



**DEPARTMENT OF CORRECTIONS**  
**Human Resources**



<b>Title:</b>	<b>Alcohol and Controlled Substance Testing of Employees Having Commercial Drivers License</b>	<b>DOC Policy: 20.5.19</b>
<b>Supersedes:</b>	<b>Procedure #36, Drug &amp; Alcohol Testing for Employees Requiring a Commercial Drivers License, dated 1/1/97</b>	
<b>Applicability:</b>	<b>Management service and classified represented employees. Refer to applicable labor agreements for classified represented employees.</b>	
<b>Directives Cross-Reference:</b>	<b>Omnibus Transportation Employee Testing Act of 1991; 49 CFR Part 40; 49 CFR Part 382; OAR 105-50-003</b>	

**I. PURPOSE**

To promote public and employee health, safety and productivity.

**II. POLICY**

- A. Effective January 1, 1996, all department appointing authorities shall apply the following regulations to management service and classified represented employees required to have a Commercial Drivers License (CDL) in the performance of their duties:
1. Federal Highway Administration rules stated in 49 CFR Part 382 requiring pre-employment, post-accident, reasonable suspicion, random, return-to-duty and follow-up testing for alcohol or controlled substances, and
  2. National Highway Traffic Safety Administration rules stated in 49 CFR Part 40 which provide procedures for breath alcohol testing and urine specimen controlled substance testing.
- B. All department appointing authorities shall be subject to the Alcohol and Drug Testing Contract between the Department of Administrative Services and the vendor for the performance of alcohol and controlled substance testing, Substance Abuse Professional services, Medical Review Officer services, record keeping and other related services.
- C. All department appointing authorities shall ensure that supervisors receive training and that all covered employees receive education materials as required by 49 CFR Part 382.601, 382.603 and 382.605.
- D. Except as otherwise provided in 49 CFR Part 382.505 regarding alcohol test results of 0.02 to 0.039, an employee who violates alcohol misuse or controlled substance use rules may be terminated or, if not terminated, shall be removed from duties requiring a CDL and shall be evaluated by a substance abuse professional to assess any need for rehabilitation or treatment and, as determined to be appropriate by the appointing authority, may be assigned to duties not requiring a CDL, granted leave with or without pay at the employee's request, or disciplined for just cause or statutory grounds.

- E. An employee rehabilitation or treatment program shall be at the employee's expense except as it may be covered by insurance. Leave with or without pay may be granted at employee request during the period of treatment or rehabilitation.
- F. Except as otherwise provided in 49 CFR Part 382.505 regarding alcohol test results of 0.02 to 0.039, the supervisor may return an employee, who violates alcohol misuse or controlled substance use rules, to the former duties requiring a CDL if the employee:
  - 1. Has been evaluated by a substance abuse professional,
  - 2. Has complied with the recommended treatment or rehabilitation,
  - 3. Has taken a return to duty alcohol or controlled substance test and has a negative result, and
  - 4. Is subject to unannounced follow-up alcohol or controlled substance tests.
- G. An employee having a CDL shall inform their supervisor of any medical use of controlled substances.
- H. Upon receiving the report of an employee's testing positive for a prohibited drug or controlled substance, the appointing authority shall conduct a pre-dismissal hearing which shall have for its purposes:
  - 1. The assessment of the employee's work history and the circumstances surrounding the drug use;
  - 2. The opportunity for the employee to provide information/mitigating circumstances surrounding the use of drugs;
  - 3. The basis upon which the agency takes action regarding the employee.
- I. As a result of the assessment and discovery conducted at the pre-dismissal meeting, the appointing authority shall decide on the appropriate action(s) to be taken with regard to the employee which may include:
  - 1. The signing of a last chance agreement (see Attachment A for sample agreement) that the employee will stay free from drugs and/or alcohol and will include:
    - a. Referral to a substance abuse professional for assessment;
    - b. Referral to the EAP or other appropriate treatment or rehabilitation program;
    - c. A plan for verification of continued or successful completion of the treatment or rehabilitation program;
  - 2. The assigning of the employee to an alternative work/job assignment if appropriate;
  - 3. Appropriate disciplinary action up to and including dismissal.

### III. POLICY CLARIFICATION

- A. Reasonable suspicion of prohibited drug use, possession, manufacture, distribution, or selling is based on:
  - 1. Direct observation of abnormal behavior or impairment to mental or physical behavior/performance, e.g., slurred speech, difficulty in walking or performing job activities;
  - 2. Direct observation of use, possession, etc.
  - 3. The opinion of a medical professional (doctor, nurse or other related professional practitioner qualified by education or experience) employed at the work site that an employee is using a prohibited drug;
  - 4. Documented or verified information concerning the workplace manufacture, distribution, selling, possession or use of a prohibited drug;
  - 5. A work-related accident in conjunction with an above basis for a reasonable suspicion.
- B. Periodic drug testing is testing carried out on a recurrent, cyclic or intermittent basis, e.g., at the time of physical examinations.
- C. Prohibited drugs/controlled substances are marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and substances specified in schedules I through V of Section 202 of the Controlled Substances Act, 21 USC 811, 812 and as defined in 21 CFR 1300.11 through 1300.15 unless authorized by a legal prescription or are exempt from federal or State law.
- D. Random drug testing is testing done using a random number table or a computer-based number generator that is matched to a payroll or employee identification number.

### IV. IMPLEMENTATION

This policy will be adopted immediately without further modification.

**LAST CHANCE DRUG REHABILITATION AGREEMENT**  
(Sample agreement)

The following agreement is entered into between the Department of Corrections and \_\_\_\_\_, henceforward to be referred to as employer and employee. This agreement serves as notice to the employees of what is expected for continued employment with the employer.

1. I agree to be evaluated by a qualified substance abuse counselor, and if required, I shall immediately enroll and continue in a bone fide drub inpatient or outpatient rehabilitation program recommended by the Substance Abuse Professional (SAP). I understand that should I fail to successfully complete either the recommended inpatient or outpatient program, my employment with the employer will be terminated.
2. I agree to comply with, and complete the conditions of any "aftercare plan" as recommended by my treatment counselor. If I must be absent from any aftercare session, I must notify the employer. The employer has my permission to verify attendance at required meetings. If I do not continue the aftercare program, I understand that my employment is terminated.
3. I agree that the signing of the agreement shall allow my employer to contact treatment or health care providers who may have information about my drug condition, my compliance with SAP recommended treatment and terms of this agreement. I authorize these providers to furnish information to my employer.
4. I agree to return to work immediately upon successful completion of the drug rehabilitation program. I further agree that should I be required to attend an outpatient program, that my time away from work for such appointments will only include the time necessary for the appointment and travel to and from the appointment.
5. I understand that this agreement constitutes a final warning and is non-precedent setting for any other employees with the employer in the future. Each case will be reviewed on its own merit.
6. I understand the Employee Assistance Program is available to me should personal problems arise in the future which may have an affect on my ability to remain in compliance with the employer's drug policies and this agreement.
7. I understand that violation of the employer's drug policies at any time in the future is cause for termination.
8. All parties to this agreement understand that the undersigned employee will be terminated should he/she exhibit deficient performance or conduct of the type that led to the drug test and this agreement.
9. I understand the terms and conditions of this agreement. I also understand that this agreement does not guarantee me employment for any set period of time. I have had the opportunity to discuss it with my representative. I sign this agreement free from any duress or coercion. This agreement will become a permanent part of my official personnel file.

Personal Commitment

I pledge and agree to abide by the terms of this agreement. I understand that a violation of, no noncompliance with, any of these terms can result in my being discharged. Further, I pledge to remain free of all illegal drugs and not abuse legal drugs during my term of employment.

_____	_____	_____	_____
Employee	Date	Employer	Date
_____	_____		
Employee Representative	Date		