



POLICY STATEMENT 67 MISUSE OF DRUGS OR ALCOHOL

POLICY DIGEST

Monitoring Unit: Human Resource Management
Initially Issued: January 7, 2013

I. PURPOSE

Louisiana State University is committed to maintaining an environment which supports the research, teaching, and service mission of the University. Although the University respects an employee's right to privacy, the misuse of drugs or alcohol within the University community interferes with the accomplishment of the University's mission.

Louisiana State Law prohibits the consumption, possession, distribution, possession with intent to distribute, or manufacture of drugs described as controlled dangerous substances in the Louisiana Revised Statutes 40:964; and other statutes define the illegal possession and/or use of alcohol. Further, various federal and state laws and regulations apply to the employees of Louisiana State University, including the Federal Drug Free Workplace Act of 1988; interim Department of Defense rules for a program to achieve and maintain a drug free workforce; The Drug-Free Schools and Communities Act Amendments of 1989 (Public Law 101-226); State of Louisiana Executive Department Executive Order No. BJ 2008-69; and Revised Statutes 49:1001- 1021 of the State of Louisiana. This policy is specifically directed to describe and prohibit the misuse of alcohol and controlled drugs. Other University policies govern the permitted use of alcoholic beverages in its facilities and on its premises.

II. DEFINITIONS

- A. Drug free workplace: means a site for the performance of work at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the federal Drug Free Workplace Act of 1988.
- B. Drug free workforce: means employees engaged in the performance of Department of Defense contracts who have been granted access to classified information; or employees in other positions that the contractor determines involve National Security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.
- C. Controlled substance: means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).
- D. Criminal drug statute: means any local, state or federal criminal statute which limits or prohibits the manufacture, distribution, dispensation, use, or possession of any controlled substance.
- E. Misuse of alcohol: means any possession, consumption or other use of an alcoholic beverage in violation of law, this policy or in any other manner not specifically permitted by LSU.
- F. Conviction: means a finding of guilt (including a plea of nolo contendere) or imposition of

sentences, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes, whether or not any such conviction is later expunged.

- G. Employee: includes faculty, other academic, unclassified, classified, graduate assistants, student employees and any other person having an employment relationship with the University.
- H. Employee assistance program: refers to a program sponsored by LSU to direct employees to trained professionals who can help with drug and alcohol dependency, misuse or abuse by providing counseling and referral services to the employee.
- I. Fitness for duty: for purposes of this policy, means employees suspected to be unfit to perform some or all of their employment duties as a result of the use or reasonably suspected use of substances, such employees will be subject to mandatory testing. Refusal to submit to a substance test is cause for immediate termination of employment.
- J. safety and security sensitive: means positions for which there is a high likelihood of causing serious injury or harm to self, other employees, students, those served by the University, the general public, and University property; those positions for which the consequences of *failure to perform* duties in a safe and proper manner are likely to result in serious injury or harm; and those positions which involve the access to, or custody of, data or materials which are of such a nature that it affects or may affect the safety/security of the position or department or unit to which the position is assigned (the Office of Human Resource Management maintains a complete list of designated positions).

III. GENERAL POLICY

Louisiana State University is committed to providing a workplace free from the misuse of drugs or alcohol and seeks to make its employees aware of the dangers of drug and alcohol abuse as well as the availability of drug counseling, rehabilitation, and employee assistance through various communications media available to it. The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace is prohibited as is the illegal or unauthorized possession and/or consumption of alcohol. Workplace shall include any location on University property in addition to any location from which an individual conducts University business while such business is being conducted. Without reference to any sanctions which may be assessed through criminal justice processes, violators of this policy will be subject to University disciplinary action up to and including termination of employment. Note: Contractors and vendors who perform work under contract, purchase order, or other arrangement for the University must have an effective program for assuring their employees are fit for duty, and free from the effects of drugs or alcohol.

IV. EMPLOYEE EDUCATION, PREVENTION, COUNSELING

Human Resource Management will periodically notify all employees of its policies and procedures governing the misuse of drugs or alcohol, and through appropriate media, make employees aware of the dangers of abusive or illegal use of alcohol or drugs. Through the University Employee Assistance Program, employees with drug and alcohol related problems may seek help. Employees in violation of this policy as it relates to alcohol or drugs or otherwise determined to be suffering from behavioral problems adversely affecting their performance as employees may be mandatorily referred to the Employee Assistance Program as an alternative to disciplinary action or in addition to disciplinary action.

The Employee Assistance Program provides free initial diagnosis and screening. Subsequent sessions are the financial obligation of the employee and may qualify for coverage in the State Employees Group Benefits Program and most Health Maintenance Organizations for those who are members. Twelve Step groups for employees recovering from substance abuse problems are available on campus and in the community.

V. PROHIBITIONS

To establish and maintain a safe and secure work environment, LSU prohibits an employee being on the job while having alcohol in his/her body that is above prohibited alcohol concentration levels, and LSU prohibits the use of or presence of illegal drugs or other dangerous substances in the bodies of its employees while on duty, on call, and/or engaged in LSU business on or off LSU premises. LSU further prohibits the sale, purchase, transfer, concealment, transportation, storage, possession, distribution, cultivation, manufacture, and dispensing of illegal or unauthorized drugs or related paraphernalia while on duty, on call, and/or engaged in work for LSU on or off LSU premises.

The prohibitions of this policy extend to the following:

- A. Illegal drugs, unauthorized controlled substances, abuse of inhalants, look- alike drugs, designer and synthetic drugs, and any other unauthorized drugs, abnormal, or dangerous substances which may affect an employee's mood, senses, responses, or motor functions, or alter or affect a person's perception, performance, judgment, or reactions while working, including those drugs identified in Schedules I through V of Louisiana R.S. 40:964 or Section 202 of the Controlled Substances Act, 21 U.S.C. 812.
 - 1. NOTE: Prohibited drugs and drug uses include:
 - a. Any drug which is not legally obtainable.
 - b. Any drug which is legally obtainable but has not been legally obtained; or
 - c. Legally obtained (prescription) drugs not being used for prescribed purposes or being used in excess of prescribed dosages or in a manner inconsistent with published warnings.
- B. Misuse of alcoholic or intoxicating beverages or substances; and
- C. Drug related paraphernalia as defined in R.S. 40:1031, including any unauthorized material or equipment or items used or designated for use in testing, packaging, storing, injecting, ingesting, inhaling, or otherwise introducing into the human body those substances covered by this policy.

VI. ALCOHOL MISUSE POLICY

Alcohol misuse is prohibited. Alcohol misuse includes: 1) use of alcohol on the job; 2) use of alcohol during the four hours before performance of safety-sensitive and security sensitive functions; and 3) having a prohibited alcohol concentration level in the individual's blood system while on the job. Any employee exhibiting behavior and/or appearance characteristic of alcohol misuse or whose job performance appears to be impaired by alcohol or who is involved in an accident in which the misuse of alcohol is suspected may be required to submit to a test for the presence of alcohol. In addition, each applicant for employment or each employee who is required to obtain a commercial driver's license (CDL) must be tested for drugs, alcohol, or controlled substances in accordance with the provisions of the Omnibus Transportation Employee Testing Act of 1991.

A blood alcohol concentration level of 0.04 or greater is considered to be above the prohibited alcohol concentration level.

VII. PRESCRIPTION/LEGAL DRUGS

The use of drugs/medications prescribed by a licensed physician is permitted provided that the prescribed does not affect the employee's work performance. The employee shall notify his/her direct supervisor of any drugs/medications prescribed by a licensed physician in those instances when the physician or pharmacy advises that the employee's performance could be impaired; or when the employee has reason to believe that the use of the prescribed drugs/medications will impair his/her ability to perform his/her employment duties and responsibilities. Employees are encouraged to utilize accrued leave, with approval, in those instances where impaired functioning is a reasonable possibility.

Employees are encouraged to maintain prescribed drugs/medications in the original prescription containers which properly identify the employee's name, medication name, issuing physician, pharmacy, and dosage.

LSU reserves the right to have a licensed physician of its own choice determine if use of a prescription drug/medication is reasonably likely to impair the employee's performance or increase the risk of injury to the employee or others. LSU reserves the right to suspend the work activity of the employee during the period in which the employee's ability to safely perform his/her job is being evaluated or may be adversely affected by such medication.

VIII. DRUG TESTS/SCREENS

Louisiana Revised Statute 49:1015 provides for public employee drug screening for pre-employment, re-employment, or reinstatement, including return to work following an accident or injury, and random/unannounced drug testing for employees in safety-sensitive and security-sensitive positions. The statute also provides for requiring, as a condition of continued employment, samples from employees to test for the presence of drugs following an accident during the course and scope of their employment, under other circumstances which result in reasonable suspicion that drugs or alcohol are being used, or as a part of a monitoring program established by the employer to assure compliance with terms of a rehabilitation agreement.

In concert with this statute, University employees are subject to being tested for drugs under the following circumstances:

- A. Fitness for Duty (Reasonable Suspicion) - this is drug/alcohol screening performed as a result of a supervisor's belief, based upon reliable, objective, and articulable facts that reasonably suggest an employee is not fit to perform their duties and may be violating this policy. A decision to test must be based on direct observation of specific physical, behavioral, or performance indicators. The decision to test shall be made by Human Resource Management. This testing is likewise applicable to an employee found in possession of suspected illegal or unauthorized items as previously defined.
- B. Safety and Security Sensitive Jobs – the University requires routine unannounced testing for those employees in safety-sensitive and security-sensitive positions where any form of substance abuse may affect University activities through unsafe work behavior/performance or

error in judgment; or where substance abuse could jeopardize the safety and well-being of employees, other personnel, or the general public, or cause significant damage to University property.

- C. Post-Accident/Incident – this is drug/alcohol screening performed following an accident that occurs during the course and scope of an employee’s employment that a) involves circumstances leading to a reasonable suspicion of the employee’s drug use or alcohol misuse, b) results in a fatality, c) results in or causes the release of hazardous waste or materials, or d) involves an on-the-job injury or potentially serious accident, injury, or incident, in which safety precautions were violated, equipment or property was damaged, or careless acts were performed. Such testing is required of any employee who is directly involved in such an incident, and whose action or inaction is suspected to have been a causative factor. Supervisors should direct questions about whether drug screening is appropriate for a given accident/incident to LSU Administrative Services and Risk Management (ASRM).
- D. Rehabilitative – this is drug/alcohol screening required pursuant to the terms of the rehabilitation agreement for those employees participating in substance abuse after-care treatment for up to sixty (60) months.

A list of randomly selected employees in jobs which are subject to the periodic unannounced sampling procedure will be generated from HRM. HRM will send an appropriate notice to the appropriate supervisor who will notify the employee(s) to report to testing.

Testing methodologies to be used include urine test, blood test, hair and/or breath tests. These tests shall be used to determine violations of this policy by detecting the presence of any illegal or unauthorized drugs, alcohol, or other substances in the body which may impair job performance.

Drug testing of LSU employees pursuant to this policy shall target the presence of the following drugs or their metabolites in the body:

1. Cannabinoids (marijuana);
2. Opiates;
3. Methamphetamine;
4. Cocaine metabolite; and
5. Phencyclidine (PCP)
6. Alcohol

Additional tests for other drugs, substances or their metabolites may be performed if circumstances warrant. Further, LSU will test for the presence of alcohol through breath or blood testing methodologies if circumstances warrant.

IX. TESTING PROCEDURE

The collection, custody, storage, and analysis of drug test samples will be performed in compliance with Substance Abuse and Mental Health Services Administration (SAMSHA) Guidelines. Testing will be conducted under the direction and supervision of a laboratory certified by SAMSHA and in accordance with SAMSHA Guidelines. To ensure accuracy, a sequence of two (2) tests, at LSU's expense, will be utilized. Initial testing will be by the immunoassay methodology. Each presumptively positive sample will then be subjected to additional, more precise confirmatory testing through means of the gas chromatography- mass spectrometry (GC-MS) methodology.

A test confirmed as positive through this dual testing procedure indicates the presence of a drug or its metabolite at or above the cutoff level prescribed by this policy. The applicable standards for cutoff levels for drugs are defined by the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 F.R. 11979; "Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel," 46 C.F.R. Parts 4, 5, and 6; and "Procedures for Transportation Work Place Drug Testing Programs," 49 C.F.R. Part 40. R.S. 1001, et seq. The applicable standards for cutoff levels for alcohol are set by the Omnibus Transportation Employee Testing Act of 1991. Test results shall be documented and maintained with confidentiality. Positive test results and samples will be maintained in accordance with any legal requirements.

X. SEARCHES/INSPECTIONS

In furtherance of this policy, employees are hereby notified that at any University facilities and work sites or the property of the University, there is no expectation of privacy. Under appropriate circumstances and in accordance with the law, the University, with or without law enforcement authorities, reserves the right to conduct unannounced searches and inspection of LSU facilities and properties, including vehicles.

XI. ENFORCEMENT

Each alleged violation of this policy will be handled on a case-by-case basis. Certain employees may be rehabilitated, while others may receive disciplinary sanctions, particularly if they have manifested total disregard for the health, welfare, and safety of themselves or others. Participation in the LSU Employee Assistance Program may be treated by the University as a positive attempt by the employee to combat his/her substance abuse problem and indicative of a future desire to adhere to this policy. However, participation in the EAP will not shield the employee from enforcement of this policy and disciplinary action, where appropriate.

After a review of all data, including any defenses or additional test results produced by the employee, appropriate action will be taken.

The following will likely result in termination:

- A. Refusal or failure to submit to a test
- B. Submission of an adulterated or substitute sample in the testing process
- C. Buying, selling, dispensing, distributing or possession of an illegal or controlled dangerous substance or misuse or non-permitted use alcohol while on duty or on LSU premises

The following may result in termination or a lesser sanction, including suspension, depending on the circumstances and the employee's performance record:

- A. Unjustifiable possession of drug-related paraphernalia on duty or on LSU premises
- B. Unjustifiable possession of legal (prescription) drugs
- C. Positive test result for illegal or controlled dangerous substance
- D. Positive blood alcohol level

Sanctions may vary after consideration of prior employment counseling or discipline and any mitigating

or aggravating circumstances.

XII. ARRESTS/CONVICTIONS

Any LSU employee arrested or convicted under a criminal drug statute or any criminal statute pertaining to the consumption or distribution of alcohol or any other substance, involving conduct which occurs on or off duty, must notify his/her immediate supervisor within the next work day or immediately upon the employee's return to the workplace. Upon final disposition of any criminal proceedings, LSU will review all evidence to determine whether disciplinary action, including termination, is warranted. Where circumstances warrant, the University may also choose to conduct such a review prior to final disposition of any criminal proceedings. In all cases involving an employee's arrest on a drug or drug-related offense which occurs on the job or on LSU premises, prompt investigation will be conducted and, disciplinary action taken, if warranted.

The Federal Drug-Free Workplace Act of 1988 requires that each employee notify his/her supervisor within five (5) days of conviction of any criminal drug statutes when such offense occurred in the workplace, while on official business, during work hours, or when in on-call duty status. Federal law requires that LSU report within ten (10) days any such criminal drug statute conviction to each Federal Agency from which grants or contracts are received.

Employees whose jobs require driving are required to immediately notify their supervisor if their driving privileges are suspended or revoked.¹ Driving while under the influence of drugs and/or alcohol arrests and convictions create a distinct problem in the workplace as a result of the driver's license forfeiture provisions of Louisiana R.S. 32:414 and Louisiana R.S. 32:661, *et seq.* Employees who operate department vehicles on a regular and recurring basis may be forced to utilize accrued annual compensatory leave or be placed in leave without pay status during the pendency of any period of suspension. Supervisors may attempt to accommodate those employees suffering suspensions of reasonable duration, including temporary reassignment of duty and/or possible placement into another classification that does not require a valid driver's license, provided that such a bona fide vacancy exists. However, employees should realize that circumstances may justify termination as is the case with a second or subsequent suspension/refusal to breath alcohol testing. Affected employees are encouraged to seek restricted/hardship licenses which authorize driving for employment purposes. Employees returning to work after any such suspension shall be required to provide proof of restoration of driving privileges, and may be required to undergo further measures to assure fitness for duty, such as, but not limited to, referral to the employee assistance program or random testing for drugs and/or alcohol.

XIII. CRIMINAL PENALTIES

Employees are responsible under both University policy and state law for their conduct. It is the policy of the University to arrest and refer for prosecution any person who violates any criminal statute or other state or federal law concerning alcohol or drugs while within the jurisdiction of the LSU Police Department. To the extent University officials reasonably believe that an employee may have violated any criminal statute outside the jurisdiction of LSU Police Department, then a referral or inquiry may be made to an appropriate law enforcement agency through Human Resource Management.

¹ Supervisors are required to immediately report all suspensions and/or revocations to the Employee Relations Section of Human Resource Management.

XIV. CONFIDENTIALITY

LSU respects the individual rights of its employees. Any employee involvement in the LSU Employee Assistance Program (EAP) or other rehabilitative program for substance abuse problems will be handled with confidentiality. Employees seeking such assistance shall be protected from abuse, ridicule, retribution, and retaliatory action. All medical information obtained will be protected as confidential unless otherwise required by law or overriding public health and safety concerns. This confidentiality shall not prohibit or limit the University's ability to discipline employees for violation of this policy.

The results of all drug screens obtained in compliance with this policy will be confidential, except on a need to know basis. LSU shall deliver any illegal drug, controlled dangerous substance, or other substance prohibited by this policy, discovered on LSU property or on the person of a LSU employee, to appropriate law enforcement agencies. Likewise, any employee engaged in the possession, sale, attempted sale, distribution, or transfer of illegal drugs or controlled substances while on duty or on LSU property or work place will be referred to appropriate law enforcement authorities.

LSU submits reports to Office of the Governor as required by law and Executive Order.

XV. CONCLUSION

The use of illegal drugs and misuse of alcohol or other controlled substances, on or off duty, is inconsistent with law-abiding behavior expected of the citizens of the State of Louisiana. LSU will not tolerate substance abuse or alcohol use which imperils the health and well-being of its employees and the public, or threatens its mission. LSU's intention, through this policy, is to adhere to the Federal Drug-Free Workplace Act of 1988, 34 C.F.R. Part 83, Subpart F, the Department of Transportation Procedures for Transportation Workplace Drug Testing Programs, 49 C.F.R. Part 40, and the State of Louisiana Employee Substance Abuse and Drug-Free Workplace Policy, and Executive Order No. MJF 98-38, all in an effort to maintain a safe, healthful, and productive work environment for its employees and to promote public safety.

EXHIBIT I

Drug Free Workplace

The federal Drug Free Workplace Act of 1988 contains specific requirements relating to University employees who are engaged in the performance of a federal grant or contract as follows:

Each such employee must receive a copy of the University policy providing a drug free workplace, which shall be provided through the official promulgation of this Policy Statement and such other means as may be appropriate, and each such employee:

- A. Agrees as a condition of employment to abide by the terms of the drug free workplace policy.
- B. Must notify the LSU Office of Human Resource Management of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction.

The University is required to:

- A. Notify the granting agency; within 10 days after receiving notice of conviction as above, or otherwise receiving notice of such conviction which notification shall be by the LSU Office of Human Resource Management.
- B. Within 30 days after receiving such notice, impose a sanction on, up to and including termination, or require satisfactory participation in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency by any employee so convicted with such sanction or required participation to be coordinated by the Office of Human Resource Management through the normal LSU administrative processes.
- C. Make a good faith effort to continue to maintain a drug free workplace through implementation of the requirements of the Act.

EXHIBIT II

Drug Free Workforce

In addition to requirements of the Drug Free Workplace Act of 1988 which apply to all employees engaged in the performance of a federal grant or contract, the Department of Defense has issued interim regulations which specifically apply to employees engaged in the performance of a Department of Defense contract which are provided below.

Covered employees include those employees engaged in the performance of Department of Defense contracts as follows:

- A. All Department of Defense contracts involving access to classified information.
- B. Any other Department of Defense contract when the contracting officer determines such application to be necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of or the performance of the contract (except for commercial or commercial-type products).
- C. Excepted are any contracts or parts of contracts to be performed outside of the United States, its territories, and possessions, except as otherwise determined by the contracting officer.

For those Department of Defense contracts to which these regulations apply, the following specific conditions or appropriate alternatives apply:

- A. Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources [which shall be as provided through the LSU Employee Assistance Program];
- B. Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees [which shall be provided as appropriate through the Office of Human Resource Management];
- C. Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues [which shall be as provided through the provisions of the Employee Assistance Program and this Policy Statement];
 - 1. Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:
 - a. Contractor programs shall include the following, or appropriate alternative."(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to public health, safety, national security that could result from the failure of an employee adequately to discharge their position. testing- "(ii) In addition, the Contract may establish a program for employee drug testing-

- i. When there is a reasonable suspicion that an employee uses illegal drugs; or
 - ii. When an employee has been involved in an accident or unsafe practice;
 - iii. As a part of or as a follow-up to counseling or rehabilitation for illegal drug use;
 - iv. As a part of a voluntary employee drug testing program.
- b. The Contractor may establish a program to test applicants for employment for illegal drug use.
- c. For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Program," (53 FR 11980 (April 11, 1988), issued by the Department of Health and Human Services. "(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.
- d. The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.