

# KANSAS ADJUTANT GENERAL'S DEPARTMENT

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## MEMORANDUM FOR ALL STATE EMPLOYEES

FROM: TAG-SHRO

SUBJECT: Substance Abuse Testing Program  
TAG Policy No. 034-08

EFFECTIVE DATE: July 10, 2017

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**POLICY STATEMENT:** It is the policy of the Adjutant General's Department to comply with the State of Kansas Drug Screening Program for positions which have been designated as safety-sensitive positions, including State Resource Protection Officers and Law Enforcement Officers who are required to carry firearms.

### **DEFINITIONS:**

**Candidate.** An individual offered employment in or being prompted, demoted, or transferred to a designated position is a Candidate.

**Condition of Employment.** Requirements of a position that applicants and employees must meet in order to obtain employment or maintain employment is a Condition of Employment.

**Confirmed Positive Result.** The presence of an illicit substance in pure form or its metabolites at or above the specified cutoff level identified in two consecutive tests which employ different test methods is a Confirmed Positive Result.

**Designated Positions.** Positions subject to the drug screening program due to the safety-sensitive nature of the work required are Designated Positions.

**Employee Assistance Program (EAP).** A program provided for State of Kansas benefits eligible employees and their dependents which provides information, short-term counseling, advice, and referrals from licensed professionals is the Employee Assistance Program.

**Medical Review Officer.** A licensed physician, with knowledge of substance abuse and appropriate medical or forensic training, who reviews and interprets positive results of confirmation test and evaluates those results together with medical history or other relevant biomedical information to confirm results is a Medical Review Officer.

**Negative Test Result.** The absence of an illicit substance in pure form or its metabolites in sufficient quantities to be identified by either an initial screen or confirmation test or as determined by the Medical Review Officer is a Negative Result.

**Positive Test Result.** A confirmed positive result is considered failure by the candidate or employee to meet a primary qualification of the job and is cause to rescind the conditional offer of employment for an applicant and disqualify the applicant for one (1) for working in a Designated Position.

**Positive Result Equivalent.** Refusal to sign consent forms, failure to report for or participate in a drug test, or tampering with a drug test specimen or the collection process are examples of a Positive Result Equivalent.

**Post Offer/Pre-Employment.** An offer of employment which is contingent upon the applicant meeting the required conditions of employment before beginning employment is Post Offer/Pre-Employment.

**Reasonable Suspicion.** An objective justifiable suspicion of drug use based on specific facts or circumstances that results in a request for a Drug Test is Reasonable Suspicion.

**Safety-Sensitive Positions.** For the purpose of this policy, a position whose incumbent is authorized and required to carry a firearm as part of their daily responsibilities is a Safety-Sensitive Position.

**Substances Screened.** Marijuana/cannabinoids (THS); cocaine metabolites; opiates; phencyclidine (PCP); and amphetamines/methamphetamines are the Substances Screened under Substance Abuse Testing Program.

#### **PROCESS GUIDELINES:**

The use of illegal drugs by State Employees in positions designated as Safety Sensitive Positions by the Department of Administration pose a special risk to the safety of employees and the public.

Positions designated as Safety Sensitive Positions within the Adjutant General's Department include Resource Protection Officers/Law Enforcement Officers due to the requirement that each incumbent carry a firearm in order to complete the essential requirements of their position.

Statutes and regulations for the Drug Screening Program authorize Pre-employment Drug Testing for candidates and Reasonable Suspicion Drug Testing for employees, in Designated Positions.

The Drug Screening Program only applies to screening for illicit drugs. The program has no provisions for random testing or alcohol testing of any employee, including those in Designated Positions.

Employee working in Designated Positions have a responsibility to report all prescription drug or over-the-counter drug use which might impair their ability to perform the responsibilities of their work in a safe manner to their supervisor or manager.

Candidates and employees in Designated Positions must be given a general statement of policy prior to any drug testing. To that end, all employment announcements and advertisements for designated positions shall include a general notice to applicants concerning the requirement of a pre-employment drug screen as a Condition of Employment.

## **Pre-Employment/Post-Offer Testing**

### Applicants for Designated Positions

Applicants given a Conditional Offer of Employment for a Designated Position will be notified of the Drug Screening request along with detailed information about the Drug Screening Policy as it relates to Candidates. Failure by a Candidate to report to the collection site at the scheduled time and location will be documented as "Refusal to Test" and will be considered the equivalent to receiving a "Confirmed Positive" result for employment, which will be cause for rescinding the Conditional Offer of Employment in accordance with K.A.R. 1-6-32.

Intentionally tampering with the drug testing process by a Candidate is considered deception or fraud in the securing of the candidates eligibility, which is cause to withdraw the offer of employment and disqualify the candidate from any Designated Position for one (1) year.

A confirmed positive drug screen result for a Candidate will be reported as "Not Approved for Employment". The Conditional Offer of Employment will be rescinded and the Candidate will be ineligible for employment in any Designated Position for a period of one (1) year.

### Current Employees Requesting to Work in Designated Positions

Employees transferring, promoting or demoting to a Designated Position shall be required to participate in Pre-Employment Drug Screening Program and will be notified of the Drug Screening requirement along with detailed information about the Program as it relates to the Employee.

Failure by the employee to report to the collection site at the scheduled time and location will be documented as "Refusal to Test" and will be considered the equivalent to receiving a "Confirmed Positive" result for employment, which will be cause for rescinding the Conditional Offer of transfer, promotion or demotion in accordance with K.A.R. 1-6-32.

A confirmed positive drug screen result for an employee requesting a transfer, promotion or demotion will be reported as "Referral to the Employee Assistance Program Required". The employee will remain in their current position and be directed by the Human Resource Director to contact the State Employee Assistance Program within 24 hours. Failure to participate in the Referral will result in disciplinary action up to and including dismissal, and disqualification from employment in a Designated Position for one (1) year.

A Confirmed Positive drug screen is considered detrimental to the State and is cause to propose immediate dismissal if the employee is on temporary (999) or trainee status.

## **Reasonable Suspicion Testing**

All Reasonable Suspicion Testing must be approved and coordinated by the State Human Resources Director prior to removing the employee from the work-site.

Reasonable Suspicion Testing may be requested when the supervisor of a Designated Position has evidence or reasonable cause to suspect an employee is under the influence of drugs while on duty. Evidence must be based upon direct observation of behavior or appearance and confirmed by a second supervisor.

Some situation may require immediate action by the supervisor, while others require a series of documented behaviors.

Situations which may require immediate action:

- an on-the-job accident or occurrence which appears to have been the result of the employee's actions or inaction,
- an on-the -job incident or medical emergency that appears to have been cause by illegal drug use by the employee,
- behavior observed or information reported to, and supported by, verified documentation that the employee is unable to carry out the responsibilities of the job, or may be a threat to safety, and
- physical on-the-job evidence of illegal drug use by the employee.

It is important to remember that each situation must be reviewed and documented based on the evidence and direct observation for each. (See Form 034-08 A, 'Reasonable Suspicion Checklist' to document evidence.)

When an employee begins to show a pattern of deteriorating job performance, the supervisor will take a series of steps to counsel and document performance related behavior as a part of a pattern and not isolated incidents.

Documentation describing patterns of deteriorating work performance is extremely important, as is the evaluation process. Documentation of actual events and observations, specific dates, times, reaction, behavior and interactions with people are important. Supervisors shall counsel employee a minimum of two (2) times prior to recommending a drug screen. One incident does not describe a pattern of deteriorating work performance.

Patterns of Deteriorating Performance:

- excessive absenteeism with peculiar excuses,
- excessive use of sick leave for minor illnesses,
- frequent absences on Fridays, Mondays, or after holidays,
- excessive tardiness,
- long breaks; frequent trips to bathroom, break area or parking lot,
- changes in appearance such as red or bleary eyes, carelessness in dress or appearance, hand tremors,
- inconsistent work patterns or disruption of work patterns,
- decreasing reliability, procrastination, neglect

An employee in a Designated Position who is requested to submit to a Drug Screening Test due to inability to perform the work of the position, safety concerns, or causing undue disruption of work shall be removed from the work-site to report to the Human Resource Director for referral. Employee will be placed on Administrative Leave with pay pending the results of the drug screening test.

Employees in a Designated Position who are requested to submit to a Drug Screening test due to their inability to perform the work of the position or safety concerns with the employee shall be notified of the Drug Screening requirement by the Human Resource Director, along with detailed information about the Program as it relates to the Employee.

Employees removed from the work-site shall not be allowed to drive and must secure their own transportation to the collection site. Employees must not be sent to the collection site without a signed consent form and affirmation of policy form.

Failure by a current employee to report to the collection site at the scheduled time and location will be documented as "Refusal to Test" and will be considered the equivalent to receiving a "Confirmed Positive" result for disciplinary or Employee Assistance Program referral purposes in accordance with K.A.R. 1-9-19(a).

An employee's first Confirmed Positive drug test result may be considered a threat to safety or inability to perform the work and is cause to require a referral for and participation in, a required education or treatment program by the employee as a condition of continued employment.

Failure to successfully complete a recommended education or treatment program is considered to be 'failure by the employee to meet a condition of employment,' and is cause to propose termination.

An employee's subsequent Confirmed Positive result or tampering with the drug screening process is considered conduct detrimental to the State and is cause for immediate termination.

Disciplinary action will not be proposed for an employee solely on the basis of a Confirmed Positive result if the employee:

- has not had a prior Positive drug test or the equivalent; and
- successfully completes the assessment and recommended education or treatment program.

Some treatment or education programs will require the employee to be on full-time leave while others will not. An employee must be removed from performing Designated Position duties, however, the agency may reassign an employee to a non-designated position for which they are qualified.

### **Responsibilities**

All Drug Screening results and information is confidential and shall be shared on a 'Need to Know' basis only.

The State Human Resource Office shall be responsible for the administration of the State Drug Screening Program and all forms, documents, and official files.

The State Human Resource Office shall be responsible for including Drug Screening information in all job postings for all Designated Positions and advising Candidates and employees of Program requirements and consequences related to the Candidates or employees specific situation.

### **AUTHORATIVE REFERENCES:**

K.S.A. 75-4362, "Drug Screening Program".

K.A.R. 1-6-31. Candidate drug screening test for designated position.

K.A.R. 1-9-19a. Drug screening test for employees in designated positions.

