



## Ohio Administrative Code

### Rule 123:1-76-01 Drug-free workplace definitions of terms.

Effective: November 9, 2018

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For purposes of the drug-free workplace services program:

(A) "Abuse" means:

- (1) Any use of an illegal drug;
- (2) Intentional misuse of any over-the-counter drug in cases where such misuse impairs job performance;
- (3) Use of any prescription drug in a manner inconsistent with its prescription, or under circumstances where use is not permitted;
- (4) The use of recommended medical marijuana in a manner inconsistent with a medical purpose, or under circumstances where use is not permitted;
- (5) The use of any restricted substance under circumstances where use is not permitted;
- (6) Use of alcohol where such use impairs job performance; and

(B) "Agency" means any office, department, commission, board, institution or facility in the executive branch of government.

(C) "Alcohol" means ethyl alcohol or ethanol.

(D) "Applicant testing" means drug testing of final applicants for positions in state service who have tentatively met all relevant employment criteria but have not been officially offered employment with the state.



(E) "Appointing authority" means the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, institution, or facility.

(F) "Chain of custody" means procedures to ensure the integrity of each specimen for drug testing by tracking its storage from point of collection to final disposition.

(G) "Collection site" means a place designated by the director of the department of administrative services where individuals present themselves for the purpose of providing a specimen to be analyzed for the presence of drugs.

(H) "Confirmation test" means a drug test on a specimen to substantiate the results of a prior drug test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous or initial drug test.

(I) "Drug" means:

(1) Any drug which, under the Federal Food, Drug and Cosmetic Act, federal narcotic law, sections 3715.01 to 3715.72, or Chapter 3719. of the Revised Code, may be dispensed only upon a prescription;

(2) Any drug which contains a schedule v controlled substance and which is exempt from Chapter 3719. of the Revised Code, or to which such chapter does not apply; or

(3) Any other substance defined in section 4729.02 of the Revised Code.

(J) "Controlled substance" means those substances defined in sections 3719.01 and 3719.41 of the Revised Code.

(K) "Drug program coordinator" means the person responsible for implementing, directing and managing the drug-free workplace program within the agency. The drug program coordinator serves as the agency's principal contact with the testing laboratory and maintains the effective operation of the drug-free workplace program within the agency.



(L) "Drug test" means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person's bodily fluids.

(M) "Employee" means any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer who is paid by warrant of the director of budget and management.

(N) "Follow-up test" means a drug and/or alcohol test for employees referred through administrative channels to a counseling or rehabilitation program such as those recommended by or associated with the employee assistance program. Such employees shall undergo follow-up testing for a time and frequency stipulated by the administrator of the drug-free workplace services program, or as stipulated by the appropriate collective bargaining agreement for the employee. Such testing is distinct from testing which may be imposed as a component of the counseling or rehabilitation program itself.

(O) "Illegal drug" means any substance other than alcohol; having psychological and/or physiological effects on a human being that is not a prescription medication, non-prescription medication, or medical marijuana when used in accordance with applicable Ohio law; including controlled dangerous substances and controlled substance analogs of volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate inhalation.

(P) "Initial test" means a drug test to determine the presence or absence of drugs or their metabolites in specimens.

(Q) "Laboratory" means a facility having certification, staff, equipment and personnel required by the director of the department of administrative services or applicable federal regulations to perform urine testing for drugs or breath testing for alcohol for employees of any office, department, commission, board, institution or facility in the executive branch of state government.

(R) "Medical marijuana" means marijuana that is cultivated, processed, dispensed, tested, possessed, or used for medical purposes in accordance with a proper registration with the registry established



by the Ohio state board of pharmacy with a valid and active recommendation issued by a physician in compliance with applicable Ohio law.

(S) "Medical review officer" means a person who is a licensed physician or other professional delineated in federal regulations with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with a person's medical history and other relevant biomedical information.

(T) "Drug-free workplace services program" means a program administered by an agency of Ohio state government designated by the governor to implement Ohio's drug-free workplace programs and to administer and coordinate Ohio's compliance with provisions of the federal Drug-Free Workplace Act of 1988, the Omnibus Transportation Employee Testing Act of 1991, and any other federal or state laws or regulations requiring substance abuse testing.

(U) "Positive test result" means a test result that was positive on an initial FDA-approved immunoassay test, confirmed by a gas chromatography/mass spectrometry assay (or other confirmatory test(s) meeting national institute on drug abuse standards and approved by the department of administrative services), and reviewed and verified by a medical review officer, or a breath test for alcohol administered by the state patrol or a person qualified under rule 3701-53-07 of the Administrative Code which equals or exceeds a threshold level established in section 4511.19 of the Revised Code as constituting a positive test for being under the influence of alcohol.

(V) "Prescription" means a written or oral order for a controlled substance for the use of a particular person or a particular animal given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the director of the United States drug enforcement administration pursuant to the federal drug abuse control laws. For purposes of this definition, medical marijuana is not a prescription medication.

(W) "Reasonable suspicion testing" means alcohol or other drug testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:



- (1) Observable phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of being under the influence of a drug;
  - (2) Abnormal conduct or erratic behavior while at work, absenteeism, tardiness, or deterioration in work performance which may reasonably be considered to be caused by drug abuse;
  - (3) A report of drug use provided by reliable and credible sources and which has been independently corroborated;
  - (4) Evidence that an individual has tampered with a drug test during his/her employment with the current employer;
  - (5) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of alcohol and/or other drugs while working, or while on the employer's premises or operating the employer's vehicle, machinery, or equipment.
  - (6) The occurrence of a significant incident involving an employee's on the job actions which has resulted in the personal injury of any person, or in which expensive property damage estimated to be in excess of two thousand dollars has occurred. The personal injury situations warranting reasonable suspicion testing shall be those stipulated in the relevant collective bargaining agreements, or in the absence of any such agreement, by the director of the department of administrative services.
- (X) "Specimen" means a tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.
- (Y) "Substance" means alcohol or drugs.
- (Z) "Workplace" means a state owned or utilized premise for official state business or any place where official state business is conducted.