in the workplace or otherwise receiving actual notice of such conviction. Such notice, including position title, must be submitted to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. The notice shall include the identification number(s) of each affected grant. State agencies covered by the



Act are subject to suspension of payments and termination of the contract or grant for violations of any of the requirements of a drug-free workplace.

7. Make a good faith effort to continue to maintain a drug- and alcohol-free workplace by communicating this policy to all employees annually.
8. Ensure that vendors/independent contractors have executed agreements to ensure compliance with drug- and alcohol-free workplace requirements.

V. REFERENCES

- A. Administrative Procedures Act, 5 U.S.C. § 551
- B. Drug-Free Workplace Act, 41 U.S.C. Sections 701-707.
- C. West Virginia Code § 47-19-3.
- D. West Virginia Code § 60A-2-201 *et seq.* and applicable federal statutes.

VI. **EFFECTIVE DATE:** October 1, 1991.

VII. REVISIONS

- A. Previous Revisions: January 16, 2003 and October 1, 2004.
- B. Latest Revision: December 18, 2020

VIII. **POLICY NUMBER:** DOP-P2.

Approved and Issued By:

A handwritten signature in blue ink that reads "Sheryl R. Webb".

Sheryl R. Webb, Director of Personnel

Date Signed: December 18, 2020.



**DRUG- AND ALCOHOL-FREE WORKPLACE
EMPLOYEE ACKNOWLEDGMENT FORM**

I certify that I have received a copy of the West Virginia Division of Personnel Drug- and Alcohol-Free Workplace policy.

I agree to abide by the terms of the policy and I am aware that with any violation of this policy, I will be subject to disciplinary action, up to and including dismissal. I may also be required to participate in a drug or alcohol abuse assistance or rehabilitation program as a condition of continued employment or reemployment. I understand that I must also comply with any agency-issued safety standards.

In addition, I understand that if I am a federal contractor or federal grant recipient or an employee of a federal contractor or federal grant recipient, under federal law and as a condition of employment, if I am convicted of any violation of a criminal drug offense in the workplace, I must report this conviction to my supervisor and the appointing authority in writing within five (5) calendar days of the conviction.

My signature acknowledges my receipt of the policy and my understanding of its contents and requirements. My signature does not indicate that I agree or disagree with the content of the policy.

Name (Print)

Signature

Date

TO BE COMPLETED BY SUPERVISOR

I certify that I have discussed with and provided the above-named employee a copy of the West Virginia Division of Personnel Drug- and Alcohol-Free Workplace policy.

Name (Print)

Signature

Date

FORM DOP-P2-AF

Distribution: Original – Human Resources

Copy – Employee

Policy DOP-P02

EFFECTIVE DATE: December 18, 2020