


LDH Employee Drug Testing Policy

	Louisiana Department of Health (LDH)	
	Policy Number	48.2
	Content	Conditions which will require drug testing of LDH employees and the procedures in which the tests will be attained
	Effective Date	November 6, 2017
	Inquiries to	Human Resources Training & Staff Development P.O. Box 4818 Baton Rouge, LA 70821-4818 (225) 342-6477 FAX (225) 342-6892

LDH is committed to fostering, cultivating and preserving a culture of equity, diversity and inclusion. Our human capital is the most valuable asset we have. The collective sum of the individual differences, life experiences, knowledge, inventiveness, innovation, self-expression, unique capabilities and talent that our employees invest in their work represents a significant part of not only our culture, but our Department’s reputation and achievement as well.

If there is a discrepancy between an LDH Policy and a Program Office or facility policy, the LDH policy shall govern/overrule/supersede the conflicting section within the Program Office or facility policy.

I. INTRODUCTION AND PURPOSE

The employees of the state of Louisiana are among the state’s most valuable resources, and the physical and mental well-being of these employees is necessary for them to carry out their responsibilities properly. Substance abuse causes serious adverse consequences to users, affecting their productivity, health and safety, dependents, and co-workers, as well as the public.

The State of Louisiana has a long-standing commitment to working toward a drug-free workplace. In order to curb the use of illegal drugs by the employees of the State of Louisiana, the Louisiana Legislature enacted laws (R.S. 49:1015 and R.S. 49:1001, *et seq.*) which provide for the creation and implementation of drug testing programs for public employees, appointees, prospective employees and prospective appointees.

The Louisiana Department of Health (LDH) fully supports these efforts and is committed to a drug-free workplace.

II. APPLICABILITY

This policy shall apply to all employees of LDH including appointees and all other persons having an employment relationship with this agency. This policy does not apply to contractors or employees of entities which contract with the State. Contractors and contractors' employees are subject to the requirements of R.S. 49:1021, which provides For a program of random drug testing administered through the Division of Administration.

III. DEFINITIONS

Appointing Authority – an officer or employee authorized by statute or delegation to make appointments to positions in the State Service.

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.

Employee - unclassified, classified, and student employees, student interns, and any other person having an employment relationship with the agency, regardless of the appointment type (e.g. full time, part time, temporary, etc.).

Illegal Drug – 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.

Reasonable Suspicion - belief based upon reliable, objective and articulable facts derived from direct observation of specific physical, behavioral, odorous presence, or performance indicators and being of sufficient import and quantity to lead a prudent person to suspect that an employee is in violation of this policy.

Safety-sensitive or Security-sensitive position - a position determined by the Appointing Authority to contain duties of such nature that the compelling State interest to keep incumbent drug-free outweighs the employee's privacy interests. A list of such positions within LDH is maintained by the LDH Human Resources Director and each respective appointing authority. The list was determined with consideration of statutory law, jurisprudence, the practices of this agency and the examples of safety-sensitive positions provided in the model policy document issued by the Division of Administration.

Under the Influence - for the purposes of this policy, 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. A determination of influence can be established by a professional opinion or a scientifically valid test.

Workplace - any location on agency property 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.

IV. POLICY

It shall be the policy of LDH to maintain a drug-free workplace and a workforce free of substance abuse. Employees are prohibited from reporting for work or performing work for LDH 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 illegal use, possession, dispensation, 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.

To assure maintenance of a drug-free workforce, it shall be the policy of LDH to implement a program of drug testing, in accordance with all other applicable federal and state laws, as set forth below.

V. MEDICAL MARIJUANA

- A. In accordance with Act 651 of the 2022 Regular Session of the Louisiana Legislature, no state agency shall subject an employee or prospective employee to negative employment consequences solely on a positive drug test for marijuana, marijuana components, including tetrahydrocannabinols, or marijuana metabolites if the employee or prospective employee has been clinically diagnosed as suffering from a debilitating medical condition and a licensed physician has recommended marijuana for therapeutic use by the employee or prospective employee in accordance with R.S. 40:1046.
- B. **Act 651 shall not be construed to prohibit the imposition of negative employment consequences on an employee who uses or is impaired by marijuana on the premises of the employer or during work hours.**
- C. Act 651 does not apply to any employee whose principal responsibility is to operate a state vehicle, maintain a state vehicle, or supervise any employee who drives or maintains a state vehicle as their principal responsibility. In addition, Act 651 does not apply to emergency medical services, law enforcement, and firefighter services.

VI. CONDITIONS REQUIRING DRUG TESTS

LDH shall require testing under the following conditions.

- A. *Reasonable suspicion:* Any employee shall be required to submit to a drug test if there is reasonable suspicion (as defined in this policy) that the employee is using drugs.
- B. *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 or same, shall be required to immediately submit to drug and alcohol testing if:
 - 1) Reasonable Suspicion: Circumstances give rise to a reasonable suspicion of the employee's drug or alcohol use or impairment: or
 - 2) Fatality: The accident or incident resulted in a fatality; or

- 3) 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. 23:1081 if an employee refuses, after being so directed, to submit to drug or alcohol testing because of an on-duty accident or incident. Because of such refusal, benefits under the Worker's Compensation laws of the State of Louisiana may be denied.

- C. *Rehabilitation Monitoring:* Any employee who is participating in a substance abuse after-treatment program or who has a rehabilitation agreement with the agency following an accident involving substance abuse shall be required to submit to random drug testing.
- D. *Pre-employment:* Pursuant to R.S. 49:1015, LDH requires each prospective employee to submit to drug screening at the time and place designated by the appointing authority, following a job offer which is contingent upon a negative drug testing result. Prospective employees shall not be allowed to report to work before the results of a pre-employment drug test are received by the hiring agency. A prospective employee who tests positive for the presence of drugs shall be eliminated from consideration for employment for that job offer. Pre-employment testing requirements also apply to any former state employee who returns to state service regardless of length of absence.

Prospective employees transferring into LDH from another department with an active drug-testing program and employees transferring between LDH program offices/facilities will not be subject to drug tests unless they are transferred into safety-sensitive/security-sensitive positions.

- E. *Safety-sensitive and Security-sensitive positions - Appointments and Promotions:* Each employee who is offered a safety-sensitive or security-sensitive position (as defined in this policy) shall be required to pass a drug test before being placed in such position, whether through appointment or promotion.
- F. *Safety-sensitive and Security-sensitive positions - random testing:* Every employee in a safety-sensitive or security-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.

VII. 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 R.S. 49-1001, *et seq.* LDH reserves the right to test its employees for the presence of any other illegal drug or controlled substance when there is reasonable suspicion to do so.

The appropriate Human Resources Director shall be involved in any determination that one of the above-named conditions requiring drug testing exists with the exception of pre-employment, which will be determined by the appointing authority making the conditional job offer. Upon such determination, the Human Resources Director shall notify the supervisor of the employee to be tested, who shall immediately notify the employee where and when to report for the testing.

Testing services shall be performed by a provider chosen by the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws. At a minimum, the testing service shall assure the following:

- A. All specimen collections will be performed in accordance with applicable federal and state regulations and guidelines to ensure the integrity of the specimens and the privacy of the donors.
- B. Chain of custody forms must be provided to ensure the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition.
- C. Testing shall be performed by a SAMSHA-certified laboratory.
- D. The laboratory shall use a cut-off of 50 ng/ml for a positive finding in testing for cannabinoids.
- E. All positives reported by the laboratory must be confirmed by gas chromatography/mass spectrometry.
- F. All positive results of drug testing shall be reported by the laboratory to a qualified medical review officer for further investigation. A qualified medical review officer is a licensed physician responsible for receiving laboratory results generated by the employer's drug testing program who has knowledge of

substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with their medical history and any other relevant biomedical information.

VIII. CONFIDENTIALITY

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

IX. RESPONSIBILITY

The Secretary is responsible for the overall compliance with this policy.

The LDH Human Resources Director and the facility human resources directors are the persons within LDH responsible for administering the drug testing program; determining when drug testing is appropriate; receiving, acting on, and holding confidential all information received from the testing services provider and from the medical review officer; and collecting appropriate information necessary to agency defense in the event of legal challenge.

All supervisory personnel are responsible for ensuring that all employees under their supervision complete the required LDH Drug Free Workplace training within 90 days of their employment and every five years thereafter.

X. VIOLATIONS

Violations of this policy may result in corrective action or disciplinary action. Corrective action includes Improvement Letters (Civil Service Rule 12.9). Disciplinary actions are Suspension without Pay, Reduction in Pay, Involuntary Demotion and Dismissal (Civil Service Rule 12.3). Any corrective or disciplinary action taken is at the sole discretion of the Appointing Authority.

XI. REFERENCES

Louisiana Revised Statutes 40:1046, 4049:1015 and 49:1001
ORM Insurance Information Notice 2018-5
Act 651 of the 2022 Regular Session of the Louisiana Legislature

XII. REVISION HISTORY

Date	Revision
March 1, 1999	Policy created
September 12, 2000	Policy revised
November 6, 2017	Policy revised
March 5, 2020	Housekeeping Changes (Section VI. D – Page 4; Section VII. F – Page 6; Section IX – Pages 6-7)
December 21, 2021	Housekeeping Change (Section VI.D - Page 4)
September 22, 2022	Policy updated (Added Section V – Page 4)