



**ARKANSAS DEPARTMENT OF THE MILITARY
OFFICE OF THE ADJUTANT GENERAL
CAMP JOSEPH T. ROBINSON
NORTH LITTLE ROCK, ARKANSAS 72199-9600**

**ASA HUTCHINSON
GOVERNOR**

**KENDALL W. PENN
MAJOR GENERAL
THE ADJUTANT GENERAL**

NGAR-DOTM

21 January 2020

**MEMORANDUM FOR DEPARTMENT OF THE MILITARY (DOTM) STATE
EMPLOYEES**

SUBJECT: Department of the Military (DOTM) Policy 49-2020, Drug and Alcohol Testing Policy

1. The DOTM Human Resources is responsible for the creation, updating, revision, and dissemination of state policies and procedures. These policies and procedures assist the agency in maintaining an effective workforce.
2. The purpose of this policy is to inform all state employees and supervisors of the updated and expanded standards set forth by the Department of the Military regarding drug and alcohol testing.
3. Point of contact for this memo is Scott Stanger at (501) 212-5167.

A handwritten signature in black ink, appearing to read "Kendall W. Penn".

**KENDALL W. PENN
MAJOR GENERAL
The Adjutant General**

Encl.
Drug and Alcohol Testing Policy

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DEPARTMENT OF THE MILITARY
Drug and Alcohol Testing Policy

PURPOSE

The Department of the Military (DOTM) is committed to safeguarding the health and well-being of all employees, maintaining public confidence, and maintaining a safe work environment. Therefore, to meet this objective, as well as to comply with the Drug-Free Workplace Act of 1988 and Arkansas law, the DOTM has adopted a drug and alcohol-free workplace policy that prohibits the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance where DOTM employees work, including all DOTM-owned or leased vehicles, or while conducting business on behalf of DOTM or the State of Arkansas.

REFERENCES

1. Ark. Code Ann. §§11-14-100 *et seq.* Voluntary Program for Drug Free Workplaces;
2. 41 U.S.C. §81 Drug-Free Workplace;
3. Governor's Executive Order 89-2;
4. Arkansas Constitution, Amendment 98

APPLICABILITY

This policy applies to all employees of DOTM as well as job applicants. All Covered Workers are responsible for abiding by this policy and must comply with all DOTM policies and procedures, as well as any applicable TAG policies regarding drug and alcohol use and/or testing of state employees.

POLICY

The Department of the Military prohibits all Covered Workers from reporting to work or being in a duty status while their ability to perform job duties is impaired due to the use of alcohol or other drugs. All Covered Workers are prohibited from testing positive for metabolites of substances listed in the schedules of the Federal Controlled Substances Act and the Arkansas Uniform Controlled Substances Act. This policy applies during all work hours, whenever conducting business or representing DOTM or the State of Arkansas, and while on-call or a paid standby duty status.

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DEFINITIONS

1. **Alcohol:** Intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.
2. **Current use of alcohol or drugs:** Use of alcohol or drugs that justifies the good faith belief that an applicant or employee is engaging in the use of alcohol or drugs. Current use is presumed when a positive test result for alcohol or drugs occurs.
3. **Drug:** Any controlled substance, including marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.
4. **Drug test:** Any chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence or absence of a drug or its metabolites or alcohol.
5. **Employee:** Individual employed by DOTM for a salary, wage, or other remuneration, but does not include an independent contractor.
6. **Good faith belief:** Reasonable reliance on a fact, or that which is held out to be factual, without intent to deceive or be deceived and without reckless or malicious disregard for the truth and does not include a belief formed with gross negligence.
7. **Job applicant or Applicant:** A person who has applied for a position with DOTM, who has been offered employment conditioned upon successfully passing a drug or alcohol test and who may have begun work pending the results of the drug or alcohol test.
8. **Testing positive:** A result that is at or above the cutoff concentration level established by the US Department of Transportation or Arkansas State law regarding being under the influence, whichever is lower.
9. **Reasonable suspicion drug testing:** Drug or alcohol testing based on a good faith belief that a Covered Worker is using or has used drugs or alcohol in violation of the DOTM's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things as more fully described below under Reasonable Suspicion Drug and Alcohol Testing, such facts and inferences may be based upon:
 - a. Observable phenomena during working hours such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;
 - b. Abnormal conduct or erratic behavior during working hours or a significant deterioration in work performance;
 - c. A report of drug or alcohol use provided by a reliable and credible source;

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- d. Evidence that an individual has tampered with a drug or alcohol test during employment with the DOTM;
- e. Information that a Covered Worker has caused, contributed to, or been involved in an accident while at work; or
- f. Evidence that a Covered Worker has used, possessed, sold, solicited, or transferred drugs or used alcohol while working or while on the DOTM's premises, while occupying any real property under the jurisdiction of The Adjutant General as defined by A.C.A. §12-63-201, or while operating the DOTM's vehicle, machinery, or equipment.

10. Safety sensitive position: (1) Any position involving a safety sensitive function pursuant to federal regulations governing drug and alcohol testing adopted by the US Department of Transportation or any other rules, guidelines, or regulations adopted by any other federal or state agency; or (2) any position designated in writing by the DOTM as a safety sensitive position in which a person performing the position while under the influence of alcohol or drugs may constitute a threat to health or safety, including positions in which a lapse of attention could result in injury, illness, or death (operating, repairing, maintaining, or monitoring heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles as part of the job duties) or positions that require any of the following activities:

- a. Carrying a firearm;
- b. Performing life-threatening procedures;
- c. Working with confidential information or documents pertaining to criminal investigations; or
- d. Working with hazardous or flammable materials, controlled substances, food, or medicine.

11. DOTM Property: DOTM Property is defined as all DOTM-owned or leased offices or buildings under the DOTM's ownership or control. This policy also applies to all DOTM owned or leased vehicles.

12. Qualifying Patient: means a person who has been diagnosed by a physician as having a qualifying medical condition and who has registered with the Arkansas Department of Health in accordance with the Arkansas Medical Marijuana Amendment of 2016.

13. Under the influence: Symptoms of the current use of alcohol or drugs that may negatively impact the performance of the job duties or tasks or constitute a threat to health or safety and includes the following:

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- a. Symptoms of the applicant's or employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, or other irrational or unusual behavior that are inconsistent with the usual conduct of the Covered Worker;
- b. Negligence or carelessness in operating equipment, machinery, or production or manufacturing processes;
- c. Disregard for safety;
- d. Involvement in an accident that results in damage to equipment, machinery, or property; disruption of a production or manufacturing process; or injury; or
- e. Other symptoms causing a reasonable suspicion that the current use of alcohol or drugs may negatively impact the performance of the job duties or tasks or constitute a threat to health or safety.

14. Written certification: A document signed by a physician stating that in the physician's professional opinion, after having completed an assessment of the Qualifying Patient's medical history and current medical condition made in the course of a physician-patient relationship, the Qualifying Patient has a qualifying medical condition. The certification must specify the Qualifying Patient's qualifying medical condition. A written certification is NOT a medical prescription.

PRESCRIPTION AND OVER-THE-COUNTER DRUGS

For purposes of this policy, 'prescription' and 'prescribed medication' means a written or oral order for a pharmaceutical drug for use by a particular person given by a practitioner in the course of professional practice, including controlled substances prescribed in accordance with the regulations promulgated by the director of the United States Drug Enforcement Administration pursuant to the federal drug abuse control laws. This definition does not include a recommendation for use of medical marijuana, as the use of marijuana by a Covered Worker is prohibited during working hours, including any lunch or other breaks.

Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Any employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with safe and competent performance of his/her job. If the use of a medication could compromise the safety or competency of the Covered Worker, fellow employees or the public, it is the Covered Worker's responsibility to use appropriate personnel procedures (e.g., call in sick, use leave, request change of duty, notify supervisor) to avoid unsafe workplace practices.

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The illegal or unauthorized use of prescription drugs is prohibited. It is a violation of this policy to intentionally misuse and/or abuse prescription medications. Appropriate disciplinary action will be taken if job performance deterioration and/or other accidents occur.

PROHIBITED BEHAVIORS

With the exception of the possession of prescription medication as outlined above, the illegal or unauthorized use of prescription drugs is prohibited. Further, it is a violation of this policy for a Covered Worker to possess, manufacture, use, sell or transfer, or be impaired by alcohol, marijuana, controlled substances or other intoxicants during working hours. All Covered Workers are prohibited from testing positive for metabolites of substances that are listed in the schedules of the Federal Controlled Substances Act and the State of Arkansas Uniform Controlled Substances Act.

The use of any illegal drug covered under the Federal Controlled Substances Act U.S.C. Title 21 Section 812 is prohibited. The use of marijuana for any purpose, including medical, is also prohibited during working hours or when representing DOTM. Any illegal substances, drugs, including illegal synthetics, or drug paraphernalia are prohibited on any real property under the jurisdiction of The Adjutant General as defined by A.C.A. §12-63-201. Marijuana, marijuana paraphernalia, and cannabidiol (CBD) oil is prohibited on any real property under the jurisdiction of The Adjutant General. Violations of this policy may be cause for intervention that may result in referral to mandatory treatment and/or disciplinary action up to and including termination.

NOTIFICATION OF CONVICTIONS

Consistent with the Federal Drug-Free Workplace Acts of 1988, any Covered Worker who is convicted of a criminal drug violation occurring in the workplace must notify the DOTM HR Office in writing within five calendar days of the conviction. The DOTM HR department will then determine if any federal contracts or grant are in place that include mandatory reporting after being notified that an employee has been convicted of a criminal drug crime occurring in the workplace. The DOTM HR will notify the federal contracting agencies within 10 days when appropriate.

RETURN TO DUTY AGREEMENTS

If an agency determines that it is appropriate, a Return-to-Duty (RTD) agreement may be implemented when a Covered Worker violates this policy but remains employed or is otherwise retained by DOTM. RTD work agreements are implemented to ensure the Covered Worker abides by the provisions set forth in the RTD agreement while performing their job duties. A

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Covered Worker who violates an RTD work agreement may be subject to corrective and/or disciplinary action, up to and including termination.

NOTICE OF TESTING PROCEDURES

A notice of the DOTM Drug Free Workplace Policy will also be posted in an appropriate and conspicuous location on the DOTM premises, and copies of the policy will be made available for inspection by the employees or job applicants of the DOTM during regular business hours in the DOTM Human Resources Office or online at <https://portal.arkansas.gov/agency/department-of-the-military/>

JOB APPLICANT DRUG AND ALCOHOL TESTING

DOTM vacancy announcements for positions for which drug or alcohol testing is required will include notice of testing in the announcement. If required, the DOTM job advertisements will include a statement advising applicants that they will be required to submit to drug and alcohol testing after a conditional offer of employment. All applicants selected for employment (including applicants for temporary, emergency, and extra help positions), will also be notified in writing at the time of application or interview that an offer of employment is conditional upon passing a pre-employment drug test. The written notification will inform applicants of the consequences of: (a) failing to appear for testing or (b) a test indicating positive for drugs or alcohol. Upon conditional selection of an individual for employment, the hiring official must notify the selectee (via telephone and letter) that the selectee is conditionally selected for employment contingent on he/she successfully passing a pre-employment drug test, and provide instructions for taking the test. DOTM will select the drug testing site and pay for the initial drug test.

REASONABLE SUSPICION DRUG AND ALCOHOL TESTING

DOTM may require a blood test, urinalysis or other drug/alcohol screening for employees any time there is good faith belief to suspect the employee has violated this policy. A DOTM employee who is not in a safety-sensitive position may only be tested for drugs or alcohol when the test is based upon reasonable suspicion. An employee in a safety sensitive position may be tested for drugs or alcohol use at any occasion without reasonable suspicion. A good faith belief to suspect a violation of the policy may be established by any of the following:

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1. Observed conduct, behavior, or appearance including direct observation (by a manager, supervisor, or other DOTM employee) of drug or alcohol use or possession during working hours, while on DOTM premises, or while occupying any real property under the jurisdiction of The Adjutant General.
2. Information reported by a person believed to be reliable, including a report by a person who witnessed a job applicant or employee using or possessing drugs or drug paraphernalia in the workplace;
3. Written, electronic, or verbal statements from the employee;
4. Lawful audio or video surveillance;
5. A government agency, law enforcement agency, or court record;
6. A warning label, usage standard, or other printed material that accompany instructions for usable marijuana or other drugs;
7. Information from a physician, medical review officer or dispensary;
8. Information from reputable reference sources in print or on the internet;
9. Other information reasonably believed to be reliable or accurate; or
10. Observed impairment of job performance.
11. Uncharacteristic or erratic behavior;
12. The employee's attendance changes, e.g., habitual absenteeism;
13. A workplace accident or an accident involving a DOTM vehicle when the accident results in personal injury;
14. Physical symptoms indicative of drug or alcohol use. For example, slurred speech, tremors, drowsiness, pupils dilated or constricted, irritability, hyperactivity, general motor impairment, disorientation, or the smell of alcohol on the breath;
15. Any other facts or circumstances which would cause a reasonable person to believe that the employee is in possession of, or under the influence of drugs or alcohol.

Upon establishing reasonable suspicion, the employee's supervisor will promptly detail in writing the circumstances that formed the basis of the determination that reasonable suspicion existed to warrant the testing. A written record will be made of the observation leading to a controlled substances reasonable suspicion test within twenty-four hours of the observed behavior. Original documentation will be kept for at least one year. A copy of the documentation will be given to the employee upon request. The employee must be ordered to report for drug and alcohol testing.

RANDOM ROUTINE FITNESS FOR DUTY DRUG TESTING

The DOTM HR Office will identify those positions that are safety sensitive positions. The positions will be identified by position number.

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As a condition of employment in safety sensitive position, employees agree to random drug testing. Employees in these positions will be randomly selected at intervals determined by DOTM. Once an employee is selected for testing, the employee must report for drug testing procedures. If changes in the job duties associated with a position make the position safety sensitive, any employee holding the position must agree to random drug testing as a condition of continued employment.

FOLLOW-UP DRUG TESTING

If the employee in the course of employment enters an employee assistance program for drug-related or alcohol-related problems or a drug or alcohol rehabilitation program, the DOTM must require the employee to submit to a drug or alcohol test, as appropriate, as a follow-up to the program, unless the employee voluntarily entered the program. In those cases, the DOTM has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least one (1) time per year for a two-year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested.

POST-ACCIDENT TESTING

After an accident that results in an injury, the DOTM will require the employee to submit to a drug or alcohol test in accordance with the provisions of this chapter.

If a Covered Worker tests positive for metabolites of any prohibited substances or refuses to submit to a test for drugs or alcohol, the Covered Worker will be subject to disciplinary action up to and including termination and will be precluded from receiving worker's compensation medical and indemnity benefits pursuant to A.C.A. §11-9-102 (4)(B).

ADDITIONAL TESTING

DOTM is not prohibited from conducting any lawful testing of employees for drugs or alcohol that is in addition to the above testing.

If an employee disagrees with the findings of a drug or alcohol test, the employee may arrange to have a portion of the original sample retested at a laboratory certified by the Substance Abuse Mental Health Service Administration. The employee must arrange and pay for the second test. The second test must be performed within five working days after learning the results of the first test. If the second test is negative for the presence of drugs or alcohol, the results from the second test are considered final.

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REFUSAL TO TEST

DOTM job applicants who refuse to cooperate in a drug test or who test positive will not be hired and will not be allowed to reapply/retest in the future. DOTM employees who refuse to cooperate in required tests or who use, possess, buy, sell, manufacture or dispense an illegal drug in violation of this policy will be terminated.

The first time an employee tests positive for alcohol or illegal drug use under this policy, the result may be disciplinary action up to and including discharge. Employees will be paid for time spent in alcohol or drug testing and then placed on administrative leave pending the results of the drug or alcohol test. After the results of the test are received, a date and time will be scheduled to discuss the results of the test. This meeting will include a member of management and DOTM Human Resources.

TERMINATION OF EMPLOYMENT FOR POLICY VIOLATION

In accordance with A.C.A. §11-10-514 (b)(1), employees discharged from service due to violations of this policy will be disqualified from receiving unemployment benefits for a length of time to be determined by the Arkansas Department of Workforce Services.

CONFIDENTIALITY

The DOTM respects the privacy of all Covered Workers. Therefore, reasonable precautions will be taken to ensure the privacy and confidentiality of a Covered Worker throughout the testing process and to make certain that procedures are administered fairly, consistently, and in accordance with policy. Access to this information is limited to those who have a legitimate “need to know” in compliance with relevant laws and policies. All drug-testing information will be maintained in separate confidential records.

ARKANSAS STATE EMPLOYEE ASSISTANCE PROGRAM

The DOTM, through the Arkansas State Employee Assistance Program (EAP), has established a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace and offers drug counselling, rehabilitation and consultation regarding substance abuse issues in the workplace. DOTM employees are encouraged to utilize the resources available through the EAP provider, New Directions, as necessary. For more information, please contact New Directions at 1-877-815-1017 x1 or at www.ndbh.com

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DISCRIMINATION PROHIBITED

Although the use of marijuana is prohibited while an applicant or employee is on DOTM Property or during working hours, DOTM may not discriminate against a job applicant or employee in hiring, termination, or any term or condition of employment, or otherwise penalize an Applicant or Employee, based on the applicant's past or present status as a Qualifying Patient or designated caregiver, the individual who assists the patient with ingesting the marijuana.

DEPARTMENT CONTACT

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