



## DRUG-FREE WORKPLACE POLICY

POLICY NUMBER: 300-01	EFFECTIVE DATE: 01/01/2016	APPOINTING AUTHORITY APPROVAL: 
REPLACES POLICY DATED: 3/26/2012	AUTHORITY: ORC 124.34; OAC 123:1-76-01 thru 14; ORC 4123.54; OCSEA Contract Article 24.09 and Appendix M; Omnibus Transportation Employee Testing Act of 1991	

### I. PURPOSE

The purpose of the Drug-Free Workplace policy is to provide a safe and productive environment for all Department of Administrative Services (DAS) employees by creating a workplace that is free from the adverse effects of alcohol and other drugs; to ensure awareness and compliance of these guidelines; to incorporate O.R.C. 4123.54 (HB 223) that requires an employee injured on the job to “rebut the presumption” that the use of alcohol or drugs was the cause of injury; and to provide direction to managers and supervisors on the handling of drug issues.

This policy will also establish guidelines for all DAS employees, both exempt and bargaining unit. For bargaining unit employees, this policy may be modified as mandated by the applicable collective bargaining agreement. In addition, any DAS directives may serve to clarify bargaining unit provisions. For exempt employees, this policy may be modified or supplemented by any applicable DAS directives or the Ohio Revised Code and Administrative Code.

### II. POLICY STATEMENTS

- A. DAS employees are prohibited from unlawfully manufacturing, distributing, dispensing, purchasing, transferring, possessing or using alcohol or a controlled substance, or abusing prescription drugs in any way that is illegal on official business on or off the workplace location. “Controlled substance” consists of those substances defined in Sections 3719.01 and 3719.41 of the Ohio Revised Code.
- B. DAS recognizes that some prescription medications and over-the-counter medications may cause impairment in judgment, coordination and physical ability. Employees taking prescription or over-the-counter drugs that may affect performance, judgment or behavior shall notify their supervisor or designee of such use. Reasonable accommodations will be made for any employee who uses a properly prescribed medication.
- C. The sale or possession of alcohol and/or illegal drugs in the workplace or any location where DAS employees conduct official business shall be reported to the Ohio State Highway Patrol or other appropriate law enforcement authority. Employees who possess or sell alcohol or illegal drugs in the workplace or any location where employees conduct official business may be appropriately disciplined pursuant to ORC Section 124.34, the discipline provisions of the various state collective bargaining agreements and DAS’ work rules, policies and procedures.

- D. Sale of illegal drugs, in particular, will result in the strongest form of discipline possible, up to and including termination.
- E. DAS will not hire an applicant who has tested positive for alcohol and/or other drugs. However, this policy shall not preclude DAS from hiring persons who are in recovery from alcohol and/or other drug addiction.
- F. DAS employees are required to report to work in a fit condition to perform their duties. An employee reporting to work or on official business, on or off the workplace, under the influence of alcohol or other drugs will be considered in violation of the DAS Drug-Free Workplace Policy. Any such employee will be subject to disciplinary actions pursuant to ORC Section 124.34, the disciplinary provisions of any applicable collective bargaining agreements and DAS' work rules, policies and procedures.
- G. Every DAS employee has equal access to the State of Ohio's Employee Assistance Program (EAP) that refers employees or their family members to appropriate substance abuse rehabilitation programs. These programs are often subsidized by the employee's health insurance plan. Employees with substance abuse problems are encouraged to voluntarily contact the Employee Assistance Program (EAP) and enroll in a rehabilitation program certified by the Ohio Department of Mental Health and Addiction Services.
- H. Any DAS employee suffering from a substance abuse problem shall receive the same careful consideration and offer of treatment that is presently extended under the State's existing benefit plans to those employees having other mental health and substance abuse conditions, as well as under the Employee Assistance Plan. The same benefits and insurance coverage that is provided for all other illnesses, diseases, and/or physical or psychological conditions, under the State's established health insurance benefit plan, shall be available for individuals who accept medically approved treatment of alcoholism or drug dependency.
- I. No employee with a substance abuse problem shall have his or her job security or promotional opportunities jeopardized by a request for diagnosis and/or treatment. However, continued unacceptable job performance, attendance, and/or behavioral problems may result in disciplinary action, up to and including termination.
- J. All department leadership, managers and supervisors are responsible for adherence to and implementation, enforcement and monitoring of this policy.
- K. Notice of Drug-Related Convictions: As required by the Federal Drug-Free Workplace Act of 1988, each DAS employee is required to notify the DAS Director or designee within five (5) days after he or she is convicted of a violation of any federal or state criminal drug statute where such violation occurred at the workplace or any location where the employee is working at the time of the incident which led to the conviction. A conviction means a finding of guilty, no contest (including a plea of nolo contendere) or the imposition of a sentence by a judge or jury in any federal or state court.
  - 1. The DAS Director, or designee, is required to:

- a. within thirty (30) days of notification, take appropriate disciplinary action against such an employee, up to and including termination. The DAS Director may also refer such employee to the Employee Assistance Program for referral and treatment.
- b. within ten (10) days of receiving notice from the employee of such conviction, notify any federal agency with which DAS has a contract or grant.
- c. Any employee who fails to report such conviction will be subject to disciplinary action up to and including termination consistent with any collective bargaining agreements or DAS' work rules, policies and procedures.

### III. APPLICATION OF THE DRUG TESTING COMPONENTS

- A. DAS enforces the Drug-Free Workplace Policy through management supervision and alcohol or other drug testing. Confidentiality of employee medical records and alcohol or other drug test results will be maintained to the extent provided by Ohio and Federal laws.
- B. Employees shall have the opportunity to refute the results of any alcohol or other drug test pursuant to OAC 123:1-76-10(G) and/or 123:1-76-13.
- C. The DAS drug testing program consists of the following provisions:

1. TEST REQUIREMENT CRITERIA (State Testing):

The following are criteria under which applicants or employees will be tested:

- a. All final applicants for unclassified positions, safety sensitive and other specially designated positions must complete and successfully pass a drug test as a condition of employment.
- b. Intermittent, temporary and external interim appointments expected to work in a safety sensitive position for which drug testing is normally required will be subject to pre-employment drug testing.
- c. Any DAS employee suspected to be impaired by or under the influence of drugs or alcohol when reporting for duty or while on the job.
- d. For determining Worker's Compensation benefits eligibility in the event of an injury, an employee may undergo a drug or alcohol test for cause.
- e. Employees in safety sensitive positions may be subject to a random drug and alcohol test.

2. TYPES OF REQUIRED TESTING

- a. *Applicant/Pre-employment Testing*: Testing is required of final DAS applicants for positions in state service, as listed above, who have tentatively met all relevant employment criteria but have not been officially offered employment.

- b. *Reasonable Suspicion Testing:* Any DAS employee may be required to undergo alcohol and other drug testing based on a for-cause determination by management.
- c. *Rebuttable Presumption Testing:* For the purposes of determining eligibility for Workers' Compensation benefits in the event of an injury, a DAS employee may undergo a drug or alcohol test for cause or at the request of a police officer or physician.
- d. *Random Testing:* DAS employees in safety sensitive positions may be subject to random drug and alcohol testing.
- e. *Return-to-Duty Testing:* Any DAS employee who has tested positive for alcohol or drugs on a reasonable suspicion test must pass a return-to-duty test before he or she may return to their duties.
- f. *Follow-Up Testing:* Any DAS employee testing positive on a reasonable suspicion test or referred through administrative direction to a counseling or rehabilitation program as a result of that employee's substance abuse may be subject to follow-up testing according to specifications and provisions of any governing collective bargaining agreement(s) or the Director of Administrative Services.

#### IV. ALCOHOL and/or DRUG TESTING PROCEDURES

- A. DAS employees are responsible for the cost of any test that is required as the result of a positive test (i.e. re-test, return-to-duty and follow-up tests).
- B. All travel time and time spent in the actual testing process will be considered "time worked" for compensation purposes. The exception to this is return-to-duty testing.
- C. Any employee refusing to test or cooperate with the testing process in any way that would prevent completion of the test will be considered as having received a positive test result.

##### 1. APPLICANT TESTING:

- a. The Office of Employee Services (OES) Drug Testing Coordinator will arrange a time with the collection site for the applicant to be tested (The same procedure for scheduling a "Reasonable Suspicion" Test is used).
- b. The OES Drug Testing Coordinator will provide the applicant with a scheduled time for testing and will request a drug test authorization form signed by the applicant. (See Attachment E)
- c. The applicant should be tested as soon as possible but must be tested within 32 hours of receiving notification. The Office of Drug-Free Workplace Services Program (ODFWSP) should be contacted if the applicant cannot comply with this timeline.

- d. After the applicant's test is completed, the results are processed as follows:
  - Applicant's drug test results are sent to the ODFWSP.
  - OES Drug Testing Coordinator and/or authorized personnel only can view results in the OAKS system. Positive test results will be provided to OES from ODFW (via a secure fax line).
  - The Drug Testing Coordinator forwards the results to the appropriate Account Executive.
  - The DAS Human Resources Administrator, along with the Account Executive, is notified if the applicant's test results are positive.
- e. Any applicant who tests positive will not be eligible for state employment for a period of one year following the date of the positive result.
- f. Applicants shall be advised of the opportunity to offer an explanation or submit medical documentation of legally prescribed medications which may explain a positive test result pursuant to OAC 123:1-76-09(D).
- g. Any applicant who refuses to be tested or whose actions impede the collection process in any way will not be hired.
- h. Any applicant that, with approval of OES Drug Testing Coordinator, does not complete testing prior to hire or selection, and then tests positive, will be terminated.

## 2. REASONABLE SUSPICION TESTING:

- a. All DAS employees may be required to submit a urine specimen for testing for the presence of drugs *and* a breath sample for the testing of the presence of alcohol.
- b. All reasonable suspicion testing will consist of both an alcohol test and a drug test.
- c. Alcohol and other drug testing will be conducted in accordance with the requirements of any governing collective bargaining agreement(s) or the Director of Administrative Services. All testing will be conducted as outlined in Section IV, C.
- d. For reasonable suspicion testing, bargaining unit employees have the right to consult with a union representative, if one is available, within one hour prior to testing. A union representative may accompany the employee to the collection site provided the union representative's attendance does not impede the testing process. Testing will not be postponed if a union representative is requested, but is not available.
- e. "Reasonable suspicion" testing shall be conducted when there is reasonable suspicion to believe that an employee, when appearing for duty or on the job, is under the influence of, or his or her job performance is impaired by alcohol

or other drugs. This reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of alcohol or drugs. Examples of reasonable suspicion include, but are not limited to:

- smell of alcohol
- slurred speech;
- disorientation;
- abnormal conduct or behavior;
- involvement in an on-the-job accident resulting in disabling personal injury requiring immediate hospitalization of any person;
- property damage in excess of \$2000, where the circumstances raise a reasonable suspicion concerning the existence of alcohol or other drug use or abuse by the employee.

Appropriate medical assistance should be obtained first (911) for an employee injured on the job and in need of immediate medical attention.

i. TESTING:

1. Reasonable suspicion must be documented in writing and supported by **two witnesses**, including the person having such suspicion. When a supervisor or manager suspects an employee is under the influence of drugs or alcohol while on duty, his or her suspicion should first be supported by a witness, preferably another manager or supervisor. The supervisor or manager should complete “Direct Order – Documentation Report” (Attachment B).
2. The immediate supervisor shall be contacted, if possible, to confirm that a test is warranted based upon the circumstances.
3. The written documentation must be presented to the employee, the Division Deputy Director and OES. The Division Deputy Director will maintain the report in the strictest confidence, except that a copy shall be released to any person designated by the affected employee.
4. The supervisor shall call the Office of Employee Services Drug Testing Coordinator to report the reasonable suspicion and request testing to be scheduled.

ii. COLLECTION SITE TEST SCHEDULING  
(During regular business hours):

1. All sample collections shall be conducted off-site by professional non-state personnel subject to the collection protocols of the Federal Omnibus Act.
2. During regular business hours (7:30am to 5:00pm; Monday – Friday) contact:

DAS/Office of Employee Services  
Drug Testing Coordinator

3. When contacting the OES Drug Testing Coordinator, the supervisor (manager) needs to provide the following information:
  - a. Full name of the employee needing to be tested (include middle name or initial if available).
  - b. Reasonable suspicion alcohol and drug tests are needed, whether or not the employee was injured on the job.
4. The OES Drug Testing Coordinator will call the appropriate drug testing facility to schedule the needed test.
  - a. In arranging tests under the state testing programs, the Office of Employee Services Drug Testing Coordinator should inform the collection site:
    - that a state (not U.S. Dept. of Transportation) test is being scheduled.
    - that the test is for both alcohol and drugs.
    - the name of the agency ordering the test and the five-digit account number.
    - that a split specimen is required.
    - that the collection is for the certified state contracted laboratory.
    - the name and employee number of the person sent for the specimen collection.
  - b. The OES Drug Testing Coordinator should always call ahead with information needed for the testing.
  - c. **The person to be tested should never be sent unannounced to any collection site.**
  - d. All persons sent for testing should be prepared to show photo identification at the test site.
5. After making contact with the OES Drug Testing Coordinator and supplying the necessary information, the supervisor (manager) must arrange transportation for the employee to the drug testing facility promptly and before 5:30 pm that same day.
6. The supervisor (manager) should complete the “Direct Order Reasonable Suspicion – Immediate Test” memorandum (Attachment C). The memorandum is then presented to the employee.
7. An employee ordered to undergo a reasonable suspicion test must always be transported, in a state car if available, by his or her supervisor and another management level employee to the testing facility. The

supervisor or management level employee should make arrangements for the employee's family or friend to pick the employee up after the test is conducted. If arrangements cannot be made, the supervisor or management level employee should take the employee home. The employee must not be allowed to drive.

iii. **COLLECTION SITE TEST SCHEDULING  
(During non-regular business hours):**

1. Arrangements for both an alcohol test and a drug test must be made.
2. Non-regular business hours are Monday – Friday during hours 5:00 pm to 7:30 am, on holidays or weekends.
3. For testing: Follow procedure in Attachment A.

iv. Employees shall be given the opportunity as required by collective bargaining agreements or as stipulated by the Director of DAS to offer an explanation or submit medical documentation of legally prescribed medications or exposure to toxic substances that may explain a positive test result to the Medical Review Officer. The result issued by the Medical Review Officer is the result of record. This information shall only be reviewed by the Medical Review Officer.

3. The “REBUTTABLE PRESUMPTION” LAW (O.R.C. 4123.54)

- a. O.R.C. 4123.54 requires that an employee may be subjected to drug and alcohol testing when suffering an injury that may be compensable by workers compensation benefits. The standard drug panel is the same as that currently in place. DAS has the option of adding 4 prescription drugs (see e-iii below) to the panel if it is believed that the employee injury is due to the abuse of these medications. The Blood Alcohol Content (BAC) positive level is 0.08 rather than the 0.04 level for all other testing.
- b. The employee's refusal to test may affect his or her eligibility for workers compensation and benefits pursuant with O.R.C. sections 4121 and 4123.
- c. An employee's worker's compensation may be affected by a positive test as determined by a federal DHHS-certified laboratory.
- d. A test is considered qualifying if it is administered to an employee after an injury under at least one of the following conditions:
  - i. When DAS has reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician;
  - ii. At the request of a police officer pursuant to O.R.C. section 4511.191;
  - iii. At the request of a licensed physician who is not employed by the State.
- e. Based on O.R.C. 4123.54 and in accordance with current policy, the following shall apply for DAS employees:

- i. If there is reasonable cause to believe that an employee is under the influence of drugs and/or alcohol, when involved in an accident resulting in injury, a state reasonable suspicion or a federal post accident test shall be administered pursuant to current policy. That test may also be used to satisfy the conditions set forth for rebuttable presumption.
- ii. If a test is ordered by a physician or a police officer pursuant with O.R.C. 4123.54, results of that test will satisfy the conditions set forth for a rebuttable presumption.
- iii. If DAS suspects that the employee injury is due to the employee's abuse of prescription barbiturates, benzodiazepines, methadone and/or propoxyphene, DAS may request that these drugs be added to the test panel. This expanded panel can only be used for state reasonable suspicion rebuttable presumption testing. It cannot be used for a federal post-accident test. If DAS suspects that abuse of prescription barbiturates, benzodiazepines, methadone and/or propoxyphene is a factor in an injury involving an employee subject to federal testing, two separate split specimen collections will have to be performed. The first collection will test for the standard 5-drug panel and will constitute the post-accident federal test. The second split specimen collection will be subject to the standard 5-drug panel plus the 4 prescription drugs and will constitute the rebuttable presumption test.
- iv. Since rebuttable presumption testing is triggered by an on-the-job accident resulting in injury, access to medical treatment **MUST NEVER** be delayed to satisfy any pre-test documentation requirements on the part of DAS. Documentation should, however, be prepared within 24 hours of the test and given to the employee or other authorized parties as stipulated in any applicable agency or collective bargaining agreements.
- v. The BAC level for a positive alcohol test for rebuttable presumption testing is 0.08 or greater. The level for non-rebuttable presumption testing is 0.04 or greater. An employee testing at 0.04 or greater, but less than 0.08 would be positive under state and federal reasonable suspicion/post accident testing, but negative as far as the rebuttable law is concerned.

#### 4. RANDOM DRUG/ALCOHOL TESTING

- a. DAS employees whose positions are deemed as safety-sensitive in accordance with State collective bargaining agreements or require a commercial driver's license may be subject to random drug/alcohol testing. Safety sensitive positions can be found in the OCSEA union agreement, Appendix M, Section 7.
- b. The DAS Office of Drug-Free Workplace (ODFW) Services Program will periodically provide a list of Position Numbers (PNs) to the DAS Office of Employee Services (OES) Drug Testing Coordinator indicating the employees who are to be randomly tested for drugs and/or alcohol.

- c. OES will notify the appropriate division designee that the employee's PN has been randomly selected for testing. The employee will be notified of the test the day on which the test is to be conducted.
- d. The employee may confer with a union representative, should one be available, within one hour before the test is to be conducted. The employee has no right, however, to have the union representative accompany them to the collection site for a random test. Testing will not be postponed if a union representative is requested, but is not available.
- e. The employee selected for testing may use a state vehicle to get to the testing facility. If a State vehicle is not available, the employee will provide his/her own transportation to the collection site and may receive appropriate reimbursement for mileage. If the employee cannot provide their own transportation, the designee will make alternative arrangements at the expense of the agency.
- f. Random Testing Procedure
  - i. OES will notify the appropriate designee that the employee's PN has been randomly selected for testing.
  - ii. The designee will notify OES of any planned vacations or leaves, as well as inform OES of the earliest possible opportunity to test the employee.
  - iii. The OES Drug Testing Coordinator will then notify the testing facility that the employee will be taking the test.
  - iv. OES will notify the supervisor and employee on the day of the scheduled test. The employee is to report for the test at the time and place identified.
  - v. Upon arrival at the testing facility, the employee must sign the Chain of Custody form giving the facility permission to release the results to the ODFW.
  - vi. If the employee has an unplanned absence, the designee must inform the OES Drug Testing Coordinator. OES will plan to have the employee tested during the next business day. The employee will be notified of the rescheduled test on the day it is to occur.
- g. Drug/Alcohol Test Results
  - i. Alcohol test results are available immediately upon completion of the test. The testing facility will notify agency if a test result is positive or between .02% - .0399%.
  - ii. OES Drug Testing Coordinator and/or authorized personnel only can view results in the OAKS system within 2-3 days after the test. Positive test results will be provided to OES from ODFW (via a secure fax line).
  - iii. No employee ordered for testing may refuse to take a test. Refusal to test, failure to cooperate, or refusal to provide an adequate specimen will be treated as a positive test result and disciplinary action will be taken in accordance with the appropriate collective bargaining agreement and DAS work rules, policies and procedures.

## V. PROCEDURE FOLLOWING TESTING

### A. ALCOHOL and DRUG TESTS:

1. The employee shall be placed on administrative leave with pay pending test results. This does not apply for random drug testing.
2. A positive result for alcohol testing is .04% or higher Blood Alcohol Content (BAC).
3. An employee testing for alcohol between .02% and .0399% shall be immediately removed from duty until the start of the employee's next scheduled shift or for 24 hours, whichever is greater.
4. If the alcohol and/or drug test results are positive, the employee is prohibited from driving a state vehicle. DAS shall initiate the disciplinary process in accordance with the appropriate collective bargaining agreement and DAS work rules, policies and procedures.
5. If the alcohol test is below .02% and/or drug test result is negative, the employee shall be notified to report to work. In the case of a negative drug test and/or alcohol test below .02%, no disciplinary action will be taken.
6. Employees may not be eligible for workers' compensation benefits if they are injured while under the influence of alcohol (BAC Of .08% or higher) or under the influence of drugs not prescribed by the employee's physician pursuant to ORC 4123.54.

### B. REMOVAL FROM DUTIES

1. An employee who tests positive for drugs or alcohol 04% or higher must be removed from his or her duties, pending evaluation by a substance abuse professional and a negative return-to-duty test.
2. An employee testing for alcohol between .02% and .0399% shall be immediately removed from duty until the start of the employee's next scheduled shift or for 24 hours, whichever is greater.
3. An employee subject to a return to duty test should always have a negative return-to-duty drug test and/or alcohol test result of less than .02% before returning to work.

### C. DISCIPLINARY ACTION

#### 1. REFERRAL FOR TREATMENT:

- a. If an employee tests between .02% and .0399% BAC. they will be referred for discipline in accordance with DAS 500-04 Conduct and Discipline Policy.
- b. On the first occasion an employee tests positive for alcohol ( $\geq$ .04%) or drugs, the employee will be given the opportunity to be evaluated by a Substance

Abuse Professional (SAP) and may enter into a substance abuse program certified by the Ohio Department of Mental Health and Addiction Services at the direction of that SAP. Disciplinary action up to and including termination shall be taken against the employee, provided he or she does not successfully complete the program.

- c. An employee's refusal to accept referral for diagnosis or to follow prescribed treatment or continued unacceptable job performance, attendance and/or behavioral problems will result in disciplinary action up to and including termination.
- d. DAS or EAP must acquire all waivers from the employee necessary to monitor the employee's evaluation and treatment. This is accomplished with the execution of a "Last Chance Agreement". (See Attachment D)
- e. Last chance agreements shall not be effective for longer than five (5) years, except if any of the following situations led to the drug or alcohol testing, in which case the last chance agreement shall be of an unlimited duration:
  - any accident involving a fatality;
  - any accident in which the employee-driver is cited and there is disabling damage to the vehicle(s) requiring tow-away; or
  - any accident in which the employee-driver is cited and off-site medical treatment was required.
- e. Any employee who has not completed his or her initial probationary period shall be subject to termination on the first occasion in which the employee tests positive for alcohol or other drugs.

## 2. WAIVER OF DISCIPLINE:

- a. The employee should be notified and a pre-disciplinary meeting held in accordance with the applicable collective bargaining agreement, if relevant. The investigation and discipline procedure should be no different than any other offense that could result in suspension or termination.
- b. DAS will use the meeting to confirm its information and that all procedural aspects of the test have been performed correctly.
- c. If the employee enters into a last chance agreement, imposition of discipline is held in abeyance.
- d. If the employee refuses to sign a last chance agreement, discipline may be imposed.
- e. Should the employee later test positive for drugs or alcohol, or in any way violate the terms of the last chance agreement, a second disciplinary process and pre-disciplinary meeting should be completed for that offense. The employee should be charged with both the appropriate infraction and the breach of the last chance agreement.

3. RETURN-TO-DUTY:

- a. Before an employee who has tested positive for drugs or alcohol (BAC of .04% or above) may return to duty, the SAP must certify in writing to either DAS or the EAP that the employee may return and the employee must pass a return-to-work drug/alcohol test.
- b. Any employee who has not produced an official negative return-to-duty test within 180 calendar days after a positive state test result will be subject to termination for failure to return to work as stipulated in the last chance agreement.
- c. Return-to-work testing and all mandatory follow-up testing will be coordinated with the Office of Drug-Free Workplace Services Program (ODFWSP).
- d. DAS may not accept return-to-duty test results not approved by ODFWSP.

4. FOLLOW-UP TESTS:

- a. An employee who has returned to duty after receiving treatment/assistance for substance abuse as a result of a positive test will be subject to unannounced follow-up alcohol or other drug testing as directed by the Substance Abuse Professional (SAP).
- b. The employee must be tested a minimum of six times within the first 12 months after returning to duty.
- c. Additional tests may be conducted for up to 60 months if ordered by the SAP.
- d. The employee is responsible for all costs associated with follow-up testing.

D. SPECIAL PROCEDURES

1. EMPLOYEE REQUESTS RETEST AFTER POSITIVE TEST RESULTS:

- a. An employee's request for a retest of positive drug specimens must be made within 72 hours of being advised of the positive results.
- b. All retests must be done by a laboratory certified by the U.S. Department of Health and Human Services and coordinated by the state's designated Medical Review Officer (MRO).
- c. All retests are at the employee's expense.

E. DESIGNATION OF LEAVE/PAY STATUS

1. PAID LEAVE:

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- a. Until the employee is provided notice of the pre-disciplinary meeting, the employee will be placed on approved paid administrative leave.
- b. After receiving notice of the pre-disciplinary meeting, if the employee waives the requirement that the meeting take place no earlier than three days after the notice was given, the employee shall remain on approved paid leave until the meeting is conducted.

### 2. UNPAID LEAVE:

- a. If the employee refuses to waive the 72 hour (three day) requirement, he or she will be placed on approved administrative leave without pay.
- b. The employee should be informed that he or she will remain in a leave without pay status pending the successful completion of any required evaluation and treatment.
- c. An employee shall be permitted to utilize sick, vacation and other paid leave during the period the employee is placed on unpaid leave of absence due to a positive drug or alcohol test.

### F. FMLA APPLICATION

1. All paid or unpaid leave (up to 12 weeks) during substance abuse treatment for either drugs or alcohol qualifies under the Family Medical Leave Act, provided the employee's condition meets the definition of a "serious health condition."
2. Refer to the FMLA Policy 200-05 for additional information.

## VI. DRUG-FREE WORKPLACE TRAINING

- A. All DAS managers and supervisors shall be provided training for the Drug-Free Workplace Policy and the drug testing program and shall be responsible for implementation, enforcement and monitoring of the policy and program to ensure that the policy and drug testing program are administered consistently, fairly and within appropriate Constitutional parameters.
- B. All DAS employees will be provided with periodic Drug-Free Workplace training.
- C. All DAS employees shall be furnished with a copy of DAS' Drug-Free Workplace Policy during new employee orientation or within thirty (30) days of initial employment with the agency.

## VII. DEFINITIONS

BAC - Blood Alcohol Content is the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

CPD - Columbus Police Department

DAS - Department of Administrative Services

Drug Test - a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person’s bodily fluids.

DTC - Office of Employee Services Drug Test Coordinator authorizes and schedules applicant testing and provides results to appropriate coordinator. The DTC also schedules reasonable suspicion testing conducted during normal business hours.

EAP - Employee Assistance Program is a screening, information, referral and support service for state employees and their family members. The EAP is designed to help service recipients cope with personal problems such as family and parenting issues, alcohol and other drug abuse, emotional concerns such as anxiety, anger, grief, or depression, and legal and financial difficulties.

MRO (Medical Review Officer) - a person meeting U.S. Department of Health and Human Services requirements to evaluate all positive test results together with a person’s medical history and other relevant biomedical information.

ODFWSP - The State of Ohio Drug-Free Workplace Services Program whose primary mission is the fostering of a safe, productive, and drug-free workplace environment for state employees, an environment conducive to the successful accomplishment of agency goals and missions, the enhancement of employee well-being, and increased employee productivity.

OES - Office of Employee Services

OSP - Ohio State Highway Patrol

SAP (Substance Abuse Professional) - a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## VIII. REVISION HISTORY

Date	Description of Change
1/27/2004	Original Policy
3/02/2009	Adaptation of Protocols for “Rebuttable Presumption” Law (ORC 4123.54); Revision of “Reasonable Suspicion” testing procedure to include requirement of both an alcohol test and a drug test for each incident; Revise section IV-C-2-e-iii and Attachment A for non-regular business hours testing; Addition of Random Drug/Alcohol Testing
6/22/2010	Various revisions throughout the policy as identified by ODFWSP

03/26/2012	Updated testing site information
01/01/2016	Updated LCA and BAC testing level information

**Reasonable Suspicion Alcohol and Drug Test Procedure**  
(Other than Normal Business Hours, i.e. evenings after 5:30pm, Weekends and Holidays)

**Reasonable Suspicion Determination and Documentation**

Reasonable Suspicion = Symptom(s) + Two (2) witnesses

Symptoms include but are not limited to:

- Smell of alcohol
- Slurred speech
- Disorientation
- Abnormal conduct or behavior
- Involvement in on-the-job accident resulting in personal injury
- Property damage greater than \$2,000, where circumstances raise reasonable suspicion

Complete the Reasonable Suspicion Testing “Direct Order - Documentation Report” and give a signed copy to the employee.

Make arrangements for Reasonable Suspicion Testing (Alcohol Test and Drug Test).

**Reasonable Suspicion Testing:**

**Arrange for Alcohol and Drug Testing:**

- Complete the “Direct Order Reasonable Suspicion – Immediate Test” (*Attachment C*) Memorandum and give to the employee.
- Ask the employee if he or she understands the order.
- The employee may call a union steward but testing will proceed without delay.
- Put the employee to be tested in state car (if available) with two (2) supervisors.
- Transport employee to be tested to the collection site at:

EMSI-Columbus  
1922 Bethel Rd. Columbus, Ohio 43220  
614-410-3926

- Enter through the emergency entrance.
- Notify personnel the employee needs a Reasonable Suspicion alcohol test and drug test.
- Provide the following information:
  - Employee is with the State of Ohio
  - Inform the EMSI to use Alere Toxicology chain of custody formProvide the DAS billing number (07-083)

- Request a NON-DOT (Department of Transportation) Reasonable Suspicion Split-Specimen collection

**Following Completion of All Testing:**

- Tell the employee “You are being placed on administrative leave with pay until all test results are known.”
- Transport employee to his/her home or make arrangements for a family member to transport the employee home. Under no circumstances should the employee be allowed to drive home.
- The supervisor/manager shall contact OES Drug Coordinator ASAP after 7:30 am the next business day provide employee status. (614-466-2136)
- OES Drug Coordinator will contact ODFWSP to confirm receipt of results. Negative results take 2-3 days. Positive results will take longer than negative results.

**If Reasonable Suspicion Testing is Refused by Employee:**

- Reiterate the written “Direct Order – Documentation Report”.
- Complete the “Direct Order Reasonable Suspicion - Immediate Test” (Attachment C) Memorandum and give to the employee.
- Verbally give direct order to employee and inform him or her of consequences for non-compliance.
- Ask the employee if he or she understands the order.
- If employee is now agreeable to testing, follow steps for “Arrange for Alcohol and Drug Testing” and “Following Completion of All Testing.”
- If employee still refuses, transport employee to his or her home or make arrangements for a family member to transport.
- Tell the employee “You are being placed on administrative leave with pay for the remainder of your shift.
- Contact OES at 614-466-2136 the following business morning and inform them of employee’s status.

**If the Employee is Combative**

- Call the Columbus Police Department (CPD) at **911** to seek assistance.
- Cease drug testing activity immediately.
- Call OES Drug Test Coordinator (466-2136) at 8:00 am the following business day to notify of employee’s status.
- Record the employee’s actions as a refusal to test.

**State of Ohio Drug-Free Workplace  
Reasonable Suspicion Testing  
Direct Order - Documentation Report**

Employee Name \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_

Work Location \_\_\_\_\_

Type of Test(s) Required: Alcohol   X   Drug   X  

I have noticed the following symptoms regarding the above named employee:

1. \_\_\_\_\_
2. \_\_\_\_\_

Signed:

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Witness Date

NOTE: Must be signed by the person having suspicion and a witness to the symptoms.

Report Distribution: Employee  
Division Deputy Director  
OES Labor Relations  
Union Representative if applicable and designated by employee  
File

**TO:**

**FROM:**

**DATE:**

**SUBJECT: Direct Order Reasonable Suspicion – Immediate Test**

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This memo serves as notice you are being given a direct order to report for a reasonable suspicion alcohol and drug test, effective now. You are required to cooperate with efforts to transport you to the testing site, and take the test as directed. You have been given the opportunity to clarify this direct order.

You will be placed on administrative leave and required to cooperate with efforts to transport you home.

If you do not comply with this order, you will be viewed as having a positive result on a reasonable suspicion test. You will be subject to discipline up to and including termination, for violation of the State of Ohio Drug Free Workplace Policy, and for insubordination.

Signature\_\_\_\_\_

Date\_\_\_\_\_

Witness\_\_\_\_\_

Date\_\_\_\_\_

## DRUG FREE WORKPLACE LAST CHANCE AGREEMENT

I, \_\_\_\_\_(Hereafter the employee) hereby acknowledge that in my position as \_\_\_\_\_, with the Ohio Department of Administrative Services (Hereinafter the employer) I am subject to the provisions set forth under Drug Free Workplace Policy in accordance with the Federal Omnibus Testing Act, Employer's Drug Free Workplace Policy, and/or Collective Bargaining Agreement.

The employee affirms that he/she has been charged with violating the Employer's Drug Free Work Place Policy and received a pre-disciplinary conference or waived meeting on these charges. The employee also agrees that the alleged offense is in violation of the Department's work rules and/or Collective Bargaining Agreement. Absent this agreement, the Department would otherwise confer the discipline of termination.

The parties agree that the employee's discharge will be held in abeyance contingent upon the employee's successful completion of the following requirements:

- 1.The employee will be referred to a Substance Abuse Professional by the Employee Assistance Program. The employee will submit to and cooperate in a substance abuse evaluation by that individual.
- 2.The employee must complete a substance abuse treatment program and be approved to return to work by the Substance Abuse Professional. Said program of treatment will be prescribed by the Substance Abuse Professional and he/she must certify the successful completion of that program to the employer in writing.
- 3.The employee must agree to execute any and all releases of medical and other information required by the Ohio EAP and/or the employer which are necessary for the employer to review and evaluate the employee's substance abuse evaluation and treatment program and the employee's participation in same. Any subsequent revocation of such release by the employee may be considered by the employer as a breach of this agreement.
- 4.The employee must pass a return to duty drug and/or alcohol test which has been identified as such to the employee prior to being permitted to return to work. This test must be scheduled by the employer and a negative result must be received prior to returning to duty. A positive drug and/or .02 or above alcohol return to duty test result will initiate the original removal order.
- 5.After his/her return to work, the employee must continue to strictly follow all directives and substance abuse treatment programs required by the Substance Abuse Professional.
- 6.The employee must not violate any Departmental rule or policy relating to drug or alcohol use, or the terms of this agreement. The length of this agreement shall be: Five (5) years.
- 7.The employee understands that all return to duty and follow-up drug test are subject to direct observation procedures and failure of the employee to permit any part of the direct observation procedure will be considered a refusal to test. All follow-up drug and/or alcohol tests must be negative. A positive drug and/or .02 or above alcohol follow-up test result will initiate the original removal order.

*DRUG-FREE WORKPLACE 300-01*

8. Any positive drug test and/or alcohol test .02 or above will be a violation of the last chance agreement, and will initiate the original removal order.

9. This agreement will be extended by a period equal to employee leaves of fourteen (14) consecutive days or longer, except for approved periods of vacation leave.

It is agreed by the parties that the employee shall be considered on an unpaid leave of absence (or the employee can use accrued leave) until such time that he/she returns to work under the above conditions or 180 calendar days whichever is shorter. Should the employee fail to properly be certified to return to work by the Substance Abuse Professional and return to work within 180 calendar days, this document shall serve as his/her resignation effective at the conclusion of the 180 calendar days or as otherwise specified. Should the employee not cooperate fully with the directive of the Substance Abuse Professional or fail to return to work, the employer may terminate his/her employment and seek repayment, from the employee's last paycheck, of any medical premium paid on his/her behalf during their period of unpaid leave.

The employee further understands and agrees that upon his/her return to work he/she will be subject to not less than six (6) random drug and/or alcohol follow-up tests for up to one year and that further random drug and/or alcohol follow-up testing may be ordered by the Substance Abuse Professional for up to five years. It is also agreed that the employee shall be responsible for payment (within fourteen (14) days) for the amount the employer is charged for any return to duty or follow-up test.

If during the duration of the Agreement, the employee violates this Last Chance Agreement or any subsequent agreement made between the employee and the Substance Abuse Professional or the EAP, if the employee is found in violation of the employer's drug and alcohol policies, if the employee refuses to submit to a drug and/or alcohol test, the employee will be subject to termination from employment. Although the employee will be charged separately for this second offense and afforded a pre-disciplinary meeting before the employer confers discipline, it is understood by the employee that any grievance arising out of his/her discipline shall have the scope of the arbitration limited to the question of whether or not the employee did indeed violate the conditions set forth above and the parties acknowledge the waiver of the contractual due process rights to the extent contained herein.

_____	_____
Employee	Date
_____	_____
Employer Representative	Date
_____	_____
Union Representative/Witness (if applicable)	Date

OFFICE OF DRUG-FREE WORKPLACE PROGRAMS  
DIVISION OF HUMAN RESOURCES  
APPLICANT TESTING PROGRAM

INTERVIEWEE TESTING ACKNOWLEDGEMENT FORM

POSITION TITLE: \_\_\_\_\_

Job Code: \_\_\_\_\_

I have been informed and understand that the final applicant for this position will be required to submit to urinalysis prior to appointment to test for illegal drug use, and that the State will decline to extend a final offer of employment to any applicant with a verified positive result. I further understand that an applicant with a positive test result will not be considered for state employment for a period of one year.

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Date