

4.7, Employee Drug Testing

Application: All Employees of the Department of Children's Services and Applicants for Employment

Authority: TCA § 4-4-103, TCA § 39-16-201, TCA§ 50-9-101 et seq., and Tennessee Administrative Compilation (TAC) 0800-2-12; United States Department of Transportation Regulations (49 CFR, Part 40)

Standards: N/A

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Glossary:

- ◆ Adulterated Sample
 - Any sample that appears to have evidence of dilution, contamination, or tampering, before, during, or after the test collection, and the laboratory can confirm what the specific adulterant is.
- ◆ Alcohol
 - Has the same meaning as in the federal regulations describing procedures for the testing of alcohol by programs operating pursuant to the authority of the United States Department of Transportation as currently compiled at the 49 Code of Federal Regulations (C.F.R.) Part 40, as the same may be revised from time to time.
- ◆ Alcohol Testing
 - The analysis of breath, blood, or any other analysis which determines the presence and level or absence of alcohol as authorized by the U.S. Department of Transportation in its rules and guidelines concerning alcohol testing and drug testing.
- ◆ Applicant
 - A person who has applied for a safety-sensitive position within the Tennessee Department of Children's Services and has been offered employment conditioned upon successfully passing a drug test.
- ◆ CAP-FUT Program
 - The College of American Pathologists-Forensic Drug Testing accreditation program.
- ◆ Chain of Custody
 - The methodology of tracking specific materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.
- ◆ Confirmation Test
 - A second analytical procedure to identify the presence of alcohol or a specific drug or its metabolites in a specimen.
- ◆ Conviction
 - A finding of guilt, including plea of nolo contendere and/or imposition of sentence, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- ◆ Drug
 - Any drug subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation.
- ◆ Drug-free Workplace
 - A site for the performance of work done in connection with an employee's job whereby employees are prohibited from engaging in unlawful manufacture, distribution, dispensing, possession, or use of alcohol or drugs.

- ◆ Drug Test or Drug Testing
 - A chemical, biological or physical instrumental analysis administered by a laboratory authorized to do so pursuant to TCA 50-9-101 et seq., for the purpose of determining the presence or absence of a drug or its metabolites pursuant to regulations governing drug testing adopted by the United States Department of Transportation or such other recognized authority approved by rule by the Commissioner of Labor and Workforce Development.
- ◆ Employee
 - For purposes of this policy, any person employed full or part-time by the Department of Children's Services.
- ◆ Employee Assistance Program (EAP)
 - An established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services regarding employee drug or alcohol abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work.
- ◆ Fit for Duty
 - For purposes of this policy, Fit for Duty refers to a test performed by a contracted doctor to ensure that individuals are able to perform their duties in a safety sensitive position.
- ◆ Initial Drug or Alcohol Test
 - The first alcohol or drug-screening test to determine the presence or absence of alcohol or drugs in their metabolites in a specimen.
- ◆ Invalid Sample
 - Any sample that appears to have evidence of dilution, contamination, or tampering, before during, or after the test collection, and the laboratory cannot confirm what the specimen adulterant is.
- ◆ Medical Review Officer
 - A licensed physician employed by the State contracted vendor who has knowledge of substance abuse disorders, laboratory testing procedures and, chain of custody collection procedures who verifies positive and confirmed test results. This individual possesses medical training to interpret and evaluate positive test results in relation to the individual's medical history or other relevant biomedical information.
- ◆ Metabolite
 - A substance that takes part in the process of metabolism. Metabolites are produced during metabolism or are constituents of food or substances taken into the body. When screening for drugs, laboratory personnel look for what is left in the urine after the body has broken down a complex drug into smaller pieces, i.e., they will find metabolites of the drug, not the original drug.
- ◆ Prescription or Non-Prescription
 - A drug prescribed for use by a duly licensed physician, dentist, or other medical practitioner who is licensed to issue prescriptions or a drug that is authorized

pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, and/or injuries.

◆ Reasonable Suspicion

- A belief based on specific, objective, articulable facts and the reasonable inferences that may be drawn from those facts, or knowledge sufficient under the circumstances to cause an ordinary prudent and cautious person to believe that an employee used or is using illegal drugs or alcohol.

◆ Reconfirmation Test

- A third analytical procedure, paid for by the employee, to identify the presence of alcohol or a specific drug or its metabolites in a specimen.

◆ Return to Duty Testing

- The re-testing of an employee, prior to his/her returning to the workplace, after previously testing positive for the presence of drugs or alcohol.

◆ Safety-Sensitive Position

- A position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations or work with controlled substances, or a position in which momentary lapse in attention could result in injury or death to another person.

◆ Substance Abuse and Mental Health Services Administration (SAMHSA)

- A Federal agency within the U.S. Department of Health and Human Services created to focus attention, programs, and funding on improving the lives of people with or who are at risk for mental and substance abuse disorders.

◆ Zero Tolerance

- Appropriate employee disciplinary or corrective action, up to and including termination, upon the confirmation of alcohol or drug usage by the employee while in the workplace.

Policy Statement:

The Department of Children's Services is committed to a drug-free environment and implements an employee drug testing program to assist in that effort. The Department shall maintain a zero-tolerance policy for the illegal use of drugs, on or off the job, and the use of alcohol on the job. An employee violating this policy will be subject to disciplinary action, up to and including termination.

Purpose:

To enhance professionalism and safety by promoting a drug-free workplace within the Tennessee Department of Children's Services (DCS).

Procedures:

A. Requirements

1. The Department's Drug-Free Workplace program conforms to the requirements of TCA § 50-9-101 through § 50-9-114 and the Rules of the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Drug-Free Workplace Programs, TAC 0800-2-12.
2. Each employee is required to certify his/her acknowledgement of this policy and the action to be taken if a violation occurs by using [PR-0278, Employee Drug Free Workplace Acknowledgement](#). The signed acknowledgement is maintained in the employee's personnel file. Copies of these acknowledgement forms may be obtained through the Human Resources Division.

B. Conditions of Employment

As a condition of employment or continued employment an employee will not:

1. Use, possess, sell, trade, offer for sale, or offer to buy illegal drugs or otherwise engage in the illegal use of drugs on or off the job.
2. Work or report to work visibly impaired or while possessing in his or her body, blood or urine, illegal drugs in any detectable amount.
3. Report to work under the influence of or impaired by alcohol.
4. Use prescription drugs illegally, including using prescription drugs that have not been legally obtained or using prescription drugs in a manner or for a purpose other than as prescribed.
5. Tamper with a drug test being administered pursuant to this policy.

Note: For guidelines on controlled substances and medication information, refer to the [Controlled Substance and Medication Work Aid](#).

C. Types of Testing

1. Applicant Drug Testing:
All applicants for employment with the Department are required to submit voluntarily to drug testing after a conditional offer of employment.
2. Reasonable Suspicion Drug and Alcohol Testing/ Reasonable Suspicion Drug Testing:
Employees in all job classifications are required to submit to drug and alcohol testing as a condition of continued employment to ascertain prohibited drug use in

any case in which an individualized “reasonable suspicion” exists that the employee uses illegal drugs, is abusing prescription drugs, or is under the influence of drugs or alcohol on the job. This may be based on the following reasons:

- a) Observable phenomena, such as direct observation of drug or alcohol use or possession or the physical symptoms of being under the influence of a drug or alcohol.
- b) A pattern of abnormal conduct or erratic behavior.
- c) The identification of an employee as a suspect in a criminal investigation involving drug possession, use, distribution or trafficking.
- d) Information provided by reliable and credible sources or independently corroborated.
- e) Newly discovered information indicating that the employee may have tampered with a previous drug or alcohol test.

3. Random Drug Testing for Certain Safety Sensitive Positions:

- a) DCS employees whose sole responsibility is transportation of youth (i.e. DCS Transportation Officers, DCS Lieutenants and DCS Corporals assigned to transportation units) are subject to drug testing, which is ordered on a random, unannounced basis.
- b) Random selection is done with a statistically valid method. An employee’s name remains in the pool after being tested each time selections are made in order to ensure every employee shall have an equal chance of being tested each time. The percentage of employees to be tested on a quarterly basis shall be determined by DCS.
- c) An employee in a safety sensitive position as outlined in 3a above who has been on leave or otherwise not performing his/her job duties for a period of six (6) months or longer shall take a drug test prior to returning to work in a safety sensitive job.

4. Critical Incident/Post Accident Drug Testing:

Employees in all job classifications must submit to drug testing after a work-related Incident.

- a) Any car accident in a state vehicle.
- b) Any car accident during the transport of a child.
- c) Any work-related accident which results in injury to the employee or another person.
- d) Any work-related accident which results in a death.

- e) Assessing for potential exposure to drugs or chemical substances during job duties such as exposure from entering a structure used to manufacture methamphetamine.

D. Safety-Sensitive Designation

Each employee in a position designated as safety-sensitive is notified of such designation and is required to certify his/her acknowledgement of the safety-sensitive designation by using form [CS-0185, Employee Notifications of Conditions of Employment.](#)

E. Arrest/Criminal Convictions

1. As a condition of continued employment, an employee who is arrested for or charged with any criminal drug offense notifies his or her supervisor no later than 24 hours after such arrest or charge.
2. If an employee is convicted of violating any criminal offense, he/she is subject to disciplinary action up to or including termination.
3. If an employee participating in an activity funded by a federal agency is convicted of violating any criminal drug statute in the workplace, the Department notifies the appropriate federal agency. Notification is provided within ten days of receipt of notice regarding such conviction.

F. Testing

All testing thresholds comply with Substance Abuse and Mental Health Services Administration (SAMHSA) testing threshold guidelines.

1. All specimens are tested for the following:
 - a) Alcohol
 - b) Expanded Amphetamine (including MDA and/or MDMA)
 - c) Barbiturates
 - d) Cannaboids
 - e) Cocaine
 - f) Opiates
 - g) Oxycodone/Hydrocodone

- h) Phencyclidine
 - i) Benzodiazepines
 - j) Methadone
 - k) Methamphetamine
 - l) Propoxyphene
 - m) Buprenorphine
2. Specimens are also examined for adulteration. The following are the standard, although not the only, indicators of adulteration that are checked for:
- a) Temperature
 - b) Color/Appearance
 - c) Nitrates
 - d) Oxidants
 - e) Specific Gravity
 - f) pH Level
 - g) Creatinine
3. Contract laboratory staff trained to collect urinalysis specimens conduct urine specimen collection. Employees to be tested are required to provide positive photograph identification before entering the testing area. A driver's license may be used for this purpose. Collection procedures are completed in conformance with the procedures compiled in the [United States Department of Transportation Regulations \(49 CFR, Part 40\)](#) and must be collected in accordance with those procedures using the split sample method. DCS utilizes the vendor's chain of custody form that complies with the Tennessee Drug Free Workplace requirements.
4. Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity, identity, retention of the specimen, and transportation of the specimen to the laboratory is completed in accordance with the SAMHSA guidelines and [\(49 CFR, Part 40\)](#).
5. A SAMHSA licensed and approved contract laboratory conducts an initial drug screening test using an immunoassay testing method. If a positive result is found, the laboratory immediately performs a confirmation test using gas chromatography/mass spectrometry (GC/MS).
6. Positive, unadulterated or invalid results attained on both testing methods are reported to the MRO who proceeds as set forth in the following section.

G. Reporting and review of results by Medical Review Officer (MRO)

1. The contract laboratory reports any specimens with evidence of dilution, contamination, tampering or any question normally requiring an MRO opinion to the MRO for disposition. The MRO may determine the need to re-test, re-collect, or otherwise modify the collection procedure to ensure adequate and appropriate testing.
 - a) Samples which are confirmed as “adulterated samples” are considered positive and follow the procedures outlined in Section G: 5, 6 and 7.
 - b) Employees whose samples are confirmed as “invalid samples” are required to do the following:
 - ◆ Submit to an immediate follow up, observed collection.
 - ◆ Should the follow up test produce a second invalid result, the employee is referred for a Fit for Duty test.
 - ◆ During the Fit for Duty test, employees who have produced invalid results twice are required to submit to an alternative form of testing (hair, blood, etc.) as determined appropriate by the physician conducting the test and the MRO.
2. The contract laboratory reports confirmed positive tests to the MRO. After the laboratory has returned a confirmed positive test result to the MRO, he/she attempts to contact the employee within 24 hours to privately discuss any issues that might have affected the urine sample.
 - a) An employee who receives a positive confirmed test result from the MRO may contest or explain the result to the MRO within five (5) working days after receiving such notification. The MRO may require the employee to submit additional evidence to justify a positive drug test result, including, but not limited to, a valid prescription or a letter from the individual’s physician verifying a valid prescription.
 - b) The MRO reviews all medical records made available by the employee, if any, and determines whether a confirmed positive test could have resulted from legally prescribed medication. If an employee’s or applicant’s explanation or challenge is unsatisfactory to the MRO, or if the employee does not challenge the test result, the tests is considered verified. The MRO promptly reports the verified test result to local the designated Human Resources representative.

- c) Employees who test positive for legally prescribed drugs or who have produced two invalid tests may be asked to submit to a Fit for Duty test, as determined by the MRO, to determine their ability to function in the current position.
 - ◆ Individuals who pass the Fit for Duty test are allowed to return to work as scheduled.
 - ◆ Individuals who fail the Fit for Duty test have their results and all information leading up to the failure forwarded to local Human Resources. The Human Resources department, in consultation with the Human Resources Director and senior leadership at the facility, review and decide upon the outcome on a case-by-case basis.
 - ◆ Should further clarification be needed, the DCS Executive Director of Human Resources is available for consultation.
- 3. If the MRO is unable to reach the employee within a 24 (twenty-four) hour period, after a minimum of three (3) attempts, he/she notifies the designated Human Resources representative to contact the employee and inform the employee to contact the MRO. The MRO will not inform local designated Human Resources representative that the employee has a confirmed positive, adulterated, substituted, or invalid test result.
 - a) The Human Resources office attempts to contact the employee and instruct him/her to call the MRO. The employee must contact the MRO within 72 (seventy-two) hours after the notification by Human Resources or their designee. If the employee does not contact the MRO within 72 (seventy-two) hours after being contacted by Human Resources, the MRO may verify the test as positive or refusal to test, if applicable.
 - b) If the MRO contacts Human Resources as authorized above, and Human Resources or their designee is unable, after reasonable efforts to contact the employee by telephone or to locate the employee through his/her supervisor, Human Resources may initiate termination due to job abandonment. Human Resources must leave a message for the employee by any practical means (such as voicemail, e-mail or letter) to contact the MRO. Human Resources informs the MRO of the date and time of the attempted contact. Reasonable efforts include, at a minimum, three attempts, spaced reasonably over a 24 (twenty-four) hour period, to reach the employee at the day and evening telephone numbers listed on the chain of custody form.
- 4. Upon MRO's verification of a test result, MRO notifies the employee of the positive test result and then notifies the Department of the result within one business day.
- 5. Upon notification of a positive test result, the employee may request a reconfirmation test using the same specimen sample previously taken.

- a) The reconfirmation test is performed by an independent SAMHSA- certified or College of American Pathologists-Forensic Drug Testing (CAP-FUT) program certified laboratory designated by the DCS contractor.
- b) The reconfirmation test is at the employee's expense.
6. Results from the analysis of the second test on the split specimen sample are evaluated by the MRO and is the final step for determining positive or negative findings.
7. If there is a positive result, the employee is subject to disciplinary action, up to and including termination.

Note: Employees who are confirmed to have a positive drug screen result, or who refuse a required drug screen, or who have a positive drug screen result reconfirmed, or who have altered their specimen or drug screen results are subject to disciplinary action, up to and including termination.

H. Failure to Provide an Immediate Specimen

1. If the employee fails to provide a specimen immediately, he/she remains in the collection area for a three (3) hour period (if time permits in the business day).
2. If the employee has not provided a sufficient specimen within three (3) hours of the first unsuccessful attempt or by close of business of the testing site, the collection site person discontinues the collection and notifies the designated Human Resources representative.
3. If an employee fails to provide a sufficient urine specimen within the allotted time, he/she may be rescheduled for an alternate method of sample collection.
4. Unless medical reasons for not providing an adequate sample are confirmed by the MRO, the test is deemed positive.

I. Additional procedures for Reasonable Suspicion Drug Testing

1. Employees are required to submit to drug and alcohol testing as a condition of continued employment to ascertain prohibited drug use in any case which an individualized "reasonable suspicion" exists that the employee uses or is using drugs or alcohol. This may be based upon the reasons set forth in Section (C) (2).
2. If any employee is suspected of using drugs or of using alcohol, Supervisors use [CS-1086, Reasonable Suspicion Checklist](#) (refer to [Instructions For Use Of Form CS-1086, Reasonable Suspicion Checklist](#), if needed) to assess an employee's impairment and determine whether reasonable suspicion exists.

3. An employee is escorted by a supervisor to a pre-determined test site (where the initial test is conducted) as determined by the contracting vendor. procedures for collecting and testing urine specimens as well as the reporting and reviewing of results are in accordance with Sections (F) and (G) above.
4. If the employee fails to provide a specimen immediately, the procedures outlined in (H) above are followed. If the employee cannot provide a specimen during the three-hour timeframe, the escorting supervisor ensures that contact is made with local Human Resources or designee for further instruction.
5. DCS reserves the right to request observed collection of samples at their discretion. Based on SAMHSA guidelines, all follow up tests due to an initial result are an observed collection.
6. Employees who are drug tested for reasonable suspicion are placed on administrative reassignment pending the outcome of the test.

J. Confidentiality

Subject to federal and state law, employee drug and alcohol testing results and records are maintained under strict confidentiality. The contractor, the MRO, and employees involved in the administration of this policy observe strict confidentiality of an employee's test results and treatment. Any employee violating this requirement of confidentiality is subject to disciplinary action, up to and including termination.

K. Employee Responsibilities

1. Any employee who compromises the integrity of the alcohol and drug testing program or who fails to enforce it is also subject to disciplinary action, up to and including termination.
2. An employee or applicant is responsible for notifying the laboratory of any administrative or civil action brought pursuant to TCA 50-9-101 through 113 and/or TAC 0800-2-12.
3. All employees are required to sign [PR-0278, Employee Drug Free Workplace Acknowledgement](#)

Forms:

[CS-0185, Employee Notifications of Conditions of Employment.](#)

[Instructions For Use Of Form CS-1086, Reasonable Suspicion Checklist](#)

[CS-1086, Reasonable Suspicion Checklist](#)

[PR-0278, Employee Drug Free Workplace Acknowledgement](#)

Collateral Documents:

[*Controlled Substance and Medication Work Aid*](#)

[*United States Department of Transportation regulations \(49 CFR, Part 40\)*](#)