



THE UNIVERSITY of
NEW ORLEANS

**ADMINISTERED BY: Office of Vice
President for Business Affairs**

Policy No: AP-BA-36.3
TITLE: Employee Drug Testing
EFFECTIVE DATE: April 4, 2014*
(*Policy Revised, see below)
CANCELLATION:
REVIEW DATE: Spring 2018

PURPOSE

To promote a healthy and safe workplace free from the risks associated with the use of alcohol and drugs.

AUTHORITY

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), 49:1001-1021, and Executive Order MJF 98-38. University of Louisiana System Policy and Procedures Memoranda, M-(3), (Employee Drug Testing Policy).

APPLICABILITY

This policy shall apply to all employees of the University of New Orleans, more specifically defined as:

- All current W-2 employees defined under Federal Law, whose job requires them to drive commercial motor vehicles, including those applying for jobs that require the operation of commercial motor vehicles.
- All current W-2 employees in a safety-sensitive or security-sensitive position, both classified and unclassified as defined under State Law, including those applying for safety-sensitive and security-sensitive positions.
- All current W-2 employees, both classified and unclassified as defined by State Law, will be subject to alcohol and controlled substance abuse testing under the following conditions: reasonable suspicion, post-accident investigation, and monitoring for rehabilitation.

DEFINITIONS

CAP-FUDT Laboratory–NIDA Laboratory [SAMSHA] (LA R.S. 49:1001) – A laboratory for forensic drug testing certified by the College of American Pathologists.

Collection Site (LA R.S. 49:1001) – A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Commercial Motor Vehicle (CFR 382.107) – A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property and (1) has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds, (2) has a gross vehicle weight rating of 26,001 or more pounds, (3) is designed to transport 16 or more passengers including the driver, or (4) is of any size and is used in the transportation of hazardous materials requiring placards.

Confirmation or Confirmatory Test (LA R.S. 49:1001) – A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

Controlled Substance – A drug, chemical substance or immediate precursor in Schedules I through V of R.S. 40:964 or Section 202 of the Controlled Substances Act (21 U.S.C. 812).

Designer (Synthetic) Drugs – Those chemical substances that are made in clandestine laboratories where the molecular structure of both legal and illegal drugs is altered to create a drug that is not explicitly banned by federal law.

Driver (CFR 382:107) – Any person who operates a commercial motor vehicle. This includes but is not limited to: full-time, regularly employed drivers; and casual, intermittent or occasional drivers.

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 University. 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) – Any person, firm, or corporation, including any governmental entity, that has one or more workers or operators employed, or individuals performing service, in the same business, or in or about the same establishment, under any contract of hire or service, 6 expressed or implied, oral or written. Shall not include any person, firm, or corporation that is subject to a federally mandated drug-testing program. An employee who is a person, firm, or corporation that contracts or subcontracts with a principal need not be considered, in whole or in part, to be an employee of such principal.

Employer (CFR 382.107) – Any person (including the United States Senate, the District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle, including agents, officers, and representatives of the employer.

Illegal Drug (LA R.S. 49:1015) – Includes narcotics, hallucinogens, depressants, stimulants, look-alike drugs, or other substances, which can affect or hamper the senses, emotions, reflexes, judgment or other physical or mental activities. Included is any drug which is not legally obtainable or which has not been legally obtained, to include prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes or being used by one other than the person for whom prescribed.

Initial Test or Screening Test (LA R.S. 49:1001) – An immunoassay screen to eliminate “negative” urine specimens from further consideration. The guidelines for screen laboratories will be followed pursuant to LA R.S. 49:1008.

Legal Drug (LA R.S. 49:1015) – Drugs prescribed by a licensed practitioner and over-the-counter drugs which have been legally obtained and are being used solely by the individual and for the purpose for which they were prescribed or manufactured in the appropriate amount.

Job-Related Accident/Incident – Any employee behavior (action or inaction), which results in an accident, injury, or illness. Usually the accident/incident results in lost work time by an employee, serious or significant injury or illness to a patient, visitor, or co-worker, or an accident involving a vehicle, equipment or property.

Medical Review Officer (LA R.S. 49:1001) – A licensed physician responsible for receiving laboratory results generated by employer or testing entity’s drug testing program that has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s positive test result together with his medical history and any other relevant biomedical information.

Non-Employee – Those who do not receive W-2’s from the University including but not limited to all contract and subcontract workers (faculty, residents, interns), volunteers, students, laborers or independent agents who are conducting business on behalf of or are providing services for the University.

Positive Rate (CFR 382.107) – the number of positive results for random controlled substances tests conducted plus the number of refusals of random controlled substances tests divided by the total of random controlled substances tests.

Pre-employment (LA R.S. 49:1015) – Post-job offer but prior to starting work an employee in a security- or safety-sensitive position must be tested for controlled substances. The employee shall not be allowed to perform safety-sensitive functions unless the employer has received a verified controlled substances negative test result.

Prospective Employee (LA R.S. 49:1001) – Any person who has made application whether oral or written to become an employee.

Post-accident (LA R.S. 49:1015) – Condition for continued employment. As soon as possible following a work-related accident/incident, the individual may be tested for drugs and/or alcohol as described below in “Conditions Requiring Drug Testing, 2. Post-Accident/Incident.”

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. A second employee when possible should confirm such determination. 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) – One urine specimen from one individual that is separated into two specimen containers.

Under the Influence – A drug, chemical substance, or the combination of a drug/chemical substance that affects an employee in any detectable manner. The symptoms or influence are not confined to that consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. Such a determination of influence will be established by a professional opinion or a scientifically valid test.

Workplace – Any location including all property, offices and facilities (including all vehicles and equipment) whether owned, leased or otherwise used by the agency or by an employee on behalf of the agency in the conduct of its business in addition to any location from which an individual conducts agency business while such business is being conducted.

GENERAL POLICY

It shall be the policy of the University of New Orleans to maintain a drug-free workplace and a workforce free of substance abuse. Employees are prohibited from reporting for work or performing work for the University of New Orleans with the presence in their bodies of illegal drugs, controlled substances, or designer (synthetic) drugs at or above the initial testing levels and confirmatory testing levels as established in the contract between the State of Louisiana and the official provider of drug testing services. Employees are further prohibited from the illegal use, possession dispensations, distribution, manufacture, or sale of controlled substances, designer (synthetic) drugs, and illegal drugs at the work site and while on official state business, on duty or on call for duty. Employees may be required to submit to drug/alcohol testing under the conditions set forth in this policy. Refusal to submit to testing may result in disciplinary action up to, and including, termination of employment.

CONDITIONS REQUIRING DRUG TESTING

The University of New Orleans shall require drug testing under the following conditions:

1. **Reasonable Suspicion** – An employee may be required to submit to a drug test if there is reasonable suspicion that the employee is using drugs. ¹
2. **Post-accident/Incident** – Any employee directly involved in an on-duty accident or incident, and whose action or inaction may have been a causative factor of same, shall be required to immediately submit to drug and alcohol testing if:
 - a. Reasonable Suspicion: Circumstances give rise to a reasonable suspicion of the employee's drug or alcohol use or impairment; or
 - b. Fatality: The accident or incident resulted in a fatality; or
 - c. Hazardous Materials Release: The accident or incident resulted in or caused the release of hazardous waste as defined in La. R.S. 30:2173(2) or hazardous materials as defined in La. R.S. 32:1502(5).

NOTE: Employees should be aware of the legal presumption of impairment under La. R.S. 23:1082 if an employee refuses, after being so directed, to submit to drug or alcohol testing as a result of an on-duty accident or incident. As a consequence of such refusal, benefits under the workers' compensation laws of the State of Louisiana may be denied. Under no circumstance should any employee who is believed to be under the influence of any drug or alcohol be permitted to operate a motor vehicle. When being sent for a drug/alcohol test, the employee should be driven by someone else such as a representative of the University of New Orleans or a taxi.

¹ See Definitions

3. **Rehabilitation Monitoring** – An employee who is participating in a substance abuse after-treatment program or who has a rehabilitation agreement with the agency following an incident involving substance abuse shall be required to submit to random drug testing.
4. **Pre-employment Post-hire** – A prospective employee accepting a safety- or security- sensitive position must undergo controlled substance drug testing prior to being placed in the position. Pursuant to LA R.S. 49:1008, a prospective employee who tests positive for the presence of drugs in the initial screening shall be eliminated from consideration for employment.
5. **Safety-sensitive positions – Appointments and Promotions:** An employee who is offered a safety-sensitive position shall be required to pass a drug test before being placed in such position, whether through appointment or promotion. Safety Sensitive Positions are listed [here](#). Once in SharePoint, click on “APPENDIX A Safety Sensitive Positions.”
6. **Safety-sensitive positions – Random Testing:** An employee in a safety-sensitive position shall be required to submit to drug testing as required by the Appointing Authority, who shall periodically call for a sample of such employees, selected at random by a computer-generated random selection process, and require them to report for testing. All such testing shall, if practicable, occur during the selected employee’s work schedule.

PROCEDURE

Drug testing, pursuant to this policy, shall be conducted for the presence of cannabinoids (marijuana metabolites), cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines in accordance with the provisions of LA R.S. 49:1001(20b). Urine will be analyzed for the testing of drugs using the five and nine panel drug screen and blood analyzed for the testing of alcohol. The University of New Orleans also reserves the right to test for the presence of any other illegal or controlled substance when there is reasonable suspicion to do so.

The Office of Human Resource Management shall be involved in all determinations and notifications dealing with drug testing, and will coordinate with the supervisor of the employee to be tested. A certified provider chosen by the University will perform testing services. The testing service shall assure:

1. All specimen collections will be performed in accordance with applicable federal and state regulations and guidelines.
2. Chain of custody will be strictly followed.
3. Testing shall be performed by a SAMSHA-certified laboratory.
3. All positive results shall be reported by the laboratory to a qualified Medical Review Officer (MRO).

SANCTIONS

Violation of the policy, including refusal to submit to drug testing when properly ordered to do so, will result in actions up to and including termination of employment. Each violation, and alleged violation

of the policy, will be handled on an individual basis, taking into account all data, including the risk to self, fellow employees, and the general public.

CONFIDENTIALITY

All information, interviews, reports, statements, memoranda, and/or test results received by the University of New Orleans through its drug testing program are confidential, pursuant to LA R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant.

Qualitative information regarding results, such as the identification of a substance, will be provided only to the designated Medical Review Officer who will report final results to the appropriate official. Results of the test will be released to the appropriate agency on a need-to-know basis. All drug testing results will be maintained in a separate health file, with restricted access in accordance with the Code of Federal Regulations (CFR) 382.405.

RESPONSIBILITY

The University President is responsible for the overall compliance with this policy.

The Office of Human Resource Management is responsible for administering the drug testing program; determining when drug testing is appropriate; receiving, acting on, and holding confidential, except on a need-to-know basis, all information received from the testing service provider and from the medical review office; and collecting appropriate information necessary to agency defense in the event of legal challenge.

All supervisory personnel are responsible for assuring that each employee under their supervision receives a copy of this policy, documents that receipt, and understands or is given the opportunity to understand and have questions answered about its contents.



John W. Nicklow
President
University of New Orleans

**Policy updates:*
3/15/2017
10/31/2017