

Number 17.3 - DRUG-FREE WORKPLACE POLICY

Effective Date: March 1, 1996

Replaces Drug Free Workplace Policy Dated January 12, 1995

Applicable To: All classified employees, as well as exempt, appointed, temporary and contractual, with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

PURPOSE AND POLICY STATEMENT

As an employer, the State of Vermont is responsible for maintaining safe, efficient working conditions for its employees by providing a drug-free workplace. Therefore, State employees shall not engage in the unlawful manufacture, distribution, possession or use of controlled substances (drugs) on the job or on any State work site.

An employee who is under the influence of any drug on the job may pose serious safety and health risks not only to the user but to co-workers and the general public at large.

DEFINITIONS

CONTROLLED SUBSTANCE - as used in this policy shall mean a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulation at 21 CFR 1308.11-1308.15.

CONVICTION - means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

CRIMINAL DRUG STATUTE - means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.

ILLEGAL DRUG - any drug which is not legally obtainable, or which is legally obtainable but has not been legally obtained. The term includes prescribed drugs not legally obtained and not being used for prescribed purposes.

LEGAL DRUG - includes prescribed drugs and over-the-counter drugs which have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.

UNDER THE INFLUENCE - means, for the purpose of this policy, that the employee is noticeably affected by a drug.

WORKPLACE - is defined to include non-State owned property which is used in the conduct of State business, including property used temporarily for business related purposes, such as lodging sites rented for seminars, training, or other State activities.

APPLICABILITY AND GENERAL POLICY CONDITIONS

The following conditions shall be applicable to all employees of the State of Vermont:

1. Employees shall be required, as a condition of their employment, to abide by the terms and conditions of this Drug-Free Workplace Policy.
2. An employee shall notify the appointing authority of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. Failure to do so will result in discipline, up to and including dismissal.
3. The appointing authority of a convicted employee who works in a federally funded program must notify the involved federal grant agency of the conviction within ten (10) days of receiving notice of the conviction.
4. An employee **convicted** under any criminal drug statute for a violation occurring in the workplace, while on or off duty, or on duty away from the workplace, shall be immediately dismissed for the first offense.
5. In the absence of compelling mitigating circumstances, an employee **convicted** under any criminal drug statute for a violation not occurring in the workplace while **not** on duty shall be subject to immediate dismissal for the first offense if convicted of a felony. If the conviction is not a felony, discipline up to and including dismissal may be imposed, including for the first offense, provided that there is a nexus between the offense and the job of the employee.
6. Appropriate disciplinary and/or corrective action is to be taken within thirty (30) days after the employer receives notice of a conviction. This, however, is not to be construed to limit the authority of the employer to take such action thereafter. Any disciplinary action must comply with the collective bargaining agreement, Section 504 of the Rehabilitation Act of 1978, and the Americans with Disabilities Act, if applicable.
7. An employee not convicted under any criminal drug statute, but who engages in the illegal manufacture, distribution, dispensation, possession or use of controlled substances in any State workplace while on or off duty, or on duty away from the workplace, shall be subject to discipline up

- to and including dismissal for the first occurrence. An employee engaging in such actions while off duty and away from the workplace may be subject to discipline, up to and including dismissal, including for the first offense, provided there is a nexus to the employee's job and just cause for the discipline.
8. Any employee on State premises who appears to be under the influence of, or who possesses illegal or non-medically authorized drugs, or who has used such drugs on State premises, may be temporarily relieved from duty pending further investigation.
 9. If the use of legal drugs endangers safety, management may (but is not required to) reassign work on a temporary or permanent basis.
 10. Employees must observe other work rules established by their employing departments regarding the use, possession or presence of drugs involving their employment.
 11. Each employee of the State of Vermont will make a good faith effort to maintain a drug-free workplace and uphold and promote this policy.

USE OF DRUGS

Legal Drugs: For certain positions, the legal use of a drug can pose a significant risk to the safety of the employee or others. Employees who feel or have been informed that the use of such a drug may present a safety risk, are to report such drug use to their immediate supervisor.

Illegal Drugs: The use, sale, purchase, transfer or possession of an illegal drug by an employee while in a State facility, while performing State business, or while on the job is prohibited. Being under the influence of any illegal drug while conducting State business, while on State property or in a State facility, or while operating any State equipment is prohibited. Misuse of prescription drugs is considered to be the illegal use of drugs. This includes both the use of such drugs in a manner inconsistent with the prescribed use and any use of prescription drugs by persons for whom they are not prescribed.

RESPONSIBILITIES:

Employer: It is the responsibility of each appointing authority to advise each employee of this policy; to post the policy annually at each worksite; to include a copy of this policy in each new employee's orientation; to permit and encourage employees to avail themselves of the State Employee Assistance Program (EAP); to provide training for managers and supervisors regarding the management of employees towards a drug-free workplace; and to take action with regard to any violations of this policy.

Employee: It is the responsibility of each employee to be aware of and to abide by this policy.

Administration: It is the responsibility of the Department of Personnel to ensure that managers, supervisors and employees receive training and orientation regarding the implementation of this policy.

Employee Assistance Program: It is the responsibility of the EAP to provide necessary information and support to the employee, the appointing authority and to the administration to ensure adequate implementation of this policy. This will include informing employees of the dangers of drug abuse in the workplace and to inform them of drug counseling, rehabilitation and EAP programs available to employees. (Please refer to Appendix A for additional information regarding EAP).

Appendix A – Employee Assistance Program

The Employee Assistance Program (EAP) is a voluntary, confidential counseling program designed to assist employees and members of their immediate families with personal problems such as family or marital difficulties, problems with alcohol or drugs, emotional illness, or financial or legal worries. EAP coordinators will help employees with personal problems by offering advice and providing appropriate screening and referrals to outside rehabilitative services or agencies.

A. The State of Vermont supports this program for its employees and urges employees to seek assistance from the EAP before substance abuse or other personal problems interfere with work performance and disciplinary or corrective action must be used.

B. Employees can be offered rehabilitation through the EAP, however, it is the responsibility of each employee to seek assistance from the EAP before alcohol or drug problems lead to disciplinary action or performance corrective action. A supervisor, manager, appointing authority or personnel officer may recommend that the employee seek counseling from the EAP with regard to an appropriate treatment or rehabilitation program. Costs associated with treatment are subject to the employee's own resources or covered medical expenses through group medical plans.

C. The employee's decision to seek assistance from the EAP or a rehabilitation program is totally confidential and, therefore, medical treatment and referral records pertaining to EAP screening or any rehabilitation of drug or alcohol dependent employees are protected as confidential.

D. There are two types of referrals to the EAP: self-referral and supervisory referral.

1. **Self-referral:** occurs when an employee or one of his or her dependents voluntarily seeks assistance to solve a personal problem. Guidelines on how to obtain assistance are:

- The employee or dependent who would like confidential assistance should call the EAP Coordinator at 241-2173 or toll free at 1-800-287-2173.
- The EAP Coordinator will provide the necessary assistance during a telephone call or, if necessary, arrange to see the employee or dependent for further confidential consultation. In some instances, the EAP Coordinator may need to talk with the employee to determine the nature of the problem; to determine the best community resource to help solve the problem; or arrange for any initial appointment with a counselor.
- If an employee would prefer to talk only to an outside counselor, the EAP Coordinator can arrange an initial appointment with an outside counseling service at the employee's request.
- All communication between the employee or dependents and the EAP Coordinator will be confidential.

2. Supervisor Referrals: Supervisors are responsible for directing an employee to the EAP if a personal problem appears to be affecting the employee's work performance.

- If an employee's treatment program requires release from work time, the employee must make a request to the supervisor prior to using any leave time.