



## Arkansas Department of Military

Cabinet Secretary - Brigadier General Olen Chad Bridges,  
The Adjutant General

**Policy Title:** Drug and Alcohol Testing Policy

**Policy Number:** 15

**Authority:** Ark. Code Ann. § 20-27-1801 *et seq.*,

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### I. PURPOSE:

The Department of the Military (DOTM) is committed to safeguarding the health and well-being of all employees, preserving public confidence in the DOTM, and maintaining a safe work environment. To meet these objectives, as well as to comply with the Drug-Free Workplace Act of 1988 and A.C.A. § 20-27-1801 *et seq.*, DOTM has adopted a drug and alcohol-free workplace policy that prohibits unlawful manufacture, distribution, dispensations, possession, consumption, or use of a controlled substance where DOTM employees work, to include all DOTM owned or leased vehicles, or while conducting business on behalf of DOTM.

### II. DEFINITIONS:

1. **Alcohol:** Any intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
2. **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/or who may have begun work pending the results of the drug or alcohol test.
3. **Covered Worker:** An employee or applicant, as defined by this policy.
4. **Designated Caregiver:** The individual who assists a Qualified Patient with ingesting medically prescribed marijuana.
5. **DOTM Property:** All DOTM-owned or leased offices or buildings under the ownership or control of The Adjutant General as defined by A.C.A. § 12-63-201, including to all DOTM owned or leased vehicles.
6. **Drug:** Any controlled substance, including marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.
7. **Drug test or Alcohol 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.
8. **Employee:** An individual employed by DOTM for a salary, wage, or other remuneration, but

does not include an independent contractor.

9. **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. A good faith belief must be 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 the 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;
  - 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. **Prescription or prescribed medication:** 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.
11. **Qualifying Patient:** 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.
12. **Reasonable suspicion drug testing:** Drug or alcohol testing based on a good faith belief that an individual covered by this policy is under the influence of alcohol or drugs in violation of this policy.
13. **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, or in which a lapse of attention could result in injury, illness, or death, such as, but not limited to:

- a. Operating, repairing, maintaining, or monitoring heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles;
- b. Carrying a firearm;
- c. Performing life-threatening procedures;
- d. Working with confidential information or documents pertaining to criminal investigations; or,
- e. Working with hazardous or flammable materials, controlled substances, food, or medicine.

14. **Testing positive:** A result that is at or above the cutoff concentration level established by the US Department of Transportation or Arkansas law regarding being under the influence, whichever is lower.

15. **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:

- 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. Any 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.

16. **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 medical prescription is NOT a written certification.

### **III. POLICY:**

All employees of DOTM are prohibited 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 employees, as well as prospective employees, 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 paid standby duty status. 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.

To ensure employee duties are being conducted with the utmost care and not impaired by drug or alcohol use, DOTM may require drug or alcohol tests in the following situations:

- Pre-Employment testing
- Reasonable suspicion testing
- Random testing
- Follow-up testing
- Post-Accident testing

All DOTM employees shall be subject to the provisions set forth in this policy. Failure to comply with any portion of this policy will result in disciplinary action up to and including termination.

### **IV. PRE-EMPLOYMENT TESTING**

DOTM vacancy announcements for positions for which drug or alcohol testing is required must include notice of testing in the announcement. Additionally, 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, if such testing is so required.

All applicants selected for employment (including applicants for temporary, emergency, and extra help positions), will 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.

### **V. 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 on any occasion without reasonable suspicion.

A good faith belief to suspect a violation of the policy may be established by any of the following:

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.

## **VI. 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.

As a condition of employment in a 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.

## **VII. 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.

## **VIII. POST-ACCIDENT TESTING**

After an accident that results in an injury, the DOTM will require the employee responsible 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 of employment and will be precluded from receiving worker's compensation medical and indemnity benefits pursuant to A.C.A. §11-9-102 (4)(8).

## **IX. 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.

## **X. POSITIVE TEST RESULTS AND RE-TESTING**

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 Administrator.

If a covered worker disagrees with the findings of a drug or alcohol test, the covered worker may arrange to have a portion of the original sample retested at a laboratory certified by the Substance Abuse Mental Health Service Administration (SAMHSA). The covered worker 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.

## **XI. 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.

## **XII. PRESCRIPTION AND OVER-THE-COUNTER DRUGS:**

Prescription and over-the-counter drugs may be used on DOTM Property when taken in standard dosage and/or according to a physician's prescription. This does not include the use of marijuana, even if prescribed by a medical professional.

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.

## **XIII. PROHIBITED BEHAVIORS**

The illegal or unauthorized use of prescription drugs is prohibited, and it is a violation of this policy to intentionally misuse and/or abuse prescription medications.

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. Further, appropriate disciplinary action will be taken if job performance deterioration and/or other accidents occur due to the illegal or unauthorized use of prescription drugs or the use of illegal drugs.

## **XIV. 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 and will notify the federal contracting agencies within 10 days when appropriate.

## **XV. 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 Covered

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

## **XVI. 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>.

## **XVII. 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.

## **XVIII. CONFIDENTIALITY**

The DOTM respects the privacy of all covered workers and reasonable precautions will be taken to ensure the privacy and confidentiality of a covered worker's status throughout the testing process and to make certain that procedures are administered fairly, consistently, and in accordance with policy.

All drug-testing information will be maintained in separate confidential records. Access to this information is limited to those who have a legitimate "need to know" in compliance with relevant laws and policies.

## **XIX. ARKANSAS STATE EMPLOYEE ASSISTANCE PROGRAM**

Through the Arkansas State Employee Assistance Program (EAP), DOTM has established a drug-free awareness program to inform employees about the dangers of drug abuse and offer 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, Lucet, as necessary. For more information, please contact Lucet at 1-800-624-5544, or <https://lucethealth.com>.

## **XX. DISCRIMINATION PROHIBITED**

The DOTM may not discriminate against a covered worker in hiring, termination, or any term or condition of employment, or otherwise penalize a covered worker based solely on his or her past or present status as a qualifying patient or designated caregiver. This does not apply to discipline of a covered worker, up to and including termination, for use of marijuana on DOTM property or during working hours, which are prohibited under this policy.