

# MISSISSIPPI STATE UNIVERSITY DRUG AND ALCOHOL FREE WORKPLACE POLICY

## INTRODUCTION AND PURPOSE

Mississippi State University implements this drug and alcohol policy and conducts a testing program pursuant to Sections 71-7-1, *et seq.*, of the Mississippi Code of 1972, Ann., entitled “Drug and Alcohol Testing of Employees” (hereinafter referred to as “the Act”), and you are hereby advised of the existence of said Act. The use and abuse of illegal drugs and alcohol is a serious and growing problem throughout the United States. A substance abuse policy and substance testing policy has been implemented in response to concern that the use and abuse of illegal drugs and alcohol by employees in, and applicants for, certain employment presents, among other things, serious safety and security risks. The Mississippi Legislature has supported the implementation of drug and alcohol free workplace policies by enacting the Act.

## POLICY

University employees expect to work in a drug-free environment. The University expects its employees to be free from the effects of alcohol and drugs while on the job or in the workplace. This policy is intended as a vehicle to aid in meeting these expectations.

If an employee believes that he or she has a problem with alcohol or drugs or if substance abuse is causing problems in his or her life, that employee is requested to please review the information regarding outside resources available to the employee as posted on the Human Resources Management Web site ([www.hrm.msstate.edu](http://www.hrm.msstate.edu)).

## Confidentiality

All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the University through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the Act and this policy. Any information obtained by the University pursuant to the Act and these regulations shall be the property of the University. The University shall not release to any other person other than the applicant, or employer medical, supervisory or other personnel, as designated by the University on a need to know basis, information related to drug and alcohol test results unless: (a) the employee or job applicant expressly, in writing, granted permission for the University to release such information; it is necessary to produce a confirmed test result into an administrative hearing under applicable state law or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an

employee; or there is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information. The confidentiality provisions provided for by the Act shall not apply to other parts of an employee's or job applicant's personnel or medical files. If an employee refuses to sign a written consent form for the release of information to persons as permitted by the Act, the University shall not be barred from terminating or disciplining the employee.

### **Notice of Currently or Recently Used Prescription or Nonprescription Drugs**

An employee to be tested shall be given (1) a medication disclosure form to permit the employee to disclose any non-prescription or prescription medications that have been taken within the last forty-five (45) days which may result in a positive test result, and (2) a statement that the form shall be submitted directly to the laboratory in order that the University has no access to the information disclosed on the form. The procedure for submission of the form shall ensure that no person other than the laboratory has access to the information disclosed on the form.

### **Testing Policy for Employees**

Employees may be required to undergo testing for the presence of unlawful drugs and controlled substances, based on one of the following circumstances:

1. Follow-up To and as a Part of Rehabilitation Testing; Testing Pursuant to Special Contract: The University may require an employee to submit to neutral selection or routine drug and alcohol tests if the employee, in the course of his/her employment, enters a drug abuse rehabilitation program, and as a follow-up to such rehabilitation; or if previous drug and alcohol testing of the employee within a twelve-month period resulted in a positive confirmed test result; or the drug and alcohol test is conducted in accordance with the terms of an applicable agreement; or if an employee is performing services pursuant to a contract that permits drug and alcohol tests on a neutral selection or routine basis. If an employee is participating in drug abuse rehabilitation, then drug and alcohol testing may be conducted by the rehabilitation provider as deemed appropriate by the provider.
2. Testing Pursuant to Department of Transportation Regulations (DOT): For those employees subject to regulation by the United States Department of Transportation (i.e., those employees whose job requires a Commercial Drivers' License), the University will follow its Policy HRM 60-121, Controlled Substances and Alcohol Use Testing of Employees with a Commercial Drivers' License.
3. (Testing Pursuant to the Drug Free Workforce Act: For those employees working in sensitive positions on grants and/or contracts (a) funded by the U.S. Department of Defense (DOD) and its branch agencies and (b) that contain the provisions of the DOD Drug-Free Workforce Rule of 1988. These persons are subject not only to the

Drug-Free Workplace Act of 1988, but also to the more stringent regulations of the DOD Drug-Free Workforce Rule of 1988 as described in the DFARS at Section 23.7500 and its associated contract clause, 52-233-7500. This Rule covers all controlled substances included in Schedules I and II, as defined in 21 U.S.C. 802(6), specifically, opiates, marijuana, cocaine, amphetamines, and phencyclidine (PCP) proscribed by Section 2.3 of Subpart B of the Mandatory Guidelines for Federal Workplace Drug Testing Programs, also known as the NIDA (National Institute for Drug Abuse) guidelines when testing for cause. The University will follow its Policy HRM 60-119, Drug Free Workforce.

4. Reasonable Suspicion of Drug or Alcohol Use: Testing based on reasonable suspicion of drug and alcohol use means drug and alcohol testing based on a belief that an employee is using or has used drugs or alcohol in violation of this policy drawn from specific facts and reasonable inferences drawn from those facts, and may be based upon, among other things:
  - (a) Observable phenomena, such as direct observation of drug or alcohol use while working or while on the University premises;
  - (b) A report of drug use provided by reliable and credible sources and which has been independently corroborated;
  - (c) Evidence that an individual has tampered with a drug and alcohol test during employment with the University;
  - (d) Evidence that an employee is involved in the use, possession, sale, solicitation or transfer of drugs while working or while on the University premises or operating a University vehicle, machinery, or equipment.

**Definitions** Testing Specimen - employees undergoing testing shall be required to give a "Specimen," which means a tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

#### Positive Alcohol Test Levels

- Under age 21 – 0
- Over age 21 - .04 or greater

#### **PROCEDURE**

This policy requires that a Drug Free Workforce Committee consisting of representatives from MSU staff, faculty, HRM, administration, and appropriate health and substance use counselors be established to clarify criteria for "reasonable suspicion of drug or alcohol use", and to provide general oversight over the manner in which the policy is implemented. This committee will total no fewer than five members and no greater than ten members of these constituencies. The members of the committee will

be appointed annually by their respective organizations (i.e., HRM, Staff Council, Holland Faculty Senate, MSU Administration, and appropriate health professionals who are knowledgeable about drug and alcohol abuse). The committee will perform the following duties:

- a) Detail the sorts of evidence that can be used and should be used to establish “reasonable suspicion of drug or alcohol use”, and advise those persons responsible for making such a determination.
- b) Monitor the policy and its implementation, the number and nature of charges made against MSU employees under the policy, and the disposition of these cases. This includes the outcome of drug or alcohol testing as well as any remediation plans or disciplinary actions that may be developed for employees who test positive for drug or alcohol use. The Drug Free Workforce Committee will develop a mechanism that tracks the number and disposition of cases brought under the policy, and will submit an annual summary report to all constituencies represented on the committee. A model for this report is the annual form used to report the number and disposition of post-tenure review cases that went forward to the remediation phase under the existing Post-Tenure Review Policy (See OP 01.21). This oversight will NOT include the identity of any employee who has been charged, tested, counseled, or sanctioned under the policy. All documentation will be archived in HRM and redacted copies which protect the identity of employees will be periodically reviewed by the Drug Free Workforce Committee as part of its oversight function and to craft the annual report.

### **Testing Procedures**

The University shall follow the guidelines and procedures for its testing and confirmation testing as established by the Mississippi State Board of Health on April 9, 2003, or amended thereafter, a copy of which is available for inspection in the Department of Human Resources Management, Mississippi State University.

### **Consequences of a Positive Test**

An employee who tests positive with respect to an unlawful drug or alcohol may be temporarily suspended or transferred to another position. Once the test is confirmed according to the Act, the University may respond in the following manner, and it retains the right, in its sole discretion, to take appropriate corrective or disciplinary actions, up to and including termination.

### **Refusing to Submit to Testing**

In the event an employee refuses to submit to a drug and/or alcohol test pursuant to this policy, the University may respond in the following manner, and it retains the right, in its

sole discretion, to take appropriate corrective or disciplinary actions, up to and including termination.

## **REVIEW**

The Director of Human Resources Management is responsible for review of this policy as needed but no less frequently than 4 years.

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Recommended by:

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Director of Human Resources Management

05-20-08  
Date

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05-27-08  
Date

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05-27-08  
Date

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General Counsel

06-05-08  
Date

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/s/ Vance H. Watson  
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07-28-08  
Date