**R477. Government Operations, Human Resource Management.**

**R477-14. Substance Abuse and Drug-Free Workplace.**

**R477-14-1. Rules Governing a Drug-Free Workplace.**

(1) Except as provided in Sections 26B-207 and 34A-5-114, this rule implements the federal Drug-Free Workplace Act of 1988, 41 USC 8101, et seq., the Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. 5331, et seq., and Section 63A-17-1004 authorizing drug and alcohol testing, to:

(a) provide a safe, productive work environment that is free from the effects of drug and alcohol abuse;

(b) identify, correct and remove the effects of drug and alcohol abuse on job performance; and

(c) assure the protection and safety of employees, the public, and property.

(2) State employees should report to work fit for duty and able to safely and effectively perform job functions.

(a) State employees are not prohibited from lawful use and possession of prescribed or over-the-counter medications unless the medication adversely affects their ability to safely or effectively perform their job duties. Any employee taking prescribed or over-the-counter medications is responsible for consulting the prescribing physician or pharmacist to ascertain whether the medication may interfere with safe performance of job functions. If the use of a medication could compromise the safety of employees, the public, or property it is the employee's responsibility to avoid unsafe workplace practices by using appropriate personnel procedures such as calling in sick, using leave, requesting a change of duty, notifying a supervisor, or notifying DHRM.

(b) The illegal or unauthorized use of prescription drugs is prohibited. It is a violation of this rule to intentionally misuse or abuse prescription medication. Management may take appropriate personnel action, up to and including dismissal from employment, if job performance deteriorates or other accidents occur.

(3) Except as provided in Sections 26B-207 and 34A-5-114, state employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(4) Employees shall follow Subsection R477-14-1(2) outside of work if the activity:

(a) directly affects the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more; or

(b) prevents the employee from performing job duties safely or effectively.

(5) Management shall conduct any drug or alcohol testing in compliance with applicable federal and state regulations and policies.

(6) Management shall ensure that any drug or alcohol testing is conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(7) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(8) Management may require final applicants who are not current employees to submit to pre-employment drug testing.

(9) Management may conduct drug or alcohol tests for the following reasons:

(a) reasonable suspicion;

(b) critical incident;

(c) post accident;

(d) return to duty; and

(e) follow up.

(10) Management may require final candidates for transfer or promotion to a highly sensitive position to submit to pre-employment drug testing.

(11) Management may not require an employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position to submit to pre-employment drug testing.

(12) Management may require employees in highly sensitive positions, as designated by DHRM, to submit to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions is conducted at the discretion of the employing agency.

(13) This rule incorporates by reference the requirements of 49 CFR 40.87.

(14) The state will use a blood alcohol concentration level of .04 for safety sensitive positions and .05 for any other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(15) Management with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation.

(16) When an employee in a federally regulated position has a confirmation test for alcohol results at or in excess of the applicable federal cut off level when tested before, during, or after performing safety sensitive duties, management:

(a) shall remove the employee from duty according to the applicable federal regulations; and

(b) may discipline the employee which may include dismissal.

**R477-14-2. Management Action.**

(1) Under Rules R477-10, R477-11, and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of this rule shall take immediate action.

(2) Except as provided in Sections 26B-207 and 34A-5-114, management may take disciplinary action which may include dismissal if:

(a) there is a verified positive test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee cannot perform assigned job tasks, even when the result of a chemical test is reported negative;

(d) an employee refuses a request to submit to testing under this policy;

(e) an employee substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so; or

(f) an employee violates any other portion of this rule.

(3) When an employee has a verified positive test for use of a controlled substance or alcohol in violation of these rules, management may require the employee to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 63A-17-1006(3). If this is required, the following shall apply.

(a) Management shall grant a leave of absence using accrued leave or leave without pay to an employee participating in a rehabilitation program for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) Any communication is classified as private in accordance with Section 63G-2-302.

(d) Management may require an employee to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) Management shall reinstate an employee who successfully completes a rehabilitation program to work in the previously held position, or a position with a comparable or lower salary range.

(f) Management shall discipline an employee who fails to complete the prescribed treatment without a valid reason.

(4) Management may require an employee who has a verified positive test for use of a controlled substance or alcohol to submit to follow up testing.

(5) An employee who is convicted of manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, under federal or state criminal law, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(6) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice of a conviction under Subsection (5) from:

(a) the judicial system;

(b) other sources; or

(c) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

**R477-14-3. Drug and Alcohol Test Records.**

(1) DHRM shall maintain and store a separate confidential file of drug and alcohol test results and documents related rehabilitation in the agency human resource field office.

(2) DHRM shall retain test results in accordance with the retention schedule.

**KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees**

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**Authorizing, and Implemented or Interpreted Law: 63G-2-3; 63A-17-106; 63A-17-306; 63A-17-1001 through 63A-17-1006**