

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5009

Guidelines For Reasonable Cause Drug And Alcohol Testing

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BOARD POLICY

The Board of Trustees of the Nebraska State Colleges has a vital interest in maintaining a safe, healthy, and efficient work environment as expressed in Board Policies 2800 and 5006. Being under the influence of alcohol or illegal drugs on the job poses serious safety and health risks to the user, to all those who work with the user, and to others in the community such as students.

To maintain a safe, healthy, and efficient workplace for all of its employees, and to protect the College's property, information, equipment, and reputation, this policy gives notice of the intent to test for alcohol and unlawful drug use when cause exists in the workplace to conduct such a test. The goals and objectives of the program are outlined in this policy and are intended to provide guidance to supervisors and employees concerning their responsibilities in the program.

The purpose of the testing program is to help in the treatment and elimination of alcohol and unlawful drug use and abuse in the workplace while protecting employee rights. Each College shall devise procedures within the parameters outlined in this Policy to protect employee rights to privacy, their Constitutional freedom from unreasonable searches, and their right to due process with regard to any drug and alcohol testing.

Any testing program implemented pursuant to this policy shall strictly conform to the provisions outlined in The Nebraska Drug Testing Act, Sections 48-1901 to 48-1910 of the Nebraska Revised Statutes, relating to drug and alcohol testing of employees. The provisions outlined in the Act relating to the methods employed to test, and the use, requirements, release, and disclosure of test results, specimen preservation, and chain of custody, shall control the manner in which the testing program is conducted.

All employees are required as a condition of employment to abide by the terms of this policy as well as applicable state and federal law. In addition, an employee shall notify the College administration if convicted of violating any criminal drug statute while in the workplace or on college premises no later than five days after such conviction.

An employee's consent to submit to drug or alcohol testing is required as a condition of employment and the employee's refusal to consent following a request to test for reasonable cause may result in disciplinary action, including discharge, for a first refusal or subsequent refusal. The costs of any such tests shall be borne by the college.

Procedure

Scope:

This policy applies to all full and part-time employees, including student employees.

Definitions:

1. Alcohol means any product of distillation of any fermented liquid or any beverage that contains ethyl alcohol (ethanol), including but not limited to beer, wine and distilled spirits, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific or culinary preparations.

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2. College property, premises or facilities means all property of the College including, but not limited to, the offices, facilities, structures, work areas and surrounding campus areas on College-owned or leased property, including parking lots, and storage areas. The term also includes College owned or leased property or equipment including vehicles owned, operated, leased, or under the control of the College wherever located.
 3. Drug testing means the scientific analysis of urine, blood, saliva, or breath.
 4. Illegal drug means any drug which is not legally obtainable; or any legal drug being used at a dosage or for a purpose other than recommended by the manufacturer or other than intended by the manufacturer, unless prescribed by a physician for use.
 5. Legal drug means any prescribed drug or over-the-counter drug that has been legally authorized and is being used for the purpose for which prescribed or manufactured.
 6. Reasonable, proper, sufficient or just cause means a belief based on objective facts sufficient to lead a prudent person to conclude that a particular employee is unable to satisfactorily perform his or her job due to alcohol or drug impairment. Such inability may include, but not be limited to, decreased quality or quantity of the employee's productivity, judgment, reasoning, concentration and/or psychomotor control, and marked changes in behavior. Accidents, deviations from safe work practices, and erratic conduct indicative of impairment are examples of "reasonable cause".
 7. Under the influence means a condition in which a person is affected by a drug or alcohol in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech and difficulty in maintaining balance, or an obvious odor of alcohol. A determination of being under the influence can only be as the result of a scientifically valid test, such as urinalysis or blood analysis.
 8. Possession means to have on one's person, in one's personal effects, in one's vehicle or otherwise under one's care, custody, or control.
 9. Refusal to test means that an employee fails to provide adequate breath for alcohol testing without a valid medical explanation, or the employee fails to provide an adequate urine, blood, or saliva sample for controlled substances testing without a genuine inability to provide a specimen and as determined by a medical evaluation, or the employee engages in conduct that clearly obstructs the testing process.

Training of Supervisors:

Supervisors and other management personnel are to be trained annually in:

1. The rationale and specific details of the program start up and implementation.
2. The supervisor's specific responsibilities including detecting the signs and behavior of employees who may be using drugs or alcohol in violation of this policy.

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3. Ways to recognize and deal with employees who have job performance problems that may be related to drugs or alcohol, including intervening in situations that may involve violations of this policy by recommending participation in a drug and alcohol abuse prevention program or counseling through the Employee Assistance Program.
4. Training programs will be offered annually by outside instructors specially trained in workplace drug and alcohol abuse programs. All training shall be documented.

Employees are to be informed of:

1. The health and safety dangers associated with drug and alcohol use.
2. The provisions of this policy.
3. The College will initially provide each employee a copy of the policy, and obtain written acknowledgement from each employee that the policy has been received and reviewed. This policy will also be included in the employee's handbook and be available on the College's website.

Discipline:

1. Any employee who is found to be in possession of or under the influence of alcohol or illegal drugs while on college premises will be subject to discipline up to and including discharge, unless the possession or use of alcohol is in conjunction with a college sponsored event that is expressly authorized by the college president. A determination of being under the influence cannot occur without a certified positive test result.
2. Any employee who is found through drug or alcohol testing to have in his or her body any amount of an illegal drug or alcohol at a level which adversely impacts performance while at work or on college property will be subject to discipline up to and including discharge except that, depending on the circumstances of the case, the employee may be offered a one-time opportunity to enter and successfully complete a rehabilitation program that has been approved by the College administration. Any subsequent drug/alcohol test that results as positive during or following rehabilitation will result in discharge.

Rehabilitation and Employee Assistance:

Rehabilitation assistance in lieu of discharge will be offered on a one-time basis, only after a certified positive test result:

1. To any employee who has violated this policy for the first time, provided that the violation does not involve selling or transferring illegal drugs, or serious misconduct.
2. Employees may be allowed a leave of absence for treatment. Employees participating in a rehabilitation program shall be entitled to use their accumulated but unused vacation or other accrued leave time. Nothing herein shall be construed to diminish any rights which may apply under the ADA, FMLA or other relevant laws or the employer's right to take appropriate disciplinary action.

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- a. Recommendation for intervention, counseling, or rehabilitation will not be made by the employer without certified positive test results. The testing vendor will contact the employee to discuss the results. A copy of the test results shall be provided to the employee.

Requirements To Test:

1. Two (2) supervisors trained in the detection of drugs must articulate and substantiate specific behavioral performance or physical indicators of probable drug or alcohol use in the form of a written statement.
2. All documentation related to the for-cause test, including justification, and key decision makers, must be submitted to the HR Director who will carefully consider and document all evidence supporting a request to perform drug and alcohol testing prior to the scheduling of any test.
3. When reasonable cause exists for testing an employee, the examination for drug use shall be scheduled immediately and conducted within one or two hours of the occurrence. Alcohol testing should be immediately administered.
4. Supervisors will transport the employee to the testing facility in a college vehicle. Time spent conducting the test will be considered work time and the employee will be paid for this time.
5. Except for a confirmatory breath test as provided in Section 48-1903 of the Nebraska Revised Statutes, all confirmatory tests shall be performed by a clinic, hospital, or laboratory which is certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, 42 U.S.C. 263a.

Determination for Testing:

Factors to be considered include but are not limited to the following:

1. Documented pattern of unsatisfactory work performance, with evidence of drug or alcohol related behavior.
2. Physical signs and symptoms consistent with substance abuse.
3. Evidence of illegal substance use, possession, sale, or delivery while on duty.
4. Occurrence of a serious accident or potentially serious accident for no apparent reason.
5. Flagrant violations of established safety, security or other operating procedures for no apparent reason.
6. Erratic or violent behavior.

Guide to Reasonable Cause Testing:

1. Focus on Safety:
 - a. The primary issue is safety. Any employee believed to be under the influence of alcohol or a prohibited drug is an immediate hazard to him or herself and others.

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2. Verify the reasonable cause decision:
 - a. Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. Hearsay alone is not an acceptable basis for reasonable cause referral.
3. Isolate and inform the employee:
 - a. Remove the employee from the workplace or vehicle. It is important to interview the employee privately.
4. Inquire and Observe:
 - a. Ask the employee to explain the suspected behavior and describe the events that took place. Note what can be observed and objectively documented as it relates to physical signs and symptoms of probable drug abuse. Remember, a reasonable cause decision must be made by two (2) supervisors.
5. Document events:
 - a. Record the behavior signs and symptoms that support the determination to conduct a reasonable cause test. Provide all documentation related to the for-cause test request, including justification and key decision makers, to the Human Resources Director who will review, consider, and document all evidence that supports the request to perform drug and alcohol testing.
6. If a reasonable belief that drugs or alcohol are a factor in the incident still exists after completion of the above steps, a request for testing should be made.
7. Explain that a request for testing is not an accusation; it is merely a request for additional objective data.
8. Explain the consequences for failure to submit to a request for drug screening.
9. Both supervisors, or their designees, are to transport the employee in a college vehicle to the testing site. After the specimen has been collected, the supervisors will transport the employee home or permit a family member or friend to do so. Allowing an employee who is reasonably believed to be under the influence of drugs or alcohol to drive home may create unnecessary liability exposure for the College.
10. Procedure for Confirmation of Tests:
 - a. If the employee's initial drug and/or alcohol test is positive, a confirmation test shall be immediately administered.
 - b. If the employee's initial drug test is positive, the employee will be placed on paid leave of absence, pending a confirmation of the employee's specimen if there is a delay between the initial test and the confirmation test.
 - c. If a positive drug and/or alcohol test is not confirmed, the employee's job status will be restored.

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11. Grounds for Immediate Dismissal:
 - a. Any second confirmed positive test for illegal drug or alcohol use will result in dismissal.
 - b. Refusal to be tested for alcohol or drug use.
 - c. Employee cannot provide a specimen.
 - d. Tampering with test.
 - e. Conviction of selling alcohol or illegal substances on College-owned or leased property.
 - f. Conviction of a felony involving off-site sale or distribution of illegal substances while employed in the State College System.
 - g. Repeat DUI conviction.

12. Confidentiality:
 - a. The employer will notify the employee if the results of the test are negative. If test results are positive, the testing facility will contact the employee to discuss the results, including the confirmation test.
 - b. All alcohol and controlled substances testing will be performed by an independent contractor. Testing procedures will conform to both federal and Nebraska law and will be incorporated into and made part of this policy. The procedures are designed to protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.
 - c. All records maintained by the College pursuant to this Policy are strictly confidential. Employee information contained in these records may not be released except as required by law or as expressly authorized by the employee.
 - d. Records specific to the employee may be obtained by the employee upon the employee's written request.
 - e. Records will be released to a subsequent employer when requested in writing by the employee. This disclosure is limited to the specific records authorized in the employee's written request.
 - f. Records may be released in a lawsuit, grievance or administrative proceeding initiated by or on behalf of the employee, arising out of a test administered pursuant to this policy or a determination that the employee engaged in prohibited conduct. Such proceedings include, without limitation: workers' compensation, unemployment compensation or other benefit-related proceedings. The College may also disclose information that indicates that the employee refused to test in accordance with this Policy.
 - g. Records may be released to any other person when authorized in writing by the employee. The information released is limited to the specific information in the employee's authorization.