

Substance Abuse Testing Policy

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Policy Overview

- Documents & clarifies existing procedures & expectations so they are more transparent to employees & in format more useful to supervisors
- Describes procedures for pre-employment testing for positions that are designated, based on job duties, by University policy
- Formalizes practices for suspicion-based drug testing
 - Provides examples of grounds for suspicion-based testing
 - Describes how testing is handled
 - Addresses refusal and falsification of tests

Policy Overview

- Addresses periodic testing for positions where required
- Contains statement on medical marijuana incorporating previously-issued guidance from General Counsel's Office

Policy Overview

- Largely puts in writing existing practices & expectations
- Situations warranting suspicion-based testing expected to remain infrequent
- When situations arise, seek to ensure handled fairly and consistently



Pre-Employment Substance Abuse Testing

- Required of finalists for employment in safety-sensitive & other positions designated under Fayetteville Policies and Procedures 402.1 (Background Checks Policy)
- Hiring decision will be finalized upon receipt of a negative substance-abuse test

Suspicion-Based Substance Abuse Testing

- Required when behavior is characteristic of use of substance that may negatively impact performance of job duties or constitute threat to health/safety
- Supervisor must consider **totality of situation**, document concerning behavior (checklist provided) & consult with HR
- When practicable, more than one observer recommended
- HR will order substance abuse test, if appropriate, & arrange any transport required
- Employee will be relieved of duty & placed on paid administrative leave pending outcome of test

Periodic Substance Abuse Testing

- May be conducted as required by law or as specifically determined necessary by appropriate Vice Chancellor
- Positions for which periodic substance abuse testing required for incumbents designated under Fayetteville Policies and Procedures 402.1 (Background Checks Policy)
- *Policy does not modify range of positions requiring periodic testing*

Types of Tests

- Pre-employment and periodic substance abuse testing – generally a urine drug screen
- Suspicion-based testing – may include the above and/or blood alcohol or breath testing

Screening Results

- Tests reviewed & interpreted by a Medical Review Officer (MRO)
- If positive, MRO will contact individual to determine if an alternative explanation for positive result
 - If permissible medical basis for result determined by MRO, test will be reported as negative
 - *See statement regarding medical marijuana contained in policy*
- Refusal to submit to a test, falsification, or a result that indicates prohibited use of drugs will be subject to disciplinary action up to & including termination
- Department head in consultation with HR & others, as appropriate, will determine action when results indicate prohibited use of drugs/alcohol
 - **Note:** *Existing faculty & staff personnel policies relevant to employee discipline continue to apply where there is a positive test result*
- Testing will be paid for by University
- Results will remain confidential to extent permitted by law

Statement re: Medical Marijuana

- I. Notwithstanding any state constitutional or statutory provisions permitting the use of medical marijuana, the university remains subject to and will continue to comply with the federal Drug Free Workplace Act of 1988 and Drug Free Schools and Communities Act Amendments of 1989. The university will also comply with applicable state laws and regulations.
- II. Medical marijuana in any form shall not be possessed or used on the university campus or in university-owned or leased space, including housing, or at any university-sponsored events or activities.
- III. All employees remain prohibited from possessing, smoking, ingesting, or otherwise engaging in the use of, or being under the influence of, marijuana or other controlled substances on university property, during working hours, or while operating a vehicle or equipment owned or leased by the university. Employees who violate the drug-free workplace policy remain subject to disciplinary action, up to and including termination of employment.
- IV. Any employee may be required to submit to drug testing if there is a reasonable suspicion the employee is impaired from marijuana or other substances while on duty.
- V. In the event an employee tests positive for marijuana and is a qualifying patient, the Office of General Counsel should be consulted before action is taken.
- VI. The university shall not discriminate against an applicant or employee in hiring, termination, or any condition of employment based on past or present status as a qualifying patient. For specified positions, a pre-employment substance abuse test is required for employment.

Medical Marijuana

Arkansas Medical Marijuana Amendment of 2016 (“MMA”)

- Legalizes medical use (under **state law**) for **qualifying patients**:
 - Written certification from physician +
 - Registered with Ark. Department of Health

Restrictions as to UA

Possession or use of medical marijuana **not allowed**:

- on UA owned or leased space (including campus housing)
- at any university-sponsored events or activities

. . . regardless of person's affiliation to UA

Employees

- **Prohibited from possessing/smoking/using/being under influence:**
 - on premises,
 - during working hours,
 - or while operating UA vehicle/equipment
- May be required to submit to testing based on **reasonable suspicion**
 - *New campus policy on drug and alcohol testing* will address details
 - *Safety-sensitive* positions still subject to pre-employment, random and for-cause testing
- Violations subject to discipline up to termination

Employees – 3 Caveats

- Can't discriminate against job applicant/employee based on **status as qualifying patient**
- Consult with General Counsel before taking adverse action based on positive test if qualifying patient
- If employee self-discloses status as qualifying patient, consider need for reasonable accommodation *based on underlying condition*

Students

Can't penalize for **status** as a qualifying patient, but:

- **Students cannot use or possess on campus or at any school-sponsored event or activity.**
- If under influence on campus or participating in UA activity, student may be subject to discipline.

Authority

Amendment 98 § 6

*(a) This amendment **does not permit** a person to . . .*

*(2) Possess, smoke, or otherwise engage in the medical use of marijuana
. . .*

(B) On the grounds of a . . . college, or university . . .

*(b) This amendment **does not require** . . .*

*(2) An employer to accommodate the ingestion of marijuana in a
workplace or an employee working while under the influence of
marijuana . . .*

Questions

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