

# EMPLOYEE DRUG TESTING POLICY

## **Purpose**

It is agreed by those employees working within the Administration of the University of Louisiana at Monroe that the workplace should be free from the risks associated with the use of alcohol and drugs. The Administration has a legitimate interest in promoting reasonable working conditions and is committed to providing a safe and healthy environment for employees and the public.

According to the Louisiana Revised Statutes 49:1001-1021, the University is authorized to proceed with drug testing of employees. The context of this policy will be pursuant to this statute and to the Drug-Free Schools and Communities Act of 1986, the federal Drug-Free Workplace Act of 1988, the Drug-Free Public Housing Act of 1988, the Louisiana Drug Testing Act of 1990, the Omnibus Transportation Employee Testing Act of 1991, the Federal Highway Administration procedures, Title 49CFR part 40 and part 382 et al., LA Revised Statutes 23:1081 and 1601, and Executive Order MJF 98-38.

## **Applicability/Scope**

Louisiana R.S. 49:1001 defines an employee as a person, paid or unpaid, in the service of an employer. More specifically, the person may be classified, unclassified, probationary (rehabilitation), temporary or non-temporary in a safety-sensitive and/or security-sensitive position.

More specific clarification of definition follows as to positions covered by the policy that are defined under federal and state law. Certain employees could be subjected to testing under both federal and state laws.

### Positions Defined Under Federal Law

- All current W-2 employees whose job requires them to drive commercial motor vehicles as defined by the Drug-Free Workplace Policy. The policy also applies to all persons who have made written application for positions, which will require them to drive commercial motor vehicles. This group of employees and applicants is subject to drug testing pursuant to federal law (Department of Transportation/Federal Highway Administration Alcohol and Drug Testing Regulations—CFR 49).

### Positions Defined Under State Law (LA. R.S. 49:1015)

- All current W-2 employees in a safety-sensitive or security-sensitive position, both classified and unclassified. The policy also applies to all persons who have made written application for positions designated as safety-sensitive and security-sensitive (see definitions). Employees who occupy such positions will be subject to alcohol and controlled substance testing under the following conditions: post hire pre-employment, reasonable suspicion, post-accident, random, return-to-duty, and follow-up testing.
- All current W-2 employees, both classified and unclassified will be subject to alcohol and controlled substance testing under the following conditions: reasonable suspicion, post-

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accident, post-incident, and testing as part of a monitoring program established to assure compliance with the terms of a rehabilitation agreement.

A public employer shall require samples to test for the presence of drugs, as a condition of hiring, from prospective employees whose principal responsibilities of employment include operating a public vehicle, performing maintenance on a public vehicle, or supervising any public employee who operates or maintains a public vehicle pursuant to R.S. 49:1015(F).

### **Federal and State Definitions**

CAP-FUDD Laboratory–NIDA Laboratory [SAMSHA] (LA R.S. 49:1001)

A laboratory for forensic drug testing certified by the College of American Pathologists.

Collection Site (LA R.S. 49:1001)

A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Commercial Motor Vehicle (CFR 382.107)

A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property and (1) has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds, (2) has a gross vehicle weight rating of 26,001 or more pounds, (3) is designed to transport 16 or more passengers including the driver, or (4) is of any size and is used in the transportation of hazardous materials requiring placards.

Confirmation or Confirmatory Test (LA R.S. 49:1001)

A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

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.

Driver (CFR 382:107)

Any person who operates a commercial motor vehicle. This includes but is not limited to: full-time, regularly employed drivers; and casual, intermittent or occasional drivers.

Drug Testing Services (LA R.S. 49:1005 and Executive Order No. MJF 98-38)

Procurement of laboratory services by a certified laboratory shall be provided through the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws. Expenses for testing services will be encumbered by the University. Expenses for second testing may be the responsibility of the employee.

Employee (LA R.S. 49:1001)

Any person, paid or unpaid, in the service of an employer.

**Employer (LA R.S. 49:1001)**

Any person, firm, or corporation, including any governmental entity, that has one or more workers or operators employed, or individuals performing service, in the same business, or in or about the same establishment, under any contract of hire or service, expressed or implied, oral or written. Shall not include any person, firm, or corporation that is subject to a federally mandated drug-testing program. An employee who is a person, firm, or corporation that contracts or subcontracts with a principal need not be considered, in whole or in part, to be an employee of such principal.

**Employer (CFR 382.107)**

Any person (including the United States Senate, the District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle, including agents, officers, and representatives of the employer.

**Illegal Drug (LA R.S. 49:1015)**

Includes narcotics, hallucinogens, depressants, stimulants, look-alike drugs, or other substances, which can affect or hamper the senses, emotions, reflexes, judgment or other physical or mental activities. Included is 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.

**Initial Test or Screening Test (LA R.S. 49:1001)**

An immunoassay screen to eliminate "negative" urine specimens from further consideration. The guidelines for screen laboratories will be followed pursuant to LA R.S. 49:1008.

**Legal Drug (LA R.S. 49:1015)**

Drugs prescribed by a licensed practitioner and over-the-counter drugs which have been legally obtained and are being used solely by the individual and for the purpose for which they were prescribed or manufactured in the appropriate amount.

**Job-Related Accident/Incident**

Any employee behavior (action or inaction), which results in an accident, injury, or illness. Usually the accident/incident results in lost work time by an employee, serious or significant injury or illness to a patient, visitor, or co-worker, or an accident involving a vehicle, equipment or property.

**Medical Review Officer (LA R.S. 49:1001)**

A licensed physician responsible for receiving laboratory results generated by employer or testing entity's drug testing program that has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his medical history and any other relevant biomedical information.

**Non-Employee**

Those who do not receive W-2's from the University including but not limited to all contract and subcontract workers (faculty, residents, interns), volunteers, students, laborers or independent agents who are conducting business on behalf of or are providing services for the University.

**Positive Rate (CFR 382.107)**

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The number of positive results for random controlled substances tests conducted plus the number of refusals of random controlled substances tests divided by the total of random controlled substances tests.

**Pre-employment (LA R.S. 49:1015)**

Post-job offer but prior to starting work an employee in a security- or safety-sensitive position must be tested for controlled substances. The employee shall not be allowed to perform safety-sensitive functions unless the employer has received a verified controlled substances negative test result.

**Prospective Employee (LA R.S. 49:1001)**

Any person who has made application whether oral or written to become an employee.

**Post-accident (LA R.S. 49:1015)**

A public employer may require, as a condition of continued employment, samples from his employees to test for the presence of drugs following an accident during the course and scope of his employment, under other circumstances which result in reasonable suspicion that drugs are being used, or as a part of a monitoring program established by the employer to assure compliance with terms of a rehabilitation agreement.

**Public Vehicle (LA R.S. 49: 1015(F))**

Any motor vehicle, watercraft, aircraft, or rail vehicle owned or controlled by the state.

**Random Testing (LA R.S. 49:1015)**

Employees whose positions are safety-and security-sensitive are eligible for random drug testing for alcohol and controlled substances at all times. A non-discriminating method shall be used to select employees for testing.

**Reasonable Suspicion (LA R.S. 49:1015)**

Belief based upon reliable, objective, and articulable observation regarding the appearance, behavior, speech, or body odors of an individual and being of sufficient import and quantity to lead a prudent person to suspect that an employee is in violation of this policy. A second employee when possible should confirm such determination. Recommendation to test will be in writing and will describe the behavior and circumstances observed.

**Refusal to Submit (CFR 382.107)**

A driver (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

**Safety-sensitive or security-sensitive position (LA R.S. 49:1015)**

Includes positions where: a hazardous condition or practice in the workplace could result in a potential danger which could reasonably cause death or physical harm to individuals, operation of machinery and equipment could cause serious injury to individuals in the work area, or public safety demands that employees carry deadly weapons in the course and scope of their duties and must be prepared to make clear-headed instant decisions that could cause injury or death. Positions in this area include, but are not limited to, police officers, bus drivers and equipment operators. See Appendix A for a list of positions considered to be safety-sensitive or security-sensitive.

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Sample (LA R.S. 49:1001) Urine,  
blood, saliva, or hair.

Sample Collection (R.S. 49:1006)  
Procedures as dictated by state law.

Split Sample (LA R.S. 49:1001)  
One urine specimen from one individual that is separated into two specimen containers.

#### Under the Influence

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. Such a determination of influence will be established by a professional opinion or a scientifically valid test.

#### Workplace

Any location 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.

### **Substances Tested**

Pursuant to LA R.S. 49:1001, drug testing is performed for any or all of the following classes of drugs: amphetamines, cocaine, marijuana, opiates, and phencyclidine.

### **Procedures, Conditions and Consequences of Drug Testing**

Pursuant to LA R.S. 49:1005(B), drug testing shall be performed in compliance with the NIDA guidelines or by statutory or regulatory authority under R.S. 23:1081 et seq. and R.S. 23:1601 ET seq. The cut off limits for drug testing shall be in accordance with NIDA guidelines with the exception of initial testing for marijuana, which shall be no less than fifty nanograms/ML and no more than one hundred nanograms/ML as specified by the employer or the testing entity.

#### Controlled Substances

Pursuant to CFR 392.4, the FHWA prohibits the use of controlled substances by drivers except as prescribed by a physician. The doctor must also advise the driver that the substance does not adversely affect the driver's ability to safely operate a commercial vehicle.

Pursuant to LA R.S. 49:1015, employers are prohibited from permitting a driver who uses drugs to perform safety-sensitive functions. A driver who tests positive for drugs with a 0.04 or greater BAC is prohibited from driving. The prohibition remains in effect until the driver complies with requirements of Section 382.605, including evaluation by a SAP. A driver who is prohibited from performing safety-sensitive functions may be assigned to non-safety-sensitive functions until such time as the driver complies with the requirements for returning

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to duty. For controlled substance testing, urine specimen collection and testing by a certified lab is required.

Following a determination that an employee has tested 0.04 BAC or greater for controlled substances, the employee must be removed from safety-related functions and cannot return to such functions until at a minimum: the employee undergoes evaluation and, when necessary, rehabilitation; a substance abuse professional determines that the employee has successfully complied with any required rehabilitation; and the employee undergoes return-to-duty tests with a verified negative test result.

Pursuant to LA R.S. 49:1008, a prospective employee who tests positive for the presence of drugs in the initial screening shall have the employment offer rescinded. Refusal to submit to a post-hire pre-employment job offer test will result in the individual not being hired. A driver who refuses to submit to a return-to-duty test will not be allowed to return to duty. A second test confirmed positive will result in termination of employment.

The FHWA will disqualify drivers for one year, pursuant to CFR 49.386, if the driver refuses to submit to a post-accident test after a fatal accident.

When a required test has not been administered within a reasonable time frame following an accident for which a test is required, the following actions shall be taken:

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| 2 hours elapsed:  | Driver has not submitted to an alcohol test, employer shall prepare and maintain on file a record stating the reason a test was not promptly administered.           |
| 8 hours elapsed:  | Cease attempts to administer alcohol test, and prepare and maintain records as described above.  |
| 32 hours elapsed: | If driver has not submitted to a controlled substance test at this time, cease attempts to administer the test, and prepare and maintain the record described above. |

A driver subject to post-accident testing must remain available, or the employer may consider the driver to have refused to submit to testing. The driver subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

### **Confidentiality**

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

CFR 382.107: Qualitative information regarding results, such as the identification of a substance, will be provided only to the designated Medical Review Officer pursuant to current law who will report final results to the appropriate official. Results of the test will be released to appropriate

licensing agencies on a need-to-know basis. All drug test results will be maintained in separate health files with restricted access in accordance with Section 382.405.

### **Violation of the Policy**

Violation of this policy, including refusal to submit to drug testing when properly ordered to do so, will result in actions up to and including termination of employment. Each violation and alleged violation of this policy will be handled on an individual basis, taking into account all data, including the risk to self, fellow employees, and the general public.

### **Appendix A**

Employees subject to random drug/alcohol testing include, but are not necessarily limited to the following positions:

- Bus Driver/Travel Aide
- Mobile Equipment Operator 1
- Mobile Equipment Overhaul
- Mobile Equipment Shop Foreman
- Mechanic
- Electrician
- Electrician Master
- Electrician Specialist Foreman
- Environmental Health and Safety Officer
- Maintenance Repairer Master
- Maintenance Repairer 2
- Mobile Equipment Master Mechanic
- RN 1/Student Health
- Director of University Police
- Police Captain
- Police Corporal
- Police Officer 1
- Police Officer 2
- Police Sergeant