



## Drug & Alcohol Programs

Drug and Alcohol Programs for a Safe Workplace

**The information included in this publication is designed to give you an idea of how you can develop a plan for a drug-free workplace. You should also contact your legal counsel before and during the implementation of your program.**

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# S-889

last updated  
November 2006

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This publication provides practical loss control and safety information to assist you in making your workplace safer. It is not legal advice. SAIF Corporation has made every effort to bring significant Oregon Occupational Safety and Health Administration (OR-OSHA) regulations to your attention. Nonetheless, compliance with OR-OSHA remains your responsibility. You should read and understand all relevant OR-OSHA regulations that apply to your job site(s). You may want to consult with your own attorney regarding aspects of OR-OSHA that may affect you.

**Note:** The information in this publication is time sensitive. Do not rely upon this document if its publication date is more than three years old. Please check the Employer Guide "Safety" section of our web site at [www.saif.com/employer](http://www.saif.com/employer) for a more recent, printable copy. You'll also find a variety of other valuable safety information designed to help your business prevent injuries and control costs.

## Drug and Alcohol Programs for a Safe Workplace

SAIF Corporation believes a well-structured substance abuse policy is an important element of a thorough workplace safety and health program. In recent years, the picture of substance abuse has changed dramatically. There are new illicit and illegal drugs on the market, prescriptions drugs are more readily available via the Internet, and medical marijuana programs exist in some states. This has complicated the process of establishing policies, procedures, and programs in the workplace and discourages employers from implementing measures that might help ensure that employees reporting to work are not under the influence of drugs or alcohol.

There are hundreds of resources available for employers to use when establishing a drug-free workplace policy, a zero tolerance drug and alcohol policy, or a substance abuse policy. Determining which approach is best for your business or organization can be challenging; and this guide is designed to provide you with some basic guidance, resources, and contacts to help you establish a successful program.

### **Strong Motivators**

Beyond the obvious financial and safety benefits, there are many reasons employers should implement a zero tolerance drug and alcohol policy. Here are a few things to consider if you're still not sure a policy is right for your business:

- If there is a drug- or alcohol-related accident or mishap at your business, how will the publicity and media coverage affect your public relations and company image?
- Employees under the influence of drugs and alcohol while on the job can pose a number of liability risks beyond the scope of their job tasks. Can your business afford this growing risk?
- How will your business be impacted if there are public complaints about employee drug or alcohol use on the job? How can you successfully defend your company if there isn't a policy in place?
- Zero tolerance and drug-free workplaces lend themselves to a positive public relations campaign and a positive community presence.
- Substance abuse can kill your business from the top down. Anyone in your organization can have a substance abuse problem including owners, business executives, managers, cashiers, bookkeepers, and security personnel. Substance abuse by individuals in key positions can irreparably damage the organization.

## Substance Use and Abuse in the Workplace: Can You Afford the Risk?

Every day, there's an article or a news story about drug abuse, and the problem doesn't show any signs of slowing. In fact, there are increasing numbers of people who are intentionally abusing and unintentionally misusing over-the-counter and prescription medications. When combined with the statistical population of illicit drug users, the number of employees who could be impaired while on the job is rising.

So what should you do to protect yourself and your workplace? Should you implement a formal policy? Should you set up a drug-testing program? Do you need to hire an employment law attorney? Can you look the other way? There are costs and risks associated with implementing or not implementing a substance abuse policy, and the best solution is not always the easiest.

There are hundreds of resources available to employers who choose to implement a drug-free workplace program. Determining which approach is best for your business or organization can be challenging.

Ensuring a safe and secure work environment is every employer's responsibility. A secure workplace includes hiring employees who do not endanger other employees or customers. It also means an employer should not retain an employee after becoming aware of the employee's unsuitability. Employers nationwide have been held responsible for large monetary judgments after being found responsible for negligent hiring or negligent retention practices.

To address the issues of negligent hiring and retention practices, the U.S. Drug Enforcement Agency has published the following recommendations:

- Minimize negligent hiring by requiring all job applicants to pass a drug test prior to being hired.
- Minimize negligent retention by routinely testing employees and being prepared to intervene when a worker is identified as having, or showing signs of substance abuse problems.

### **Research and Trends**

In 2006, the Substance Abuse and Mental Health Services Administration published their 2004 National Survey on Drug Use and Health. Statistics from this survey include:

- Of the 16.4 million illicit drug users aged 18 or older in 2004, 12.3 million (75.2 percent) were employed at least part-time.
- Most adults with substance dependence or abuse were employed at least part-time. Of the 20.3 million adults classified with dependence or abuse, 15.7 million (77.6 percent) were employed.

- Marijuana was the most commonly used illicit drug in 2004, with a rate of 6.1 percent (14.6 million current users). There were 2.0 million current cocaine users, 467,000 of whom used crack. Hallucinogens were used by 929,000 persons, and there were an estimated 166,000 heroin users.
- Eight states ranked in the top 10 percent nationally for past-month marijuana use in all three age groups: 12 to 17, 18 to 25, and 26 and older. These states are Alaska, Maine, Massachusetts, New Hampshire, New Mexico, **Oregon**, Rhode Island, and Vermont.
- The illicit drug category with the largest number of new users was non-medical use of pain relievers. Roughly 2.4 million persons used pain relievers non-medically for the first time within the past 12 months, and the average age at first use was 23.3 years.
- Among persons aged 12 or older, the rate of current illicit drug use in 2004 was 8.9 percent in the West, 8.4 percent in the Northeast, 7.5 percent in the Midwest, and 7.3 percent in the South. Similar patterns were evident in 2003 and 2002.

The 2006 Drug and Alcohol Services Information System Report on **Trends in Methamphetamine/Amphetamine Admissions to Treatment: 1993-2003** also provides some interesting statistics related to methamphetamine use.

- In 2003, there were 18 states with methamphetamine/ amphetamine treatment rates higher than the national average of 56 admissions per 100,000 people aged 12 or older.
- The highest substance abuse treatment admission rate in the United States was in Oregon (251 admissions per 100,000 people).

In 1999, Substance Abuse and Mental Health Services Administration published a study titled *Worker Drug Use and Workplace Policies and Programs: Results from the 1994 and 1997 National Household Survey on Drug Abuse*. Some of the findings from this study included:

- In 1997, drug testing, as part of the hiring process remained the most frequently used testing program reported by workers (39 percent), followed by testing upon suspicion and post-accident testing (30 percent and 29 percent, respectively). About one-quarter of workers reported that their workplace tested employees at random.
- In 1997, a larger percentage of current illicit drug users than non-users said they would be **less likely** to work for an employer who tests for drug use upon hiring (22 percent vs. 4 percent), randomly (29 percent vs. 6 percent), upon suspicion (24 percent vs. 10 percent), or after an accident (13 percent vs. 4 percent).

- Workers who reported current illicit drug use were more likely to have worked for three or more employers in the past year and to have higher rates of unexcused absence and voluntary turnover in the past year than those who did not report drug use.
- Employees at small workplaces (1–24 employees), compared with medium-size (25–499 employees) or large workplaces (500 or more employees), were least likely to report having information or a written policy about drug and alcohol use at their workplaces.
- Workers in professional specialty, technician, and related support occupations, together with workers in food preparation, waitstaff, and bartender occupations reported the highest rates of reluctance to work for employers who tested for drug use at hiring or randomly.

## Essential Elements of a Successful Substance Abuse Program

- Management support that starts at the top of the organization.
- A clear, written policy.
- Information, training, and resources for the education of all employees
- Prior discussion with substance abuse or laboratory professionals regarding the pros and cons of the different methods of drug testing.
- Availability of an Employee Assistance Program (EAP).
- Understanding of a "Last Chance" Agreement.
- A method to measure the impact of the substance abuse policy.
- Management discussion of the risks of having and using a substance abuse policy and the benefits a policy provides.

There are a variety of employer resources available through Oregon's Labor and Industries Bureau. From their web site under Technical Assistance for Employers/Drug Testing ([http://egov.oregon.gov/BOLI/TA/T\\_FAQ\\_Drugtesting.shtml](http://egov.oregon.gov/BOLI/TA/T_FAQ_Drugtesting.shtml)), they list a frequently asked question and four tips for conducting drug tests.

**Question:** The job performance of a member of my office staff recently has not been up to par. Based on rumors I've heard from my other employees, I suspect that this employee may be using illegal drugs. Can I require this employee to submit to a drug screen? What are the rules for drug testing employees?

**Answer:** The Oregon civil rights laws don't specifically address drug testing of employees. But the absence of specific statutes in this area doesn't mean that employers have carte blanche to conduct drug tests in every situation. In fact, while it's generally legal for employers to conduct drug tests, you should proceed very carefully, because this type of testing can infringe on an employee's constitutional privacy rights. So how can you conduct drug tests without landing your company on the wrong end of a lawsuit? Here are a few tips:

**Have a clear policy.** Your first step is to implement a clear written policy on drug testing and to fully explain the policy to all your employees. Work with your employment law attorney and a qualified laboratory testing service to draft a legal policy that advises employees they could be subject to testing.

**Articulate your standard for testing.** Advise employees how they can be selected for testing. Although some employers may choose to test randomly, many employment attorneys suggest that you limit testing to situations where there is "cause" (when the employer has reasonable suspicion of drug use), or when an employee is involved in a workplace incident or accident.

**Apply your policy consistently.** To avoid charges of discrimination or wrongful discharge, enforce your drug testing policy in a fair and consistent manner. If you test employees randomly, be certain you can document that your selection methods are truly random. If you test employees "for cause," be certain you can articulate the facts (not merely rumors or gossip), which gave you reasonable suspicion of an employee's drug use.

You can set different drug testing standards for different classifications of workers, as long as your standards are based on business reasons. For example, you might decide to set higher drug testing standards for your delivery drivers than for your clerical staff.

Obviously, it would be discriminatory to drug test only your Asian employees, or only your female employees, or only your employees over 40 years old. Likewise, you should realize that employees who suffer on-the-job injuries fall into a protected class, and thus it would be discriminatory to drug test only employees who get hurt at work. So if you test employees based on their involvement in a work-related accident, you ought to test all employees involved, regardless of whether they were injured.

**Provide advance notice.** It's typically recommended that you provide your current employees with at least 30 days advance notice before starting a new drug-testing program. Without such notice, your employees have a "reasonable expectation of privacy," an expectation that they'll be free from drug testing in the workplace. Spring a surprise drug test on an employee without a drug testing policy in place, and you may get a surprise of your own — in the form of a lawsuit.

If you do drug test employees in a proper manner, you can discipline or terminate employees who screen positive for current use of illegal drugs, because such individuals are not protected by the ADA or Oregon disability laws.

In your situation with any employee, ask yourself the following questions: Did we previously advise the employee that our company has a drug testing policy? Did we explain in the policy that employees could be tested "for cause?" Did we give sufficient advance notice of the policy? Do we really have reasonable suspicion to believe that the employee is using illegal drugs?

If you answered "no" to any of these questions, watch out! Instead of requiring a drug test, you'll be much safer addressing the employee's specific performance deficiencies by following your regular disciplinary policies. If the employee is arriving late for work, acting in a bizarre or inappropriate manner, or simply not completing his/her job duties on time, focus on those issues and apply your existing discipline rules as you would with other employees.

## Selecting a Testing Laboratory

There are a number of medical and clinical laboratories located in the state and around the region. It is important that the laboratory that analyzes specimens collected for your testing policy is certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) under the authority of the U.S. Department of Health and Human Services. This certification ensures the total quality process for testing and their benchmarks will stand up in any court of law.

In Oregon, the Oregon Department of Human Services Health Services has mandated that drug testing laboratories pass even more rigid quality control measures than required by SAMHSA. Consequently, all laboratories doing this business in Oregon exceed the SAMHSA standards.

If you are doing business in another state, you should contact SAMHSA to determine which laboratories are certified and serving areas outside of Oregon.

You can also access SAMHSA's Certified Laboratory list by typing this web address in your Internet browser:  
[http://dwp.samhsa.gov/DrugTesting/Level\\_1\\_Pages/CertifiedLabs.aspx](http://dwp.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.aspx)

## What do the Various Laboratory Certifications Mean?

Certification requires adherence to specific written standards for sample preparation, testing, and reporting. There must be detailed record keeping and minimal standards for personnel training. Periodic on-site inspections are required. CLIA (Clinical Laboratory Improvement Act, 1988) is a set of federally mandated standards for laboratories which perform medical testing, including drug testing ordered by medical personnel. Substance Abuse and Mental Services Administration (SAMHSA) has created a laboratory inspection program for those labs involved in federally mandated testing. Examples include federal government employees and individuals licensed through the U.S. Department of Transportation. College of American Pathologists (CAP) provides a voluntary inspection and certification program for non-federal testing facilities. Guidelines cover the five SAMHSA drugs, as well as all other drugs which are tested by a particular laboratory. Choosing a certified laboratory will ensure that minimum standards are met and that outside experts are overseeing quality.

## **Certified Drug Testing Laboratories in Oregon**

### **Oregon Medical Laboratories (OML)**

**722 East 11th Avenue  
Eugene, OR 97401**

**1-800-826-3616, ext. 8082**

Oregon Medical Laboratories (OML) is certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) under the authority of the U.S. Department of Health and Human Services for forensic urine drug testing. Of the estimated 300,000 testing laboratories in the United States, approximately 49 are certified by DHHS/SAMHSA. In addition to the federal certification, OML is accredited by the College of American Pathologists for forensic urine drug testing. OML's certification ensures the highest quality and accuracy for all drug testing. OML can help establish collection sites for employers in all parts of the state.

### **Legacy MetroLab**

**1225 NE Second Avenue  
Portland, OR 97232**

**503-413-5295 or toll free at 1-800-950-5295**

Legacy MetroLab is certified by the United States Substance Abuse and Mental Health Services Administration (SAMHSA) and is accredited by the College of American Pathologists for forensic urine drug testing. Offices are staffed 24 hours a day on weekdays and until 4:30 p.m. on Saturdays to serve customer needs in toxicology and substance abuse testing, as well as emergency medical toxicology, therapeutic drug monitoring, and industrial biological testing services. Drug-testing collection sites are conveniently located throughout the Portland/Vancouver metropolitan area. Additional collection sites can be established for employer convenience.

## Substance Abuse Policy and Drug Testing Resources

There are a lot of issues to consider when setting up a workplace drug testing program and establishing your policies and procedures. The following list represents just a few of the many organizations in Oregon that are available to walk you through the maze of legalities, connect you with the proper resources, and help you implement a successful program.

### **A Work Safe Service**

200 Hawthorne Ave. SE, Suite C-306  
Salem, OR 97301  
Deb Bliven & Mike Bliven  
Phone: (503) 391-9363  
Fax: (503) 316-9110

### **OML DrugFREE™**

722 E 11<sup>th</sup> Ave.  
Eugene, OR 97401  
(800) 826-3616, ext. 8082  
[www.omlabs.com/drugtest\\_2.html](http://www.omlabs.com/drugtest_2.html)  
[info@omlabs.com](mailto:info@omlabs.com)

### **Bio-Med Testing, Inc.**

1952 McGilchrist St. SE  
Salem, OR 97302  
Candice Phillips  
(503) 585-6654  
(800) 434-6654  
[www.bio-medtesting.com](http://www.bio-medtesting.com)  
[info@bio-medtesting.com](mailto:info@bio-medtesting.com)

### **Serenity Lane Employer Services**

616 E 16th Ave.  
Eugene, Oregon 97401  
Jerry Gjesvold  
(541) 687-1110  
(800) 543-9905  
[www.serenitylane.com](http://www.serenitylane.com)

### **Workdrugfree**

711 SW Alder Street, Suite 200  
Portland, OR 97205  
Chris O'Neill  
(541) 344-1232  
[www.workdrugfree.org](http://www.workdrugfree.org)  
[coneill@workdrugfree.org](mailto:coneill@workdrugfree.org)

### **Oregon Partnership: Preventing Substance Abuse**

6443 SW Beaverton-Hillsdale Hwy., Suite 200  
Portland, OR 97221  
(503) 244-5211  
(800) 282-7035  
[www.orpartnership.org](http://www.orpartnership.org)  
[info@orpartnership.org](mailto:info@orpartnership.org)

## Finding the Right Help: Employment Law Attorneys

The best way to confirm that you have the correct substance abuse policies and programs in place is to have them reviewed by an employment law attorney.

If you do not have an established relationship with an employment law attorney, there is a free referral service available in Oregon called the Lawyer Referral Service (LRS). LRS clerks refer clients to member attorneys based on location, area of law, and special services offered. The service receives roughly 250 calls per day and refers one-third to community organizations, Tel-Law, or other resources. Approximately 1,500 private attorneys participate in Oregon's LRS program.

When a client calls for a referral, they will be given the name and phone number of an attorney in the area where they need assistance. **If the client is referred to an attorney through the LRS, they will receive their first in-office consultation for a nominal fee.** Any additional fees must be arranged between client and attorney. The referral service does not set a limit on the fees attorneys charge beyond the initial consultation.

If you are unsure of the need to speak with an attorney, you may still want to call the service. LRS staff can help you focus on the type of assistance you may need or give you more information on OSB, government, and community service programs that may be able to assist you. LRS can be contacted toll-free at (800) 452-7636.

## Defining a Clear Policy

A policy can restrict activities or direct actions of employees provided:

- The policy has a legitimate business purpose.
- Employees are properly notified of expectations before actions are taken in response to the policy.

The policy must also list:

- Prohibited activities.
- What actions the company may take to insure these activities are not present in the workplace.
- What an employee can do to avoid sanctions when in violation of the policy (such as voluntary treatment plans).
- Definitions of key terms used in the policy.

## Notice of Pre-Employment Drug Screening Policy

The problem of alcohol and other drug use and abuse is pervasive in our society.

\_\_\_\_\_ and all of its employees are committed to providing a safe and productive work environment free of such use and abuse. In order to maintain this commitment, the company requires a pre-employment drug test of all job applicants who are otherwise qualified to assume the positions for which they are applying. Passage of such a test is a condition of hire.

\_\_\_\_\_ **will not hire an individual who tests positive for the illegal use of a controlled or synthetic substance or the use of alcohol in excess of established threshold levels.**

- At an appropriate time in the interviewing process, an otherwise qualified applicant will be required to comply with all practices outlined by the specimen collection agency to validate a true and accurate drug test. Signing the consent form is part of required practices. At the clinic, the applicant will be required to present a reliable personal I.D. A sample of his or her urine will then be taken and testing of the sample will be performed. The company will notify the applicant if he or she has not satisfied the drug test requirement for employment and is not eligible for further employment consideration.

**Note: the following will be deemed to constitute a positive test, resulting in disqualification from further consideration for employment:**

- **A refusal to go to, or a failure to show up at, the clinic for a physical as scheduled;**
- **A refusal or a failure to present a reliable personal photo i.d. at the time of the physical test;**
- **A refusal or failure to produce a urine specimen under the guidelines of the clinic;**
- **A refusal to provide to clinic or collection site representative(s) a list of current medications being used so appropriate use of the medication(s) can be validated; or**
- **A refusal to sign and date the consent form authorizing the taking of a sample, its testing, and release of test-related information to the company.**

Questions regarding this policy should be directed to \_\_\_\_\_.  
(company contact)

Note: Your submittal of the application confers understanding and agreement with the above statement.

## Applicant's Statement

I certify that answers given herein are true and complete. I authorize investigation of all statements contained in this application for employment as may be necessary in arriving at an employment decision.

This application for employment shall be considered active for a period of time not to exceed \_\_\_\_\_ days.

I hereby understand and acknowledge that, unless otherwise defined by applicable law, any employment relationship with this organization is of an "at will" nature, which means that the Employee may resign at any time and the Employer may discharge Employee at any time with or without cause.

It is further understood that this "at will" employment relationship may not be changed by any written document or by conduct unless such change is specifically acknowledged in writing by an authorized executive of this organization.

In the event of employment, I understand that false or misleading information given in my application or interview(s) may result in discharge.

I understand, also, that I am required to abide by all rules and regulations of the employer. If employed by \_\_\_\_\_, I understand that the first \_\_\_\_\_ days of my employment is a probationary period.

**Note:** The Applicant's Statement must be signed and submitted at the time your employment application is submitted.

Applicant's Name: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

## Drugs, Alcohol, and Contraband Policy: Sample 1

### **I. OBJECTIVE**

This policy establishes guidelines to provide a safe, healthy, and secure work environment for employees and other individuals doing business with the Company.

### **II. SCOPE OF POLICY**

All individuals are subject to this policy while they are in facilities or on property owned, controlled, or operated by the Company ("Company premises"), while on Company business, acting as an agent of the Company, under the direction or control of the Company, or representing the Company even while not on Company premises.

### **III. PROCEDURES**

It is the policy of \_\_\_\_\_, to strictly prohibit the manufacture, distribution, dispensing, possession, use, and/or sale of a controlled substance, by any individuals while on Company premises. This policy includes any of the following:

- Illegal or unauthorized drugs (including improper use that would include combinations of, amounts, frequencies, etc. of prescription or over-the-counter drugs) and any other chemical substances that may affect an individual's mood, senses, responses, or motor functions, or alter or affect a person's perception, performance, judgment, reactions, or senses.
- Prescription or over-the-counter drugs that may adversely influence performance or behavior when taken in unprescribed quantities.
- Drug-related paraphernalia.

Unless specifically authorized by the Company, the carrying, use, or possession of the following items is also prohibited while on Company premises:

- Firearms, explosives, fireworks, or ammunition.
- Alcohol or intoxicating beverages.

It is also the policy of \_\_\_\_\_, to strictly prohibit employees and others working on Company premises from reporting to work or working under the influence of detectable levels of unauthorized or illegal drugs and/or alcoholic beverages.

### **IV. DEFINITIONS**

Area testing is the testing of all covered persons present at a location or in a geographic area.

Covered persons are all persons who are in facilities or on property owned, controlled, or operated by the Company.

The Company may employ a licensed physician, with sufficient knowledge of the subject of substance abuse, to assist the company in interpreting the results of drug tests at its discretion.

Covered premises include all property, offices, facilities, land, buildings, structures, fixtures, installations, automobiles, trucks, and all other vehicles and equipment, whether owned, leased, rented, or used by the Company, including its affiliates and subsidiaries.

Company premises shall also refer to all customers' properties and any other work locations, or mode of transportation to and from those locations, while engaged in the course and scope of employment with , and/or its subsidiaries.

Drug-related paraphernalia is any material or equipment used or designed for use in testing, packaging, storing, injecting, ingesting, inhaling, or otherwise introducing into the human body any illegal or unauthorized drugs covered by this policy.

Drugs, for the purposes of this policy, include alcohol, legal and illegal controlled substances, narcotics, hallucinogens, depressants, stimulants, inhalants, and other substances capable of creating or maintaining effects on one's physical, emotional, or mental state, such as marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. Any such drugs may be included in the testing program.

Illegal drugs are drugs for which the use, sale, or possession is prohibited by law.

## **V. TESTING PROGRAM**

To meet the objectives of this policy, the Company will maintain a drug-testing program that includes the following.

### **Notification**

The testing program was implemented and has been in effect since \_\_\_\_\_ (date)

### **For-cause testing**

The Company may require a for-cause drug test for a variety of incidents. If a drug test for cause becomes necessary for an employee, the employee will be immediately suspended with pay until a full evaluation has taken place and an appropriate course of action is determined. No prior notice is required to test for cause.

### **Post-accident testing**

The Company may require a post-accident drug test of all covered persons near the scene following an on-the-job accident or incident. Covered persons may be suspended with pay until a full evaluation has taken place and an appropriate course of action is determined.

### **Area testing**

The Company may conduct an area test. An area test may be used where there is an indication that drugs may be in use or there is a potential for damage caused by drug use.

### **Confirmation test**

1. A confirmation test will be conducted on every positive test result before the testing laboratory notifies the Company. A confirmation test is a test conducted with greater sensitivity for the identification and level of any drug (except alcohol) present in the original sample provided.
2. Testing for alcohol generally will be through a calibrated breath scan instrument by a person trained in the calibration and operation of the instrument. If the instrument detects a blood alcohol level greater than .02, the employee will be tested again 15 minutes later. If the second test also detects a blood alcohol level greater than .02, the employee will be considered impaired.
3. The effects of the various blood alcohol levels are:
  - a) An alcohol test of .02 or greater, but less than .08 will result in removal from the work site for 24 hours and a minimum of a one-day suspension without pay.
  - b) An alcohol test at .08 or above will be considered a drug test failure with discipline to be determined on a case-by-case basis.

Nothing in this policy limits \_\_\_\_\_ (Company's name) \_\_\_ rights to determine what disciplinary action, including termination, is appropriate in the event any level of alcohol is found.

### **Testing laboratory**

All drug tests will be analyzed by a laboratory certified by the National Institute on Drug Abuse under the U.S. Department of Health and Human Services.

### **Testing procedures**

1. If an employee's drug test result is confirmed to be positive (in excess of the levels established by applicable federal or state regulations or Company standards), the testing laboratory will notify the Company of the test result.
2. A Company doctor, if designated by the Company, or other Company representative may contact the employee to determine whether there is a legitimate explanation for the confirmed positive test result.
3. Only those persons with a "need to know" will be provided information regarding a drug test and/or its results, consequences, and status.

Nothing in these procedures or this policy in any way limits the Company's right to take disciplinary action, including termination, as a result of a confirmed positive drug test of an employee.

### **Refusal to test**

Any individual refusing to be tested will be deemed to have failed the drug test and will be removed from Company premises. Employees will be subject to disciplinary action, up to and including termination of employment.

### **VI. SEARCH OF COMPANY PREMISES**

\_\_\_\_\_ (Company's name) reserves the right to conduct searches of all covered premises at any time, and employees are required to cooperate with such a search.

### **VII. MANDATED DRUG TESTING**

Federal law and regulations require specific drug testing for certain categories of employees. The Company will comply with all such federally mandated testing, including conducting:

- For-cause testing.
- Post-accident testing.
- Random testing required by the Department of Transportation/Federal Highway Administration.

### **VIII. GENERAL PRACTICES**

#### **Company and management responsibility**

Every supervisor is required to provide a safe and effective working environment and to support the well-being of each employee through awareness, education, and appropriate training of drug and alcohol issues.

#### **Disciplinary action**

Employees violating this policy will be subject to disciplinary action up to and including termination. Under this policy, all such disciplinary action, other than a temporary, indefinite, or paid leave of absence, requires joint review and approval by the \_\_\_\_\_ (owner, president, CEO, general manager, legal counsel, etc.) before implementation.

#### **Employees charged with or convicted of an unlawful drug activity**

Any employee who is convicted of an activity involving an illegal drug either on or off Company premises is in violation of this policy. Any employee who is convicted under a criminal drug statute must notify the General Counsel of \_\_\_\_\_ (Company's name) in writing of such conviction no later than five calendar days after the conviction. In deciding what disciplinary action to take, the Company may take into consideration:

- The nature of the offense charged.
- The safety requirements of the employee's present job assignment.
- The employee's record with the Company.
- The employee's statement of facts.

- The disposition of the charge.
- The impact of the offense on the Company and other relevant factors.

The Company may take disciplinary action before and/or after final disposition of the charges.

#### **Leaving the work site**

The Company may arrange transportation to a collection site if the company feels that there is risk of harm to self or others during transportation of the test subject.

#### **Medication**

Any employee taking medication should consult a medical professional to determine whether the drug may affect his or her personal safety or ability to perform the essential functions of the job and should advise his or her supervisor of any job limitations. Upon notification of job limitations, \_\_\_\_\_ (Company's name) \_will make reasonable efforts to accommodate the limitation. The employee may be subject to provisions of the Unpaid Leave of Absence policy.

#### **On-the-job drug use, sale, possession, or distribution**

Any employee found to use, sell, possess, or distribute any illegal or unauthorized drugs (including excessive quantities of prescription or over-the-counter drugs) while on the \_\_\_\_\_ (Company's name) \_\_\_\_\_ premises, performing Company-related duties, or while operating any \_\_\_\_\_ (Company's name) \_ equipment, is subject to disciplinary action, up to and including termination of employment. Any suspected illegal drug confiscated will be turned over to the appropriate law enforcement agency.

#### **Limitation**

To the extent any federal, state, or local law, rule, or regulation limits or prohibits the application of any provision of this policy, then to the minimum extent necessary and only for that geographical area, this policy is deemed to be amended to be in compliance.

## Substance Abuse Policy Acknowledgement/Release

I hereby consent to submit to urinalysis and/or other tests as shall be determined/ required by \_\_\_\_\_ (Company's name) (hereby referred to as "the Company") for the purpose of determining any drug and/or alcohol content thereof.

I agree that {enter Laboratory Name} (a certified lab) or other designated collection site may collect these specimens for these tests and may test them or forward them for analysis to a certified testing laboratory designated by the company.

I further agree to and hereby authorize the release of the results of said tests to an authorized medical review officer (MRO), the Company, or authorized agent of the Company.

I further agree a reproduced copy of this consent and release form shall have the same force and effect as the original.

I further agree to hold harmless the Company and its agents (including the above named laboratory and the collection site) from any liability arising in whole or part out of the collection of specimens, testing, and use of the information from said testing in connection with the Company's consideration of my employment, or my employment application (if a candidate for employment).

I understand it is the current, illegal use of drugs and/or abuse of alcohol that would prohibit me from being employed at this Company. Applicants for employment will be tested for the use of illegal drugs, whereas employees can be tested for the use of illegal drugs and alcohol.

I also hereby certify that I have received and read the Substance Abuse Policy Statement and have had the drug-free workplace program explained to me. I understand that if my performance indicates it is necessary, I will submit to a drug and/or alcohol test. I also understand that failure to comply with a drug and/or alcohol testing request or a confirmed positive result for the illegal use of drugs and/or alcohol will lead to discipline up to and including termination of employment.

I have carefully read the foregoing and fully understand its contents.

Applicant/Employee: \_\_\_\_\_

Print Name: \_\_\_\_\_

Employee Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness Printed Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

*This form will become part of my personnel file.*

## Substance Abuse Policy: Sample 2

This sample alcohol and drug policy was taken with permission from the Oregon Business Council's "Fightback Against Drugs — A Guidebook for Employers." The policy was developed in September 1990 and updated in August 1996 by Paula A. Barran; Lane Powell Spears Lubersky, Attorneys at Law, Portland, Oregon.

### Company Statement

The Company has a responsibility to its employees, those who use or come into contact with its products, and the general public to ensure safe working conditions for its employees. To satisfy these responsibilities, the Company must establish and maintain a work environment where its employees are free from the effects of drugs, alcohol, or other job-impairing substances.

### Accordingly:

**Reporting for work or working under the influence of intoxicating liquor or having used illegal drugs, or the use or possession by an employee on company premises, property, or during work time of an intoxicating liquor, controlled, or illegal substance, a drug not medically authorized, or any other substances which impair job performance or pose a hazard to the safety and welfare of the employee, the public, or other employees, or the sale of any such item, is strictly prohibited and will result in immediate disciplinary action, including termination. For the purposes of this policy, "work time" shall include lunch and rest periods.**

- Each employee must report the use of medically authorized drugs or other substances that can impair job performance to the Human Resources Department and provide proper written medical authorization from a physician to work while using such authorized drugs.
- It is the employee's responsibility to determine from the physician whether or not the prescribed or authorized drug would impair his or her job performance. Any failure to report the use of such drugs or other substances, or failure to provide proper evidence of medical authorization, can result in disciplinary action.
- Where the Company has a reasonable suspicion that an employee is under the influence of alcohol or drugs, the employee in question will be asked to submit to discovery testing to identify any involvement with alcohol or drugs. Any accident involving property damage or physical injury may also be cause for discovery testing for drugs and alcohol. In addition to the individualized testing based upon reasonable suspicion, the Company may require all employees to submit to discovery testing at unannounced times.
- An employee who is found to be under the influence of or impaired by alcohol, controlled or illegal drugs, or other substances covered by this policy as stated above, is subject to disciplinary action, including immediate suspension or termination.
- An employee who refuses to submit to discovery testing for illegal drugs will be subject to immediate suspension or discharge.
- The Company reserves the right to inspect and/or search all company property, and employee's personal property on company premises for intoxicating liquor, controlled or illegal substances, or any other

substances which impairs job performance. Refusal to submit to any such inspection or refusal to cooperate in any investigation will subject the employee to disciplinary action including immediate suspension or termination.

- The Company recognizes its commitment and its responsibility to its employees by seeking to provide through the Employee Assistance Program an opportunity for employees to deal with drug- and alcohol-related problems. Any employee who voluntarily requests assistance in dealing with a personal drug and/or alcohol problem may do so through the Employee Assistance Program in complete confidence and without jeopardizing his or her employment with the company. Other treatment programs for drug and alcohol problems may be available through the health and welfare providers selected by individual employees. The discontinuation of any involvement with alcohol or drugs is an essential requisite for participation in any treatment program.
- As a result of disciplinary action arising from a drug or alcohol problem, an employee may be required to participate in a drug or alcohol treatment program. An employee who is so required would first be evaluated for drug and alcohol use by an accredited professional. The cost of such an evaluation shall be paid by the company. An employee may be required to participate in follow-up care as part of a comprehensive alcohol and drug treatment program. Depending upon the nature of the conduct which led to the employee's mandated participation in an alcohol and drug treatment program, the employee may be required to submit to random blood and urine screening for alcohol and/or drugs for a specified period of time and to meet various performance standards which are imposed as a condition of continuing employment.
- The Company reserves the right to determine whether reasonable suspicion exists, the level of discipline to be applied, and whether an employee should be given the opportunity to participate in a drug or alcohol treatment program, provided, however, that its determinations shall not be arbitrary or capricious.

**For the purpose of this policy the following definitions of terms is provided:**

**Reasonable suspicion** is defined as specific articulable observations concerning such circumstances as the work performance, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee, or as being involved in an accident on company premises which results in physical injury or property damage.

**Under the influence** is defined as any detectable level of alcohol or drugs in an employee's blood or urine or any noticeable or perceptible impairment of the employee's mental or physical faculties.

**Controlled substances** are defined as all forms of narcotics, depressants, stimulants, hallucinogens, and cannabis, whose sale, purchase, transfer, use, or possession is prohibited or restricted by law.

**Over-the-counter drugs** are those that are generally available without a prescription from a medical doctor and are limited to those drugs that are capable of impairing the judgment of an employee to safely perform his or her duties.

**Prescription drugs** are defined as those drugs that are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner/ physician or dentist.

### **“Last Chance” Agreement Overview**

On occasion, an employer and a discharged employee may sign a “rehabilitation agreement” or a “last chance” agreement, under which the employer voluntarily reinstates the employee in return for a pledge to enter treatment as well as to improve job performance. Usually, the employee agrees that should he/she violate the terms of the agreement, either by failing to remain in treatment or by further misconduct at work, he/she will be terminated. Consider having the employee sign this agreement twice—once at the time of entry into treatment and once upon his or her return to work. The second time, you can attach any treatment recommendations to the agreement. An example of such an agreement is set forth below:

#### **Sample “Last Chance” Agreement: Condition of Employment**

I, \_\_\_\_\_ understand that approved leave of absence and my continued employment is based upon the following terms:

1. I agree to be evaluated by a competent authority and/or professional counselor of company choosing, and if recommended, I shall immediately enroll and continue in a bona fide alcohol/drug inpatient or outpatient rehabilitation program approved by the Company. I fully understand that should I fail to complete successfully either the inpatient or outpatient program, my employment will be terminated.
2. There is a cost for this evaluation, and I agree to pay the expense. Upon successful completion of the program outlined in this agreement, the Company will reimburse me for this evaluation expense.
3. In addition to the requirements of paragraph 1 above, I shall immediately enroll and continue in a bona fide aftercare program approved by the Company which includes joining and attending all prescribed drug and/or alcohol support group meetings for a minimum of 24 months following successful completion of the above alcohol/drug rehabilitation program. If I do not continue aftercare program and support group meetings as described, I understand that my employment will be terminated.
4. I agree to attend all meetings recommended by the alcohol/drug rehabilitation counselors as a condition of my continued employment. The Company has my permission to verify my attendance.
5. I agree to follow all of the drug/alcohol rehabilitation counselors’ instructions regarding family participation in the treatment program.
6. I understand that the signing of this agreement shall allow the Company the right to communicate with my physicians and/or counselors regarding my status and progress during rehabilitation and aftercare.
7. I agree to submit to an alcohol/drug test (blood test or urinalysis) if requested by the Company during the 24 months that I am involved in the aftercare. I understand that if I refuse to take an alcohol/drug test, refuse to cooperate in the testing, or if the tests are positive, my employment will be terminated immediately. I further understand the Company’s policy of zero tolerance (alcohol- and drug-free) dictates that if there is any measurable amount of alcohol or drugs indicated by these tests, I will be terminated.

8. Upon completion of 24 months of aftercare, my job performance and recovery progress will be reviewed, and the terms of this condition of employment may be extended an additional 12 months at the discretion of the company.
9. I understand that upon return to the workplace, I must meet all established standards of conduct and job performance and that I will be subject to the Company's disciplinary procedures for any failure to meet the standards.

The terms of this agreement are in addition to, and not a supplement to, the Company's policies and procedures.

I understand and agree that my continued employment is contingent upon my meeting satisfactorily all the above terms and that my failure to do so relinquishes any defenses on my part and subjects me to immediate termination of employment.

\_\_\_\_\_  
Employee signature for acceptance

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee signature upon satisfactory completion  
of above terms and agreement, and return to work.

\_\_\_\_\_  
Date

## Additional Samples

**The following samples can be added to your policies, procedures, and rules.**

### **Work/Job Site Rule\***

Employees shall be subject to discipline up to and including discharge for use, possession, sale, or being under the influence of alcohol or controlled substances while on company premises, or while representing or working for the company, except as authorized by a doctor. For purposes of this rule, "being under the influence of alcohol or controlled substances" means having any measurable quantity in one's system.

\* Note: This rule does not replace a drug and alcohol policy. It is just a sample rule for possible inclusion in the company's work rules or procedures.

### **Pre-employment Consent Notice**

The following information should be available to job applicants at the start of the hiring process:

"Part of the hiring process includes testing for controlled substances. If you wish to complete the application process, you must participate in such testing. You will be asked to consent at the time of the test."

### **Unexcused Absence Testing**

"Should an employee have (list number) unexcused absences in any calendar month, they may be required, at the Company's discretion, to submit to discovery testing. An unexcused absence is any absence that is not pre-scheduled, or reported to the designated company representative in accordance with the Company's attendance and absence policy."

This publication provides practical loss control and safety information to assist you in making your workplace safer. It is not legal advice. SAIF Corporation has made every effort to bring significant Oregon Occupational Safety and Health Administration (OR-OSHA) regulations to your attention. Nonetheless, compliance with OR-OSHA remains your responsibility. You should read and understand all relevant OR-OSHA regulations that apply to your job site(s). You may want to consult with your own attorney regarding aspects of OR-OSHA that may affect you.

Note: The information in this publication is time sensitive. Do not rely upon this document if its publication date is more than three years old. Please check the Employer Guide "Safety" section of our web site at [www.saif.com/employer](http://www.saif.com/employer) for a more recent, printable copy.

You'll also find a variety of other valuable safety information designed to help your business prevent injuries and control costs.