

University of Louisiana System

**Title: EMPLOYEE DRUG TESTING
POLICY**

Effective Date: January 1, 1999

Cancellation: None

Chapter: Miscellaneous

Policy and Procedures Memorandum

Purpose

The employees working within the Administrative Office of the University of Louisiana System believe that the workplace should be free from the risks associated with the use of alcohol and drugs. The System has a legitimate interest in promoting reasonable working conditions and is committed to providing a safe and healthy environment for employees and the public.

According to Louisiana Revised Statute 49:1001-1021, the System's Administrative Office is authorized to proceed with drug testing of employees. The context of this policy will be pursuant to this Statute and to the Drug-Free Schools and Communities Act of 1986, the federal Drug-Free Workplace Act of 1988, the Drug-Free Public Housing Act of 1988, the Louisiana Drug Testing Act of 1990, the Omnibus Transportation Employee Testing Act of 1991, the Federal Highway Administration procedures, Title 49CFR part 40 and part 382 et al., Louisiana Revised Statutes 23:1081 and 1601, 30:2173(2), 32:1502(5), and Executive Order MJF 98-38.

Applicability/Scope

This drug testing policy shall be implemented January 1, 1999 following notice and publication to all employees in the Administrative Office of the University of Louisiana System.

Louisiana R.S. 49:1001 defines an employee as any person, paid or unpaid, in the service of an employer. More specifically, the person may be classified, unclassified, probationary (rehabilitation), temporary or non-temporary in a safety-sensitive and/or security-sensitive position.

Following an employment offer and prior to starting work, prospective employees applying for positions that are safety-sensitive and/or security-sensitive (see Definitions in Appendix), or whose position will involve driving a commercial motor vehicle, will be required to be tested for drugs. The individual must test free of drugs as a condition of employment.

More specific clarification of definition follows as to positions covered by the policy that are defined under federal and state law. Certain employees could be subjected to testing under both federal and state laws.

Positions Defined Under Federal Law

- All current W-2 employees whose jobs require them to drive commercial motor vehicles as defined by the Drug-Free Workplace Policy (see Definitions in Appendix). The policy also applies to all persons who have made written application for positions that will require them to drive commercial motor vehicles. This group of employees and applicants is subject to drug testing pursuant to federal law (Department of Transportation/Federal Highway Administration Alcohol and Drug Testing Regulations – CFR 49).
- Conditions when employers must test employees for alcohol and/or controlled substances under federal law (see Definitions in Appendix).
Pre-employment: Prior to the first time an employee performs a safety-sensitive function, the individual must undergo testing for controlled substances. The employee shall not be permitted to perform safety-sensitive functions unless the driver has received a controlled substances test result indicating a verified negative test result.
Post-accident: For an employee with a commercial drivers license covered by the Federal Highway Administration, a post-accident test will be conducted for the employee driver of an accident involving a loss of human life or where the driver receives a moving traffic violation. A collision or occurrence meets the definition of an “accident” when the incident involves a motor vehicle operating on a public road which results in a death or bodily injury to a person who immediately receives medical

Random: Such testing shall be conducted for employees in safety-sensitive and security-sensitive positions or participating in a rehabilitation program utilizing a fair and equitable method of selection.

Pursuant to LA R.S. 49:1015, employers are prohibited from permitting a driver who uses drugs to perform safety-sensitive functions. A driver who tests positive for drugs with a 0.04 or greater BAC is prohibited from driving. The prohibition remains in effect until the driver complies with requirements of Section 382.605, including evaluation by a SAP. A driver who is prohibited from performing safety-sensitive functions may be assigned to non-safety-sensitive functions until such time as the driver complies with the requirements for returning to duty. For controlled substance testing, urine specimen collection and testing by a certified lab is required.

Following a determination that an employee has tested 0.04 BAC or greater for controlled substances, the employee must be removed from safety-related functions and cannot return to such functions until at a minimum:

- a. the employee undergoes evaluation, and where necessary, rehabilitation,
- b. a substance abuse professional determines that the employee has successfully complied with any required rehabilitation, and
- c. the employee takes a return-to-duty test with a verified negative test result.

Pursuant to LA R.S. 49:1008, a prospective employee who tests positive for the presence of drugs in the initial screening shall have the employment offer rescinded. Refusal to submit to a pre-employment post-hire job offer test will result in the individual not being hired. A driver who refuses to submit to a return-to-duty test will not be allowed to return to duty. A second test confirmed positive will result in termination of employment.

The FHWA will disqualify drivers for one year, pursuant to CFR 49.386, if the driver refuses to submit to a post-accident test after a fatal accident.

When a required test has not been administered within a reasonable time frame following an accident for which a test is required, the following actions shall be taken:

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| 2 hours elapsed: | Driver has not submitted to an alcohol test, employer shall prepare and maintain on file a record stating the reason a test was not promptly administered. |
| 8 hours elapsed: | Cease attempts to administer alcohol test, and prepare and maintain records as described above. |
| 32 hours elapsed: | If driver has not submitted to a controlled substance test at this time, cease attempts to administer the test, and prepare and maintain the record described above. |

A driver subject to post-accident testing must remain available, or the employer may consider the driver to have refused to submit to testing. The driver subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

Confidentiality

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Review Process:

Campus Human Resource Directors
Board of Supervisors
University Presidents
Legal Counsel

Distribution:

University Presidents

Appendix A

Federal and State Definitions

CAP-FUDT Laboratory – NIDA Laboratory [SAMSHA] (LA R.S. 49:1001)
Certified laboratory for forensic drug

Drug Testing Services (LA R.S. 49:1005 and Executive Order No. MJF 98-38)

Procurement of laboratory services by a certified laboratory shall be provided through the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws.

Expenses for testing services will be encumbered by the System Office. Expenses for second testing may be the responsibility of the employee.

Employee (LA R.S. 49:1001)

Any person, paid or unpaid, in the service of an employer.

Employer

(LA R.S. 49:1001)

purpose for which they were prescribed or manufactured in the appropriate amount.

Job-Related Accident/Incident

waste as defined in R.S. 30:2173(2) or hazardous materials defined in R.S. 32:1502(5).

Public Vehicle (LA R.S.49:1015(F))

Any motor vehicle, watercraft, aircraft, or rail vehicle owned or controlled by the state.

Random Testing (LA R.S. 49:1015)

Employees whose positions are safety- and security-sensitive are eligible for random drug testing for alcohol and controlled substances at all times. A non-discriminating method shall be used to select employees for testing.

Reasonable Suspicion (LA R.S. 49:1015)

Belief based upon reliable, objective, and articulable observation regarding the appearance, behavior, speech, or body odors of an individual and being of sufficient import and quantity to lead a prudent person to suspect that an employee is in violation of this policy. Such determination should be confirmed by a second employee when possible. Recommendation to test will be in writing and will describe the behavior and circumstances observed.

Refusal to Submit (CFR 382.107)

A driver (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

Safety-sensitive or security-sensitive position

(LA. R.S. 49:1015)

Includes positions where (1) a hazardous condition or practice in the workplace could result in a potential danger which could reasonably cause death or physical harm to individuals, (2) there is access to or there is handling of hazardous wastes or drugs, (3) public safety demands that employees carry deadly weapons in the course and scope of their duties and must be prepared to make clear-headed instant decisions that could cause injury or death or (4) individuals handle drugs. Positions in this area would include nurses, nurse supervisors, police officers, or security guards.

(CFR 382.107)

Any of those on-duty functions set forth in 395.2 On-Duty Time, paragraphs (1) through (7) as follows: all time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer; all time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR's), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; all time spent at the driving controls of a commercial motor vehicle; all time other than driving time,

spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth); all time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Sample (LA R.S. 49:1001)

Urine, blood, saliva, or hair.

Sample Collection (R.S. 49:1006)

Procedures as dictated by state law.

Split Sample (LA R.S. 49:1001)