

Overview of ‘Sample’ Drug and Alcohol Abuse Policy

All employers should have a vital interest in maintaining a safe, healthy, and efficient working environment. Being under the influence of a drug or alcohol on the job poses serious safety and health risks to the user and to all those who work with the user. The use, sale, purchase, transfer, or possession of an illegal drug in the workplace, and the use, possession, or being under the influence of alcohol also poses unacceptable risks for safe, healthy, and efficient operations.

Under the Missouri Workers Compensation Law (the “WC Law”), **you must have a written policy before your workers compensation insurer can possibly consider a drug or alcohol penalty involving an injured worker.**

A well-written policy can help protect you from litigation and, in the event of litigation, may serve as a defense. If you have a written policy that is ill-conceived or poorly enforced, or do not have a written policy at all, you may be more susceptible to claims of personal injury to intoxicated employees, their coworkers and the public, claims of negligent hiring or retention, wrongful termination, disability discrimination, and claims from injured third parties. A well-written policy may serve as a defense to these claims.

Missouri Employers Mutual Insurance Company (MEM) highly recommends that you review your program with competent labor and employment law counsel prior to implementing any substance abuse policy or drug-testing program in the workplace.

This sample policy is meant only as a starting point. *The documentation and sample policy MEM is providing are for informational purposes only. The sample policy is not meant to be taken and used without consultation with your employment law attorney. These policies need to be tailored by your attorney to fit your situation. MEM assumes no liability for the use or sufficiency of the information provided.* In addition, please note the testing facility that you designate may require individuals to sign additional consent forms authorizing testing and/or release of test results.

There are many resources available to help companies develop drug-free workplace programs, including the Drug-Free Workplace Policy Provided by the US Drug Enforcement Administration on the DEA website. In addition, the National Institute on Drug Abuse (NIDA) can provide information on creating and implementing a prevention and treatment program for your employees by calling their Center for Substance Abuse Prevention’s Workplace Helpline at 1-800-843-4971. Your initial cost in establishing a Drug-Free Workplace may be low if readily available resources are used. Again, you should always engage appropriate legal counsel to review any and all personnel policies prior to their implementation.

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ALCOHOL AND SUBSTANCE ABUSE POLICY

(Company Name)

Is a Drug-Free Workplace. The use of Illegal Drugs and Alcohol is inconsistent with the behavior expected of employees. The use of Illegal Drugs and Alcohol and misuse of Prescribed and Over the Counter Drugs subjects employees and visitors to unacceptable safety risks that undermine the Company's ability to operate safely, effectively, and efficiently.

CEO'S Signature

DRUG-FREE WORKPLACE POLICY

PURPOSE OF THE POLICY

(Company Name) values its employees and recognizes their need for a safe and healthy work environment. Furthermore, employees abusing drugs and alcohol are less productive and are often a risk to the safety and productivity of our Company. The establishment of a Drug-Free Workplace Policy is consistent with this Company's desire to promote a safe and accident-free workplace.

DRUG AND ALCOHOL POSSESSION AND USE PROHIBITED

1. (Company Name) prohibits the use, possession, sale, manufacture, and/or distribution of alcohol and illegal/controlled substances and/or drug-related paraphernalia on Company premises or while performing duties for (Company Name) while away from Company premises, and/or during working hours.
2. For purposes of this policy, the term "Company premises" or "Company property" includes all property owned, leased, used or under the control of (Company Name) including but not limited to (Company Name) plant, offices, facilities, parking areas, land, buildings, structures, all work locations, vehicles, and equipment.
3. The substances prohibited by this policy include such items as: any illegal or unlawfully obtained drugs or controlled substances; "designer" or synthetic drugs; "over the counter" or prescribed medications not being used for purposes or in the manner intended; mood or mind-altering substances; and alcoholic or intoxicating beverages.
4. Compliance with this policy will be required by (Company Name) as a condition of employment for qualified applicants or for continued employment of current employees. The presence of a detectable amount of any prohibited substance in an employee while working and/or during working hours may be deemed a violation of this policy, regardless of when or where the substance entered the employee's system.

PRE-EMPLOYMENT SCREENING

1. Offers of employment with (Company Name) may be conditioned on proper cooperation with and participation in a drug and controlled substance screening test. Following a conditional employment offer, applicants will be asked to sign a form consenting to a screening test as part of the application process. Failure to sign the consent form will be considered a withdrawal of the application.

2. Applicants who test positive without a legitimate medical reason will be denied employment. In appropriate circumstances, (Company Name) may, in its sole discretion, authorize a retest.

TESTING OF EMPLOYEES

1. (Company Name) may request current employees to submit to a drug/controlled substance test in certain circumstances, including:
 - a. When an employee's conduct, actions or behavior reasonably leads management to suspect that the employee may be using or under the influence of drugs or alcohol on Company premises or while performing duties for (Company Name) while away from Company premises and/or during working hours;
 - b. When an employee has a prohibited substance in his or her possession (actual or constructive) while on Company premises or while performing work duties for (Company Name); and
 - c. When an employee has experienced an on-the-job injury or accident or is involved in an incident which (Company Name) believes may have resulted from impairment due to drug or alcohol use.
 - d. (Company Name) may, in its sole discretion and at any time, require an employee to undergo tests to determine the presence and/or amount of alcohol and/or drugs in his/her system.
2. An employee who has tested "positive" on a test pursuant to this policy and who is not terminated, may be retested by (Company Name) at periodic intervals, as determined by (Company Name), for up to twelve (12) months after the positive test result, even without new evidence of "reasonable belief" of drug or alcohol abuse. If an employee tests "positive" on any retest or refuses to promptly submit to a test in a fully cooperative manner, including signing any required forms, the employee may be subject to immediate termination.
3. An employee's refusal to submit to a requested test may be considered an act of insubordination justifying discipline, up to and including immediate termination.

USE OF LEGAL AND PRESCRIPTION DRUGS AUTHORIZED BY A PHYSICIAN

Certain legal and prescription drugs can produce changes in persons that might indicate intoxication or illegal drug use and could result in a "positive" result on a substance abuse screening test. Employees may continue to work for (Company Name) while taking prescription drugs at the direction of a doctor for the treatment of an illness or non-

prescription drugs used for the purposes and in the manner intended, provided the medication does not adversely affect the employee's ability to perform his or her work in a safe and efficient manner. Each employee is responsible for being aware of and following all cautions associated with the use of prescription or non-prescription drugs. If any prescription or non-prescription drugs being taken by an employee could have side effects which could affect the employee's job performance, the employee must advise his or her supervisor of the drug being taken and the potential side effects. (Company Name) has the right to determine whether an employee who is receiving legal medication should be allowed to continue working during his or her treatment due to possible safety and/or performance problems that could arise from certain legal drug use.

CONVICTION OR PROBATION UNDER A CRIMINAL DRUG LAW

Employees must notify (Title) within five days of any conviction or entry of a guilty plea resulting in incarceration or probation under any criminal drug statute, law, regulation, or ordinance. Failure to report a conviction or guilty plea will result in termination of employment.

TESTING PROCEDURES

1. When feasible, the employee asked to submit to testing will be informed of the reasons, cause or action leading to the request.
2. Employees will complete a consent for testing form. The refusal to do so will be considered a violation of this policy, and the employee may be subject to disciplinary action up to and including termination.
3. Testing will be conducted by an appropriate testing facility designated by (Company Name). Applicants and employees must cooperate fully with reasonable procedures and requirements of the testing facility.
4. Each employee and applicant who is to be tested will be asked by (Company Name) designated testing facility to list all legal and prescription drugs consumed during the past thirty days, and will have an opportunity to explain the use of each such drug. Applicants or employees who do not report the use of any such drugs and who subsequently test "positive" on any required screening or other test, will not be hired if not yet employed, or if hired, may be subject to immediate discharge.
5. Positive test results will be given a second verification test by (Company Name) designated testing facility. Employees who test positive on the second verification test will be subject to discipline up to and including immediate termination for violation of this policy. Applicants who test positive on the second verification test will not be employed.

6. Test results will be returned to (Title) for review with the applicant or employee. Test results will be maintained in a confidential manner in a separate file not part of the employee's personnel file. Test results of applicants will be maintained in a separate file, not part of the application.
7. (Company Name) will endeavor to keep the results of any drug, substance abuse or other such test confidential. Test results and voluntary reports of drug and alcohol problems will not be revealed by (Company Name) to any person except those persons whom (Company Name) believes have a need to know because of such reasons as supervision of the employee involved, personnel administration or as otherwise deemed necessary or proper by (Company Name) or as required by law.

PENALTIES FOR VIOLATING POLICY

1. Failure to comply with the provisions of this policy will be grounds for disciplinary action up to and including immediate discharge. Furthermore, employees found to have alcohol or illegal drugs in their systems, under the WC Law may receive a 50% reduction to total forfeiture of workers' compensation benefits.
2. If an employee voluntarily reports a substance abuse problem before any circumstances warranting testing and/or disciplinary action occurs, the employee may request leave time or a leave of absence under appropriate Company leave policies for a period not to exceed twelve weeks. An extension of the leave may be granted, within the exclusive discretion of (Company Name). The cost and expenses of any treatment or any counseling program will be the sole responsibility of the employee, subject to benefits available, if any, under any applicable employee benefit program. (Company Name) may request certification that the employee has continued in treatment during the granted leave period. If the employee does not continue proper treatment during the granted leave, the employee will be subject to disciplinary action up to and including immediate termination. Any employee who does not fully comply with (Company Name) requirements for a leave that is granted may be subject to immediate termination. Employees who return to work following such voluntary treatment may be tested periodically by (Company Name) to ensure that they stay drug-free. If they subsequently have a positive test for controlled substances, they will be subject to discharge.

OFF-THE-JOB ILLEGAL DRUG USE, POSSESSION, SALE OR OTHER SUCH ACTIVITY

Off-the-job illegal drug use, possession, sale or other such activity could adversely affect an employee's job performance, jeopardize the safety of other employees, and jeopardize Company equipment, property and reputation, as well as endanger the general public.

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Accordingly, such off-the-job conduct or activity may be deemed a violation of this policy and could result in disciplinary action against the employee by (Company Name), up to and including discharge. In deciding the appropriate disciplinary action to take in regard to such off-the-job drug use, possession, sale or other such activity, management will take into consideration the nature of the activity charged, the employee's total record with (Company Name), and other factors deemed relevant by (Company Name) for the protection of (Company Name) business and total operation.

WORKPLACE SEARCHES AND INSPECTIONS

To help ensure a safe and healthy work environment and to accomplish the objectives of this policy, (Company Name) reserves the right to condition entry upon Company premises, including any parking areas and all grounds and work areas to which (Company Name) employees are assigned, upon (Company Name) right to search the person and personal property of any entrant before entry or at any time while on the premises or in work areas, for illegal and unauthorized drugs, drug paraphernalia, controlled substances, alcoholic beverages and unauthorized weapons. Such searches may include but are not limited to automobiles, tool boxes, lunch kits and purses, employee lockers, desks, or other property under the control of the employees. Refusal to permit a search may subject an employee to immediate discipline up to and including discharge. Searches and inspections will be performed with concern for the individual's privacy, dignity and confidentiality. Illegal substances, drugs, and other prohibited items discovered through these searches and inspections may result in law enforcement authorities being advised in this regard consistent with the law.

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**EMPLOYEE CONSENT FORM
(APPENDIX A)**

I hereby acknowledge receipt of (Company Name), Drug-Free Workplace Policy regarding drugs and alcohol. I have read and understand this policy. I understand that refusal to submit to any drug testing required by this policy or a positive test result is grounds for disciplinary action up to and including termination. Furthermore, I authorize the release of the test results to my employer, and/or on post-accident tests, the Company's workers' compensation insurance carrier and understand that refusal to release these results is grounds for disciplinary action up to and including termination. I understand that if I test positive for drugs or alcohol following an on-the-job accident, I may be ineligible for workers' compensation benefits or have benefits reduced by 50% as allowed by Missouri law.

I recognize that the Company's policy on drugs and alcohol does not constitute an expressed or implied contract of employment.

As a condition of continued employment, employees must sign the attached consent form and comply with the policy.

I have read and understand this policy and will abide by it as a condition of my employment.

EMPLOYEE NAME: _____

SOCIAL SECURITY NUMBER: _____

EMPLOYEE SIGNATURE: _____ DATE: _____

WITNESS SIGNATURE: _____ DATE: _____

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**DRUG TEST CONSENT AGREEMENT
(APPENDIX B)**

DATE: _____

I voluntarily consent to testing by a doctor, medical center, hospital, laboratory or medically qualified personnel.

Furthermore, I release (Company Name) from any liability incurred from this testing requirement.

NAME: _____ DATE: _____

SSN: _____

WITNESS: _____ DATE: _____

