

University of Louisiana System

**Title: EMPLOYEE DRUG TESTING
POLICY**

Effective Date: January 1, 1999

Cancellation: None

Chapter: Miscellaneous

Policy and Procedures Memorandum

Purpose

The employees working within the Administrative Office of the University of Louisiana System believe that the workplace should be free from the risks associated with the use of alcohol and drugs. The System has a legitimate interest in promoting reasonable working conditions and is committed to providing a safe and healthy environment for employees and the public.

According to Louisiana Revised Statute 49:1001-1021, the System's Administrative Office is authorized to proceed with drug testing of employees. The context of this policy will be pursuant to this Statute and to the Drug-Free Schools and Communities Act of 1986, the federal Drug-Free Workplace Act of 1988, the Drug-Free Public Housing Act of 1988, the Louisiana Drug Testing Act of 1990, the Omnibus Transportation Employee Testing Act of 1991, the Federal Highway Administration procedures, Title 49CFR part 40 and part 382 et al., Louisiana Revised Statutes 23:1081 and 1601, 30:2173(2), 32:1502(5), and Executive Order MJF 98-38.

Applicability/Scope

This drug testing policy shall be implemented January 1, 1999 following notice and publication to all employees in the Administrative Office of the University of Louisiana System.

Louisiana R.S. 49:1001 defines an employee as any person, paid or unpaid, in the service of an employer. More specifically, the person may be classified, unclassified, probationary (rehabilitation), temporary or non-temporary in a safety-sensitive and/or security-sensitive position.

Following an employment offer and prior to starting work, prospective employees applying for positions that are safety-sensitive and/or security-sensitive (see Definitions in Appendix), or whose position will involve driving a commercial motor vehicle, will be required to be tested for drugs. The individual must test free of drugs as a condition of employment.

More specific clarification of definition follows as to positions covered by the policy that are defined under federal and state law. Certain employees could be subjected to testing under both federal and state laws.

Positions Defined Under Federal Law

- All current W-2 employees whose jobs require them to drive commercial motor vehicles as defined by the Drug-Free Workplace Policy (see Definitions in Appendix). The policy also applies to all persons who have made written application for positions that will require them to drive commercial motor vehicles. This group of employees and applicants is subject to drug testing pursuant to federal law (Department of Transportation/Federal Highway Administration Alcohol and Drug Testing Regulations – CFR 49).
- Conditions when employers must test employees for alcohol and/or controlled substances under federal law (see Definitions in Appendix).
Pre-employment: Prior to the first time an employee performs a safety-sensitive function, the individual must undergo testing for controlled substances. The employee shall not be permitted to perform safety-sensitive functions unless the driver has received a controlled substances test result indicating a verified negative test result.
Post-accident: For an employee with a commercial drivers license covered by the Federal Highway Administration, a post-accident test will be conducted for the employee driver of an accident involving a loss of human life or where the driver receives a moving traffic violation. A collision or occurrence meets the definition of an “accident” when the incident involves a motor vehicle operating on a public road which results in a death or bodily injury to a person who immediately receives medical

treatment away from the accident; or one or more vehicles is disabled and must be towed from the scene.

Random: Such testing shall be conducted utilizing a fair and equitable method of selection.

Reasonable Suspicion: (see Definitions) A supervisor's belief must be based on specific observation concerning the appearance, behavior, speech, or body odors of the driver. Such determinations should be confirmed by a second employee when possible.

Return-to-duty: An employee who has violated a prohibition on alcohol or controlled substance use must have a negative alcohol or controlled test before returning to duty.

Follow-up Substance Testing: A safety-sensitive employee who has been identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use is subject to follow-up testing.

Alcohol testing may be required in all of the above conditions except pre-employment as specified in 49:CFR part 40. Following a determination that an employee has misused alcohol, the employee will be removed from safety-related functions.

Positions Defined Under State Law (LA. R.S. 49:1015)

- All current W-2 employees in safety-sensitive or security-sensitive positions, both classified and unclassified. The policy also applies to all persons who have made written application for positions designated as safety-sensitive and security-sensitive (see Definitions in Appendix). Safety-sensitive or security-sensitive functions include positions involving the transport of hazardous waste, access to drugs, and use of a firearm.
- Conditions when employers may test employees for drugs under state law (see Definitions in Appendix):
 - Pre-employment post-hire: The prospective employee hired for a safety sensitive position must undergo controlled substance drug testing prior to being placed in the position.
 - Post-accident: An employee shall be tested following an accident during the course and scope of employment if there is reasonable suspicion of an employee's drug use or if the accident results in:
 - a. serious injury or a fatality,
 - b. damage at or above \$1000.00, and/or
 - c. the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials defined in R.S. 32:1502(5).

Random: Such testing shall be conducted for employees in safety-sensitive and security-sensitive positions or participating in a rehabilitation program utilizing a fair and equitable method of selection.

Reasonable Suspicion: A supervisor's belief must be based on specific observation concerning the appearance, behavior, speech, or body odors of the driver. Such determinations should be confirmed by a second employee when possible.

- All current W-2 employees, both classified and unclassified, will be subject to drug testing under the following conditions: reasonable suspicion, post-accident, and testing as part of a monitoring program established to assure compliance with the terms of a rehabilitation agreement.

A public employer shall require samples to test for the presence of drugs, as a condition of hiring, from prospective employees whose principal responsibilities of employment include operating a public vehicle, performing maintenance on a public vehicle, or supervising any public employee who operates or maintains a public vehicle pursuant to R.S. 49:1015(F).

Substances Tested

Pursuant to LA R.S. 49:1001(20b), drug testing is performed for any or all of the following classes of drugs: amphetamines, cocaine, marijuana, opiates, and phencyclidine. Urine will be analyzed for the testing of drugs using the five and nine panel drug screen and blood analyzed for the testing of alcohol. The Federal Department of Transportation requires testing for alcohol.

Procedures, Conditions, and Consequences of Drug Testing

Pursuant to LA R.S. 49:1005(B), drug testing shall be performed in compliance with the NIDA guidelines or by statutory or regulatory authority under R.S. 23:1081 et seq. and R.S.23:1601 et seq. The cut off limits for drug testing shall be in accordance with NIDA guidelines with the exception of initial testing for marijuana which shall be no less than fifty nanograms/ML and no more than one hundred nanograms/ML as specified by the employer or the testing entity.

Pursuant to CFR 392.4, the FHWA prohibits the use of controlled substances by drivers except as prescribed by a physician. The doctor must also advise the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.

Pursuant to LA R.S. 49:1015, employers are prohibited from permitting a driver who uses drugs to perform safety-sensitive functions. A driver who tests positive for drugs with a 0.04 or greater BAC is prohibited from driving. The prohibition remains in effect until the driver complies with requirements of Section 382.605, including evaluation by a SAP. A driver who is prohibited from performing safety-sensitive functions may be assigned to non-safety-sensitive functions until such time as the driver complies with the requirements for returning to duty. For controlled substance testing, urine specimen collection and testing by a certified lab is required.

Following a determination that an employee has tested 0.04 BAC or greater for controlled substances, the employee must be removed from safety-related functions and cannot return to such functions until at a minimum:

- a. the employee undergoes evaluation, and where necessary, rehabilitation,
- b. a substance abuse professional determines that the employee has successfully complied with any required rehabilitation, and
- c. the employee takes a return-to-duty test with a verified negative test result.

Pursuant to LA R.S. 49:1008, a prospective employee who tests positive for the presence of drugs in the initial screening shall have the employment offer rescinded. Refusal to submit to a pre-employment post-hire job offer test will result in the individual not being hired. A driver who refuses to submit to a return-to-duty test will not be allowed to return to duty. A second test confirmed positive will result in termination of employment.

The FHWA will disqualify drivers for one year, pursuant to CFR 49.386, if the driver refuses to submit to a post-accident test after a fatal accident.

When a required test has not been administered within a reasonable time frame following an accident for which a test is required, the following actions shall be taken:

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| 2 hours elapsed: | Driver has not submitted to an alcohol test, employer shall prepare and maintain on file a record stating the reason a test was not promptly administered. |
| 8 hours elapsed: | Cease attempts to administer alcohol test, and prepare and maintain records as described above. |
| 32 hours elapsed: | If driver has not submitted to a controlled substance test at this time, cease attempts to administer the test, and prepare and maintain the record described above. |

A driver subject to post-accident testing must remain available, or the employer may consider the driver to have refused to submit to testing. The driver subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

Confidentiality

LA R.S. 49:1012

All information, interviews, reports, statements, memoranda, and/or test results received by the Administrative Office of the University of Louisiana System through its drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant.

CFR 382.107

Qualitative information regarding results, such as the identification of a substance, will be provided only to the designated Medical Review Officer pursuant to current law who will report final results to the appropriate official. Results of the test will be released to appropriate licensing agencies on a need-to-know basis. All drug test results will be maintained in separate health files with restricted access in accordance with Section 382.405.

Violation of the Policy

Violation of this policy, including refusal to submit to drug testing when properly ordered to do so, will result in actions up to and including termination of employment. Each violation and alleged violation of this policy will be handled on an individual basis, taking into account all data, including the risk to self, fellow employees, and the general public.

Policy References:

Louisiana Revised Statute 49:1001-1021
Drug-Free Schools and Communities Act of 1986
Federal Drug-Free Workplace Act of 1988
Drug-Free Public Housing Act of 1988
Louisiana Drug Testing Act of 1990
Omnibus Transportation Employee Testing Act of 1991
Federal Highway Administration Procedures
Title 49CRF part 40 and part 382 et al.
Louisiana Revised Statutes 23:1081 and 1601, 30:2173 (2), 32:1502(5)
Executive Order MJF 98-38
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Review Process:

Campus Human Resource Directors
Board of Supervisors
University Presidents
Legal Counsel

Distribution:

University Presidents

Appendix A

Federal and State Definitions

CAP-FUDT Laboratory – NIDA Laboratory [SAMSHA] (LA R.S. 49:1001)

Certified laboratory for forensic drug testing by the College of American Pathologists.

Collection Site (LA R.S. 49:1001)

A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Commercial Motor Vehicle (CFR 382.107)

A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property and (1) has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds, (2) has a gross vehicle weight rating of 26,001 or more pounds, (3) is designed to transport 16 or more passengers including the driver, or (4) is of any size and is used in the transportation of hazardous materials requiring placards.

Confirmation or Confirmatory Test (LA R.S. 49:1001)

A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

Controlled Substance

A drug, chemical substance, or immediate precursor in Schedules I through V of R.S. 40:964 or Section 202 of the Controlled Substances Act (21 U.S.C. 812).

Designer (Synthetic) Drugs

Those chemical substances that are made in clandestine laboratories where the molecular structure of both legal and illegal drugs is altered to create a drug that is not explicitly banned by federal law.

Driver (CFR 382.107)

Any person who operates a commercial motor vehicle. This includes but is not limited to: full-time, regularly employed drivers; and casual, intermittent or occasional drivers.

Drug Testing Services (LA R.S. 49:1005 and Executive Order No. MJF 98-38)

Procurement of laboratory services by a certified laboratory shall be provided through the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws.

Expenses for testing services will be encumbered by the System Office. Expenses for second testing may be the responsibility of the employee.

Employee (LA R.S. 49:1001)

Any person, paid or unpaid, in the service of an employer.

Employer

(LA R.S. 49:1001)

Any person, firm, or corporation, including any governmental entity, that has one or more workers or operators employed, or individuals performing service, in the same business, or in or about the same establishment, under any contract of hire or service, expressed or implied, oral or written.

Shall not include any person, firm, or corporation that is subject to a federally mandated drug testing program.

An employee who is a person, firm, or corporation that contracts or subcontracts with a principal need not be considered, in whole or in part, to be an employee of such principal.

(CFR 382.107)

Any person (including the United States, a State, the District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle, including agents, officers, and representatives of the employer.

Illegal Drug (LA R.S. 49:1015)

Includes narcotics, hallucinogens, depressants, stimulants, look-alike drugs, or other substances which can affect or hamper the senses, emotions, reflexes, judgment, or other physical or mental activities.

Included is any drug which is not legally obtainable or which has not been legally obtained, to include prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes or being used by one other than the person for whom prescribed.

Initial Test or Screening Test (LA R.S. 49:1001)

An immunoassay screen to eliminate “negative” urine specimens from further consideration.

The guidelines for screening laboratories will be followed pursuant to LA R.S. 49:1008.

Legal Drug (LA R.S. 49:1015)

Drugs prescribed by a licensed practitioner and over-the-counter drugs which have been legally obtained and are being used solely by the individual and for the

purpose for which they were prescribed or manufactured in the appropriate amount.

Job-Related Accident/Incident

Any employee behavior (action or inaction) which results in an accident, injury, or illness. Usually the accident/incident results in lost work time by an employee, serious or significant injury or illness to a patient, visitor, or co-worker, or an accident involving a vehicle, equipment, or property.

Medical Review Officer (LA R.S. 49:1001)

A licensed physician responsible for receiving laboratory results generated by employer or testing entity's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his medical history and any other relevant biomedical information.

Non-Employee

Those who do not receive W-2's from the System Office including but not limited to all contract and subcontract workers (faculty, residents, interns), volunteers, students, laborers or independent agents who are conducting business on behalf of or are providing services for the System Office.

Positive Rate (CFR 382.107)

The number of positive results for random controlled substances tests conducted plus the number of refusals of random controlled substances tests divided by the total of random controlled substances tests.

Pre-employment (LA R.S. 49:1015)

Post-job offer but prior to starting work an employee in a security- or safety-sensitive position must be tested for controlled substances.

The employee shall not be allowed to perform safety-sensitive functions unless the employer has received a verified controlled substances negative test result.

Prospective Employee (LA R.S. 49:1001)

Any person who has made application whether oral or written to become an employee.

Post-accident (LA R.S. 49:1015)

A public employer may require, as a condition of continued employment, samples from his employees to test for the presence of drugs following an accident if the accident occurred during the course and scope of his employment, under other circumstances which result in reasonable suspicion that drugs are being used. Additionally, the employee, under reasonable suspicion of drug impairment, shall be required to submit to a drug test if the accident results in (1) serious injury or a fatality, (2) damage at or above \$1000.00, or (3) causes the release of hazardous

waste as defined in R.S. 30:2173(2) or hazardous materials defined in R.S. 32:1502(5).

Public Vehicle (LA R.S.49:1015(F))

Any motor vehicle, watercraft, aircraft, or rail vehicle owned or controlled by the state.

Random Testing (LA R.S. 49:1015)

Employees whose positions are safety- and security-sensitive are eligible for random drug testing for alcohol and controlled substances at all times. A non-discriminating method shall be used to select employees for testing.

Reasonable Suspicion (LA R.S. 49:1015)

Belief based upon reliable, objective, and articulable observation regarding the appearance, behavior, speech, or body odors of an individual and being of sufficient import and quantity to lead a prudent person to suspect that an employee is in violation of this policy. Such determination should be confirmed by a second employee when possible. Recommendation to test will be in writing and will describe the behavior and circumstances observed.

Refusal to Submit (CFR 382.107)

A driver (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

Safety-sensitive or security-sensitive position

(LA. R.S. 49:1015)

Includes positions where (1) a hazardous condition or practice in the workplace could result in a potential danger which could reasonably cause death or physical harm to individuals, (2) there is access to or there is handling of hazardous wastes or drugs, (3) public safety demands that employees carry deadly weapons in the course and scope of their duties and must be prepared to make clear-headed instant decisions that could cause injury or death or (4) individuals handle drugs. Positions in this area would include nurses, nurse supervisors, police officers, or security guards.

(CFR 382.107)

Any of those on-duty functions set forth in 395.2 On-Duty Time, paragraphs (1) through (7) as follows: all time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer; all time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR's), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; all time spent at the driving controls of a commercial motor vehicle; all time other than driving time,

spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth); all time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Sample (LA R.S. 49:1001)

Urine, blood, saliva, or hair.

Sample Collection (R.S. 49:1006)

Procedures as dictated by state law.

Split Sample (LA R.S. 49:1001)

One urine specimen from one individual that is separated into two specimen containers.

Under the Influence

A drug, chemical substance, or the combination of a drug/chemical substance that affects an employee in any detectable manner. The symptoms or influence are not confined to that consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. Such a determination of influence will be established by a professional opinion or a scientifically valid test.

Workplace

Any location including all property, offices and facilities (including all vehicles and equipment) whether owned, leased or otherwise used by the agency or by an employee on behalf of the agency in the conduct of its business in addition to any location from which an individual conducts agency business while such business is being conducted.