



Employee Assistance Program

SUBSTANCE ABUSE POLICY:

Substance Abuse Policy Law

Substance Abuse policies and procedures are complex and subject to frequent change by legislation and court decision. It is essential to consult your attorney before implementing any policy or practice. The materials in this packet do not constitute legal advice.

Through the local chapter of the American Bar Association, some attorneys in your community may be available to answer, without charge, specific questions regarding Substance Abuse policies.

Federal Law and Regulations

The Drug-Free Workplace Act of 1988 requires all federal grant recipients and federal contractors (where contracts exceed \$25,000) to certify that they will provide a drug-free workplace. The final rules describing the requirements for such grantees/contractors were published in the Federal Register on May 25, 1990.

Generally the law requires covered employers to:

- Develop and publish a written policy and ensure that employees read and consent to the policy as a condition of employment.
- Initiate an awareness program to educate employees about
 - the dangers of drug abuse
 - the company's drug-free workplace policy
 - any available drug counseling, rehabilitation, and employee assistance programs
 - the penalties that may be imposed upon employees for drug abuse violations
- Require that all employees notify the employer or contractor of any conviction for a drug offense in the workplace
- Make an ongoing effort to maintain a drug-free workplace

Federal Regulation:

If your company is subject to the requirements of the Drug-Free Workplace Act of 1988 (by nature of a grant/contract with the Federal Government) you should add the following statement to your drug policy:

As a condition of employment, employees must abide by the terms of this policy and must notify **(Company)** in writing of any conviction of a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

Department of Transport (DOT) Regulations

The U.S. Department of Transportation (DOT) rule on drug testing regulations became effective in December 1988. The regulations cover several occupations under DOT jurisdiction, including natural gas and pipeline workers, motor carrier workers, aviation workers and railroad workers. Employers with transportation positions covered by DOT must test job applicants. Employees are to be tested during routine physicals, on a random basis, upon reasonable cause and after accidents.

The DOT has established an Anti-Drug Information Center (ADIC). This computer-based system can respond to telephone calls, facsimile, or modem. The system will provide callers with model drug rules and detailed information, interpretation and advice on DOT regulations. Contact 1-800-CAL-DRUG.

The Americans with Disabilities Act of 1990

This Act, effective July 1992, prohibits discrimination against “qualified people with disabilities” and limits an employer’s ability to inquire into an employee’s or job applicants’ medical history. It does, however, permit drug testing and does not bar employers from prohibiting alcohol abuse or illegal drug use in the workplace.

Although the Act does not protect certain illegal substance abusers and alcoholics who cannot safely perform their jobs, it does protect those who have been rehabilitated or who are participating in supervised rehabilitation programs and not currently using drugs.

The regulations appear in the July 26, 1991 Federal Register.

State Laws

State laws vary. Some states have passed legislation restricting drug testing. You need to be aware of what is required in your state. The Attorney General’s office in your state capitol can give you the regulations that pertain to your state.

I. Suggestions for Creating a Substance Abuse Policy

- A. Most Substance Abuse Policies contain at least five parts:
- Statement of Need (why have a policy)
 - Goal or Purpose (what is the policy designed to do?)
 - Scope (who will be affected by the policy?)
 - Penalties or Corrective Actions (what happens when violations occur?)
- B. Some Policies also contain:
- Opportunities (where is assistance available?)
 - Procedures (how will suspicions or evaluations be handled?)
 - Communications (how will training/education be conducted?)
 - Definitions (what do topics and terms mean?)
 - Expectations (where does responsibility lie within the company?)
- C. The Policies are followed by:
1. Sending letters to Employees explaining that the new policy has been implemented
 2. Requiring signed acknowledgement from employee on Policy Summary
 3. Implementing Intervention Program with complete protocols (who, what, when and how?)
 4. Implementing a testing program with complete protocols
 5. Implementing Supervisory Training Program (define intervention procedures and policy)
 6. Implementing Employee Education Program (define issues, expectations, resources and policy)
 7. Implementing and promoting Employee Assistance Program (include referral and follow-up process)
 8. Consistently enforcing the policy to ensure equality with appropriate documentation, justification, and deliberation (include appropriate resources)

II. Sample Corporate Policy on Substance Abuse

Statement of Need

(Company) has a strong commitment to the health, safety, and welfare of its employees, their families, and its customers. Widely available statistics and information indicate that the incidence of drug and alcohol abuse in the workplace is increasing and the effect is devastating to lives, business, and the community at large. Due to the potential for substance abuse among some of our employees, **(Company)** is concerned that the safety of our employees and the general public could be endangered. Our commitment to maintaining a safe and secure workplace requires a clear policy and supportive program relating to the detection, treatment, and prevention of substance abuse.

Goal

It is the goal of **(Company)** to provide a safe workplace by eliminating the hazard to health and job safety created by alcohol and other drug abuse. We believe this goal to be in the best interest of our employees, our customers, and our stockholders.

Scope

This policy applies to all employees of the company while on the job and to situations where an employee's off-the-job or off-premises conduct impacts work performance or undermines the public confidence in, or threatens the safety of the employee, co-workers or any other individual involved in the company's business. It is also intended to apply to employees of firms doing business with the company while on our premises.

Although the company has no intention of intruding into the private lives of its employees, we recognize that involvement with alcohol or other drugs off the job eventually can take the toll on job performance. Our concern is to assure that employees can perform their work duties in a safe environment.

Policy Guidelines

1. The company will not tolerate (zero tolerance) or condone substance abuse by employees. It is the policy of **(Company)** to maintain a workplace free of alcohol and other drugs and its effects.
2. It is the policy of **(Company)** that employees, who engage in the sale, use, possession, or transfer of illegal drugs or controlled substances, will be subject to disciplinary action up to and including termination.
3. It is the policy of **(Company)** to commit the resources necessary to achieve and maintain a drug and alcohol-free environment. **(Company)** expects the full support of this policy by all employees and all persons doing business with the company.

Procedure

To provide a safe environment, the company will:

1. Establish definitive rules and regulations.
2. Provide increased awareness through training, education, and communication on the subject of alcohol and other drug abuse.
3. Recognize that there may be employees who have an alcohol or other drug problem and stand willing to assist in the resolution of that problem by encouraging employees to seek help through the employee assistance program.

In addition, the company may take any or all of the following actions:

1. Conduct alcohol and other drug screening tests both prospective to and during employment.
2. Inspect persons and their property in our employ or doing business with the company.
3. Cooperate with outside law-enforcement agencies.
4. Take any other actions deemed necessary and appropriate by the company.

Company Responsibilities

As a responsible employer and member of the community, the company will:

1. Increase employees' awareness of the prevalence of substance abuse.
2. Administer programs that consider employee rights, are positive in their intent, and are within legal boundaries.
3. Document behavior and/or performance changes in employees (who, what, where, when).
4. Support the establishment of programs to assist employees with alcohol and other drug abuse or dependency problems.
5. Restrict discussions with the employee to the workplace.
6. Utilize channels and resources available to educate and increase the awareness of employee and general public.

Expectations

Employee Responsibilities

(Company) believes that each employee has the responsibility to:

1. Report to work at all times free of alcohol or other drugs ion their effects.
2. Participate in and support Company sponsored drug and alcohol education programs.
3. Seek and accept assistance for alcohol and other drug abuse related problems before job performance is affected.
4. Support company efforts to eliminate alcohol and drug abuse among employees where it exists.

Assistance in Overcoming Substance Abuse

Early recognition and treatment of illegal drug use or controlled substance abuse is important for successful rehabilitation, return to productive work, and reduce personal, family, and social disruption. **(Company)** encourages the earliest possible diagnosis and treatment for substance abuse. The Company supports sound treatment efforts. Whenever feasible, and subject to the limitations described here, **(Company)** will assist employees in overcoming substance abuse. However, the decision to seek diagnosis and accept treatment for substance abuse is primarily the employee's responsibility.

Self Referral. Employees with substance abuse problems should request assistance from **(Company's)** medical department or employee assistance program. Assistance will be provided on a confidential basis, and each employee will be referred to the appropriate treatment and counseling services. Employees who voluntarily request assistance, through the medical department or employee assistance program, in dealing with substance abuse problems may do so without jeopardizing their continued employment with **(Company)**.

Company Referral. Employees who test positive for illegal drug use, alcohol use, or controlled substance abuse and who are referred, at Company request, for counseling or treatment will be limited to one opportunity for counseling or treatment to cease substance abuse. A second positive test for the use of substances will result in immediate termination. Employees terminated for this reason will be ineligible for rehire.

Employees who are referred for any other reason, at Company request, for counseling will be limited to one opportunity for counseling or treatment to cease substance abuse. Any positive test for the use of illegal drugs, alcohol, or controlled substance following treatment and counseling will result in immediate termination. Employees terminated for this reason be ineligible for rehire.

Special Considerations. All company-requested employee treatment and counseling will require, at a minimum, that the employee immediately cease any illegal drug use, alcohol use, or controlled substance abuse and that the employee be subject to periodic unannounced testing for an 8-month period following enrollment in the program. Undergoing treatment or counseling for the first time will normally not jeopardize an employee's employment. However, **(Company)** is required in certain situations to report an employee's involvement with drug use or controlled substance abuse to government agencies concerned with national security, health, and safety. In these situation, **(Company)** may be required to remove the employee from a position involving national security, health, safety, or confidential matters. If other work cannot be found, the employee will be terminated.

Authorized Use of Prescribed Medicine

An employee undergoing prescribed medical treatment with any drug or controlled substance that may impair his or her physical or mental ability should report this treatment to the Company's medical department, which will determine whether the Company should temporarily change the employee's job assignment during the period of treatment.

Alcohol Use or Possession on Company Premises

The use, possession, sale, or distribution of alcohol on Company premises, or in Company supplied vehicles, whether during working hours or non working hours, is prohibited and constitutes a violation of policy. Such action will be handled pursuant to the Company's policy on work performance and conduct.

Employees who desire help with an alcohol-related problem may request assistance through **(Company's)** medical department or the employee assistance program. Assistance will be provided on a confidential basis, and each employee will be referred to the appropriate treatment and counseling services. Employees who voluntarily request assistance, through the medical department or employee assistance program, in dealing with alcohol-related problems may do so without jeopardizing their continued employment with **(Company)**.

Prohibitions

(Company's) policy prohibits the following:

- A. Use, possession, manufacture, distribution, dispensation, or sale of illegal drugs whether on or off company premises and whether during working hours or non working hours.
- B. Controlled substance abuse whether on or off company premises and whether during working hours or non working hours.
- C. Storing any illegal drug in a locker, desk, automobile, or other repository on Company premises.
- D. Being under the influence of an illegal drug or engaging in controlled abuse on Company premises, or while engaged in Company business, or in Company supplied vehicles, or during working hours.

- E. Testing positive for illegal drugs or controlled substances without a legal basis for use.
- F. Switching or adulterating any urine sample submitted for testing, or submitting a false sample for testing.
- G. Use, possession, sale, or distribution of alcohol, or being under the influence of alcohol on Company premises, or in Company supplied vehicles, whether during working hours or non working hours.
- H. Refusing consent to testing or refusing to submit a urine sample for testing when required by a Company representative or by representatives of any Company customer, vendor, or supplier.
- I. Failing, when requested by the Company, to enroll in any alcohol or other drug treatment or counseling program or failing to adhere to the requirements of the program.
- J. Being indicted or convicted under any criminal drug statute for a violation occurring in the workplace or outside the workplace.
- K. Failing to notify the Company of any indictment or conviction under any criminal drug statute within 5 days of the event.
- L. Failing to comply with the rules and regulations promulgated under any testing programs maintained by **(Company)** pursuant to such rules and regulations.

Testing

- A. **(Company)** will establish a testing program for illegal drugs and controlled substances for all employees and will, in its sole discretion, determine and may at any time change the requirements, extent, and frequency of employee testing.
- B. **(Company)** will test all applicants, whether new employees or rehires. **(Company)** requires that every newly hired and rehired employee be free of illegal drug use and controlled substance abuse. Each offer of employment shall be conditioned upon the successful completion of a test for illegal drugs and controlled substances as prescribed by the Company. Any applicant who tests positive in the pre-employment drug test shall be rejected and shall be ineligible for hire for 12 months unless the applicant

- adequately establishes a legal basis for the use of the drug or controlled substance with respect to which the applicant tested positive.
- C. Whenever **(Company)**, during the course of an investigation by corporate security, has reasonable suspicion that an employee has used illegal drugs or engaged in controlled substance abuse, whether during working hours or non working hours, on or off Company premises, the Company may require the employee to submit a urine or other acceptable sample for testing, as prescribed by the company.
 - D. **(Company)** will afford applicants and employee subject to testing the opportunity, prior to testing, to list all prescription and non prescription drugs and controlled substances they have used and to explain the circumstances surrounding the use of such drugs and controlled substances. Failure of any employee to establish adequately a legal basis for the use of any drug or controlled substance with respect to which the employee tests positive shall constitute a violation of this policy.
 - E. Applicants and employees subject to testing must, prior to testing, sign an approved form agreeing to the testing, authorizing the release of test results to the Company's medical department, and authorizing the disclosure of the results by the medical department to a personnel representative, the employee's supervisor, higher management, and to other persons. The medical department will obtain the results to a personnel representative, the employee's supervisor, higher management, and any other person in accordance with the Company's policies and procedures. **(Company's)** officers, employees, agents, and representatives may use such information in connection with Company business and for purposes of employment and disciplinary actions, and disclose it when required to Government agencies and to others upon valid legal requests, legal proceedings, and other situations to protect the interests of and otherwise in accordance with policies on employee data.
 - F. **(Company)**, prior to taking any action, will give all employees who test positive the opportunity to explain in writing the test results. Failure of any employee to establish adequately a legal basis for the use of any drug or controlled substance with respect to which the employee tests positive shall constitute a violation of this policy.
 - G. **(Company)** will establish and maintain any and all additional testing programs and requirements that may be necessary or appropriate to comply with applicable rules and regulations of all Government agencies.

Consequences for Violation of the Substance Abuse Policy

1. Violation of this policy may result in severe disciplinary action, including termination, at the sole discretion of the company.
2. In addition to any disciplinary action, the company may, in its sole discretion, refer the employee to treatment or counseling for illegal drug use or controlled substance abuse. Employees referred to such a program by the company must immediately cease any illegal drug use or controlled substance abuse, must consent to periodic unannounced testing for a period of 8 months, and must comply with all conditions of the treatment or counseling program and disciplinary action. After successful completion of all requirements of this section, employees will again be subject to the testing program application to all employees. Appropriate company representatives shall determine whether an employee referred to treatment or counseling because of illegal drug use or controlled substance abuse should be reassigned to another position.
3. **(Company)** will promptly terminate any employee who tests positive for illegal drugs or controlled substances, unless the employee establishes a legal basis for the illegal drug or controlled substance, while undergoing or after completion of treatment or counseling for illegal drug use or controlled substance abuse, when such treatment or counseling is required by the Company.
4. **(Company)** will promptly terminate any employee who tests positive for illegal drugs or controlled substances, unless the employee establishes a legal basis for the illegal drug or controlled substance, if the employee has tested positive for illegal drugs or controlled substances without establishing a legal basis for such use on a previous occasion.
5. **(Company)** will promptly terminate any employee who tests positive for illegal drugs or controlled substances, unless the employee establishes a legal basis for the illegal drug or controlled substance, if the employee has been referred at Company request for treatment or counseling on a previous occasion.

Definitions

1. The term *illegal drug* means drugs and controlled substances, the possession or use of which is unlawful, pursuant to the laws of any country and Federal, State, and local laws and regulations in the United States.

Drugs and controlled substances that are not legally obtainable, or that are legally obtainable but have not been legally obtained, are considered to be illegal drugs. Examples include street drugs such as cocaine, heroine, marijuana, and phencyclidine and controlled substances such as amphetamine, methamphetamine, and barbiturates.

2. The term *controlled substance abuse* includes prescribed drugs not being used for prescribed purposes or in a prescribed manner.

Communications

To assist employees in understanding and avoiding the risk of substance abuse, **(Company)** will provide a substance abuse awareness program for employees and supervisors. The company will use this program in an ongoing educational effort to prevent and eliminate substance abuse in the workplace. The substance abuse awareness program will inform employees about:

1. The dangers of illegal drug use and controlled substance abuse.
2. **(Company's)** Drug-Free Policy.
3. The availability of treatment and counseling for employees voluntarily seek such assistance.
4. The sanctions **(Company)** will impose for violations of its Drug-Free policy.

Implementation

Each division, subsidiary, or affiliate of **(Company)** will be responsible for establishing and implementing detailed policy and procedures, specific to its needs, in support of this policy. Each of these policies is subject to central review for consistency with the corporation's policy. It is the corporate human resources department's responsibility to interpret the corporation's policy.

Sample Letter to All Employees

The illegal use of drugs and the use of alcohol is a national problem that seriously affects every American. Drug and alcohol abuse not only affects individual users and their families, but it also presents new dangers for the workplace.

As you are aware, **(Company)** has always been committed to providing a safe work environment that fosters the well-being and health of our employees. The use of illegal drugs and alcohol jeopardizes the commitment, and undermines the capability of **(Company)** to produce quality products and services.

To address this problem, **(Company)** has developed a policy regarding the illegal use of drugs and alcohol that we believe best serves the interests of all employees. Our policy formally and clearly states a zero tolerance of illegal use of drugs and use of alcohol. This policy was designed with two basic objectives in mind: 1) employees deserve a work environment that is free from the effects of drug and alcohol and the problems associated with their use, and 2) this company has a responsibility to maintain a safe and healthy workplace.

Please read our substance abuse policy and be familiar with its procedures. We believe it is important that we all work together to make **(Company)** a workplace that is a safe and rewarding place to work.

Sincerely,

President
(Company)

Sample Substance Abuse Policy Statement

(Company) is committed to providing a safe work environment and to fostering the well-being and health of its employees. The commitment is jeopardized when any **(Company)** employee illegally uses drugs on the job, comes to work under the influence, or possesses, distributes or sells drugs in the workplace.

Therefore, **(Company)** has established the following policy:

1. It is a violation of company policy for any employee to possess, sell, trade, or offer for sale, illegal drugs or otherwise engage in the illegal use of drugs on the job.
2. It is a violation of company policy for anyone to report to work under the influence of illegal drugs or alcohol.
3. It is a violation of the company policy for anyone to use prescription drugs illegally. (However, nothing in this policy precludes the appropriate use of legally prescribed medications.)
4. Violations of this policy are subject to disciplinary action up to and including termination.

It is the responsibility of the company's supervisors to counsel employees whenever they see changes in performance or behavior. Although it is not the supervisor's job to diagnose personal problems, the supervisor should encourage such employees to seek help and advise them about available resources for getting help. Everyone shares responsibility for maintaining a safe work environment.

The goal of this policy is to provide a safe and productive environment. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that there is zero tolerance of illegal drug use or the use of alcohol.

I have read, understand, and will comply with **(Company's)** policy on workplace substance abuse.

Signature

Date