

Sample MA Workplace Substance Abuse Testing Policy including Marijuana

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1.0 Overview

As we are all aware, drug abuse and alcohol dependency are national social and health problems that have devastating consequences to individuals and their friends and families. Such issues can also have a negative impact on the workplace, the well-being of our fellow employees and the quality of work performed for our clientele. ABC Corp. (the “Company”) is concerned, and certain of the Company’s clients have expressed concern, about the adverse effects of drug abuse on employees’ job performance, health, and safety.

Massachusetts law allows for the controlled use of medical marijuana. Although employees who legally obtain a medical marijuana “registration card” from the Massachusetts Department of Public Health are allowed to possess and consume certain quantities of marijuana, doing so is not permitted on Company property or at Company sponsored events (either on or off Company property). Marijuana is classified as a Schedule I drug according to the Controlled Substances Act. Thus, the use, possession, cultivation, or sale of marijuana violates federal policy.

If the Company wants to offer an accommodation add the following paragraph:

The Company may in its discretion seek to accommodate legally recognized Massachusetts medical marijuana users when possible depending on the Employee’s position. Employees who obtain a registration card from the Massachusetts Department of Public Health must submit a letter to the Director of Human Resources attaching a copy of their card and requesting a reasonable accommodation. The Company will then enter into a discussion with the Employee and where applicable the Employee’s Health Care provider to determine if such accommodation is appropriate under the circumstances.

2.0 Purpose

To foster a drug-free, healthful, and safe work environment for all at the Company.

3.0 Scope

The scope of this policy includes all of the Company's employees who are present at the Company's premises (as defined below) or who are engaged in, or traveling to or from, any activity, appearance or other engagement on behalf of the Company or otherwise while in the course of their employment.

4.0 Policy

Provisions

All employees are prohibited from the following:

- The manufacture, possession, use, sale, distribution, dispensation, receipt, or transportation of illegal substances while on Company property or while otherwise engaged in Company business.
- The theft, unauthorized use, or intentional mishandling or misuse of any medication and/or substance that is present at Company for the purpose of treating patients.
- The consumption of alcoholic beverages or marijuana, either while on duty or preceding duty which affects the employee's fitness for duty.¹
- Being under the influence of substances while on Company property or while otherwise engaged in Company business or during employment.

Violation of this policy will not be tolerated and may subject violator to discipline, up to and including termination of employment.

Any employee who refuses to submit to testing as provided for in this policy may also be subject to disciplinary action, up to and including termination of employment.

Definitions

Possession: To have on one's person, in one's personal effects, in one's vehicle or otherwise under one's care, custody, or control.

¹ Where use of alcohol on or off Company premises (such as at Company-sponsored events) is approved, it is permitted only in moderation and only to the extent it does not lead to impaired performance or inappropriate behavior, or endanger the safety of any individual or violate applicable law.



Substance: Any alcohol, drugs, other substances whether ingested, inhaled, injected subcutaneously, or otherwise) that have known mind altering or function-altering effects upon the human body or that impair one's ability to safely perform his or her work, specifically including, but not limited to, prescription drugs and over-the-counter medications; alcohol; drugs and other substances made illegal under federal or state law; "synthetic or designer" drugs: illegal inhalants; "look-alike" drugs; amphetamines, cannabinoids (marijuana and hashish), cocaine, phencyclidine (PCP), and opiates; and any drugs or other substances referenced in Schedule I through V of the Controlled Substances Act (whether or not such drugs or other substances are narcotics).

Premises: For the purpose of this policy all property, facilities, buildings, structures, installations, work locations, work areas, or vehicles owned, operated, leased, or under the control of the Company entity to which such premises or property pertains. Private vehicles parked on premises or properties are also included under this definition. **Although the vehicle used by an employee is not under the control of the Company, this Policy shall be construed as prohibiting the use of substances by the employee while traveling to and from the premises, or to any other location at which the employee has been designated to work, in such vehicle.**

Under the Influence: The condition wherein any of the body's sensory, cognitive, or motor functions or capabilities is altered, impaired, diminished, or affected due to substances. This also means the detectable presence of substances within the body, regardless of when or where they may have been consumed, having an alcohol test result of 0.02 or greater alcohol concentration of blood or breath, and/or having a positive test for other substances.

Prescription: A valid prescription issued to the employee by a licensed health care provider authorized to issue such prescription and used for its intended purpose as prescribed before any expiration date.

Legal Compliance

The provisions of this policy are subject to any federal, state, or local laws that may prohibit or restrict their applicability, and testing for substances shall be conducted in accordance with and limited by such laws notwithstanding any terms of this policy to the contrary.

Post-Offer Testing

Prior to beginning work for the Company, all those to whom an offer of employment is made will be subject to substance abuse testing. A positive finding for which the individual cannot offer an acceptable explanation will generally result in withdrawal of the offer of employment.

Post-Accident / Injury Testing

If a workplace accident occurs causing injury to an employee or damage to property under circumstances that raise a question about possible substance abuse, the employee may likewise be subject to substance abuse testing.

Reasonable Suspicion

The Company may require an employee to submit to a substance abuse test if the employee's supervisor or another individual in a management position reasonably suspects that the employee is using, is Under the Influence of, is in the possession of or is unlawfully distributing substances or has otherwise violated this policy's prohibitions with respect to substances. The following is a non-inclusive list of factors that may lead to reasonable suspicion under this policy:

- Odors (i.e., smell of alcohol or marijuana)
- Movements (unsteady, fidgety, dizzy)
- Eyes (dilated, glassy, constricted, watery, involuntary eye movements)
- Face (flushed, sweating, confused or blank look, constant sniffing, redness under nose)
- Speech (slurred, slow, distracted mid-thought, inability to verbalize thoughts)
- Indicia of drug use (needle marks, possession of drug paraphernalia)
- Personality (change in personality, argumentative, agitated, irritable, forgetful)
- Other observations (extreme drowsiness, sleeping, unconsciousness, slowed reaction rate, erratic behavior)
- Abnormally dilated or constricted pupils
- For Marijuana Use:
 - Red, blood-shot eyes
 - Poor concentration
 - Impaired perception of time

- Loss of energy
- Impaired perception of distance

In addition, when there is a medication administration/handling discrepancy or where a substance is missing, all staff members who were involved in the handling of, or had access to, the missing substance may be required to submit to a substance abuse test. Employees who admit to diversion of medications may also be required to undergo substance abuse testing.

If there is reason to suspect that the employee is working while under the influence of an illegal drug or alcohol, the employee may be suspended until the results of the substance abuse test are made available to the Company.

Reporting to Law Enforcement:

Where available evidence warrants, the Company may bring violations of this policy to the attention of appropriate law enforcement authorities.

Medications

Employees taking legally prescribed or over-the-counter medications that have the potential to negatively impact the employee's ability to perform his/her job functions in a safe and effective manner (e.g., medications which caution against use while operating machinery) must report such use to their immediate supervisor, and may be required to present medical documentation describing the effects such medication may have on the employee's ability to perform his/her tasks. The Company may take such action as it deems appropriate, including but not limited to temporarily transferring the employee to a different position, permitting the employee to take a leave of absence or other steps, depending on the circumstances.

Workplace Searches:

Management may conduct searches of Company property, including lockers, and an employee's personal property in cases where there is reason to suspect a violation of this policy. An employee who refuses to consent to and/or cooperate in the conducting of such searches may be subject to disciplinary action up to and including termination of employment.

Off-Premises Use

The Company reserves the right to suspend, with or without pay, any employee who has been arrested or charged with a criminal offense related to alcohol, marijuana or illegal substances pending resolution of the charges to the Company's satisfaction. The Company reserves the right to take such action as it deems appropriate under the circumstances, including termination. Employees who are charged or convicted or any substance related violation under state or federal law, including employees who plead guilty or *nolo contendere* (i.e., no contest) to such charges must inform the Company. Failure to do so may result in disciplinary action, up to and including termination.

Testing Procedures / Confidentiality of Test Results

Any drug testing required or requested by the Company will be conducted by a laboratory licensed by the state. All expenses related to the test will be incurred by the Company.

Employees asked to undergo a Substance Abuse Test will be asked to sign a Consent for Substance Abuse Testing Form. Refusal to sign the form may result in discipline, up to and including termination.

Specimens that are found to be adulterated or substituted will be considered a refusal to test, and therefore may result in termination of employment or ineligibility for hire.

The Company will strive to keep the employee's test results confidential, treating them the same as other medical records and disseminating the result only on a need-to-know basis, such as in response to any government inquiry, court order, in defense of any legal, administrative, or grievance proceedings that may be brought against the Company by the tested employee, or as otherwise may be required by law or in the course of legal, administrative or grievance proceeding.

Prior Reporting of an Abuse Problem

Employees are encouraged to seek help if they have a drug or alcohol problem. Any employee who, *prior* to being asked to report for testing and *prior* to any violation of this policy, reports to his or her manager or Human Resources that he or she believes he or she has a substance abuse problem, shall be permitted an unpaid leave of absence to seek treatment for such problem provided (1) the Company is made aware of the treatment program, and (2) the employee successfully completes the treatment program, as determined and certified by the treatment facility.

Positive Results

If an employee tests positive on an initial screening test, the employee will be placed on unpaid administrative leave. The employee will be given the opportunity to explain the positive result and will be informed that employee may have the same sample retested at a laboratory of their choice at their cost.

Employees with confirmed positive results will be subject to disciplinary action, up to and including termination. Discipline selected by the Company will depend upon a variety of factors, including the prior work record of the employee; the length of prior employment; the prior accident and attendance record of the employee; the circumstances which led to the testing; and the proposals by the employee to address the problem.

First time violators may, at the discretion of the Company, be permitted an unpaid leave of absence to seek treatment, as provided for in the section above on prior reporting of a substance abuse problem. In such circumstances, the employee must agree to provide the Company with information about their progress and completion of the program. Such employees will also be required to submit to substance abuse testing prior to being permitting to return to work, and may also be subject to random testing for a one-year period following completion of the program, in addition to any testing otherwise provided for in this policy.

5.0 Enforcement

The firm's Human Resources department shall be charged with implementing and monitoring this policy. Failure by any employee responsible for complying with the directions set forth in this policy will result in disciplinary action up to and including termination of employment.

ACKNOWLEDGEMENT OF RECEIPT OF SUBSTANCE ABUSE TESTING POLICY

I, _____, acknowledge that I have received a copy of the ABC Corp. Substance Abuse Testing Policy (the “Policy”). I have read and understand the Policy. I understand that, if I violate the Policy, I may be subject to disciplinary action, including termination. I further understand that, under the Policy, I may be subject to post-accident/injury and reasonable suspicion substance abuse testing. I also understand that if I am asked to submit to a substance abuse test, and refuse to do so, I may be subject to disciplinary action, including termination. I will contact my supervisor if I have any questions about any aspect of the Policy. I further understand that that I am an employee-at-will and that the Policy does not alter that status.

Date

Employee Signature

Date

Witness

CONSENT FOR SUBSTANCE ABUSE TESTING

I have received, read and understand the Workplace Substance Abuse Testing policy of ABC Corp. (the “Company”).

I hereby voluntarily consent to allow _____ (the “Laboratory”) to take a specimen of my [hair] [saliva] [urine] for drug and/or alcohol testing. I further consent to allow the Laboratory to make the results of such test available to the Company. I understand that the information so released to Company will be used to determine whether I was fit to perform my job duties, and/or whether I had violated the Company’s policies concerning substance abuse, and that the results of such tests may form the basis for disciplinary action against me, up to and including termination.

I understand that if I refuse to submit to such testing or if I fail to cooperate with the testing procedures, I may be subject to disciplinary action, up to and including termination.

In consideration for such testing services being rendered on my behalf, I hereby release the Laboratory, its officers, agents, and employees, from any and all claims which I might otherwise have due to such results being made so available. I hereby consent not to file any action at law or in equity against Company, Laboratory, their respective officers, agents or employees in connection with the results of such screen being made so available, and I hereby agree to indemnify and save harmless Company, Laboratory, their respective officers, agents, and employees from all damages, expenses, reasonable attorney's fees, and costs of court which they or any of them may suffer or incur, jointly or severally, due to the results of such screen being made so available.

With full knowledge of the above information, I have decided to voluntarily submit to the requested substance abuse test.

Date

Employee Signature

Date

Witness