

Office/Contact: Office of Human Resources

Source: SDCL Ch. 3-6F; ARSD 55:05; Bureau of Human Resources Drug and Alcohol Testing Policy; University Policy 4:7 (Drug Free Environment)

Link: [https://sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=3-6F](https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=3-6F); <https://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=55:05>; <https://bhr.sd.gov/policies-forms/policies/>; <https://www.sdstate.edu/sites/default/files/policies/upload/Drug-Free-Environment.pdf>

Associated Forms: Authorization and Consent or Refusal to Submit to Substance Abuse Testing

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## **SOUTH DAKOTA STATE UNIVERSITY**

### **Policy and Procedure Manual**

SUBJECT: Drug and Alcohol Testing

NUMBER: 4:14

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#### 1. Purpose

This policy and its procedures set forth the conditions under which University employees may undergo drug and alcohol testing in their employment capacity and the process for such testing in compliance with state and federal law.

#### 2. Definitions

- a. Employee: Any person having an employment relationship with the University, regardless of the appointment type (e.g. civil service, non-faculty exempt, faculty, full-time, part-time, temporary, student, intern, or volunteer).
- b. Illegal Drug: Any illegal substance, including but not limited to narcotics, hallucinogens, cocaine, marijuana (including cannabis used or possessed for medical purposes), and designer drugs, and any controlled substances, including but not limited to amphetamines and barbiturates, that are used either without being prescribed by a licensed physician or in excess of the amount prescribed by a licensed physician. Any drug that is not legally obtainable or that 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 an individual other than the person for whom prescribed.
- c. Drug and/or Alcohol Test: An evaluation used to detect the presence of illegal drugs and/or alcohol in an individual's system. Testing will usually consist of urine sampling for drugs and/or breath testing for alcohol.
- d. Confirmatory Test: An analytical procedure to identify the presence of a specific drug or metabolite that is independent of the initial test performed on the same specimen and that uses a different chemical principle from that of the initial test to ensure reliability and accuracy.
- e. Reasonable Suspicion: Belief based upon reliable, objective facts derived from immediate and direct observation of specific physical, behavioral, odorous presence, or performance indicators being of sufficient import and quantity to lead a reasonable person to suspect that it is more likely than not that an employee has used or may be impaired by drugs or

alcohol, or has engaged in conduct that violates this policy.

- f. **Safety-Sensitive or Security-Sensitive Position:** A position determined by state law or by the V.P. for Human Resources, successor, or designee, to entail duties of such a nature that a compelling University interest to keep the incumbent drug or alcohol free outweighs the employee's privacy interests. The following are non-exclusive examples of safety-sensitive and security-sensitive positions:
  - i. Positions with duties that are required or are authorized to perform the safety inspection of a structure;
  - ii. Positions with duties that are required or are authorized to carry a firearm or other weapon or are authorized to use physical force when necessary that could result in bodily injury or death;
  - iii. Positions with duties that allow access to controlled substances;
  - iv. Positions involved in patient care, to include those providing direct patient care or those drivers of State vehicles who transport patients receiving care;
  - v. Positions with duties that are required or authorized to inspect, handle, or transport hazardous materials;
  - vi. Positions with duties that are required or authorized to exercise any responsibility over potentially dangerous equipment;
  - vii. Positions with duties that require operation of a state vehicle, an aircraft, or that require a Commercial Driver's License (CDL);
  - viii. Positions with duties that require the operation or supervision of heavy equipment or machinery.
- g. **Workplace:** Any location—including all offices, facilities, vehicles and equipment—whether owned, leased or otherwise used by the University or by an employee on behalf of the University, from which an employee is assigned to conduct University business.

### 3. Policy

#### a. Policy Statement

- i. It is the policy of the University to maintain a drug-free environment (University Policy 4:7) and to thereby establish, promote, and maintain a safe and healthy working and learning environment for employees and students. Unauthorized use or possession of alcohol or controlled substances by employees, or unauthorized use of substances that impair judgment or mental/physical function by employees in safety-sensitive and security-sensitive positions, is prohibited.
- ii. Pursuant to University and SDBOR policies and state and federal law, drug and alcohol testing applies to all employees of the University, including those who are employed in safety-sensitive or security-sensitive positions. Drug and alcohol testing for employees required to have a CDL must conform to USDOT

regulation CFR 49 Part 40. Drug and alcohol testing for aircraft flight crew, instructor, and maintenance employees must conform to FAA regulation 14 CFR Part 120. Job announcements and letters of offer for safety-sensitive or security-sensitive positions will contain language indicating that employees will be subject to pre-employment and post-employment suspicionless drug and alcohol testing in accordance with this policy. All other employees will be subject to reasonable suspicion drug and alcohol testing. The University's testing policy shall comply with the Americans with Disabilities Act.

b. Drug and Alcohol Testing

i. The University shall require drug testing for its employees under the following conditions:

1. Reasonable Suspicion – Any employee shall be required to submit to a drug or alcohol test if their supervisor has reasonable suspicion that the employee is using and/or under the influence of drugs and alcohol.

Reasonable suspicion may be met by the following:

- a. An on-the-job incident that may be reasonably attributed to drug or alcohol use by the employee, such as a medical emergency;
- b. Observation of conduct, speech, behavior, body odors, or appearance which is usually associated with being impaired, with chronic use or withdrawal, or with being under the influence of drugs or alcohol, such as the following:
  - i. Shakiness or lack of coordination;
  - ii. Trembling;
  - iii. Mood swings;
  - iv. Slurred speech;
  - v. Dulled mental processes;
  - vi. Odor of alcohol on breath;
  - vii. Excessive absenteeism; or
  - viii. A pattern of absenteeism.
- c. Observation that the employee may be using drugs or alcohol, or may be under the influence of drugs or alcohol, because they are exhibiting behavior in the workplace that may:
  - i. Render the employee unable to perform the employee's job, or
  - ii. Pose a threat to the safety or health of the employee, other employees, or members of the public.
- d. Observation of, or collection of physical on-the-job evidence of drug or alcohol use or possession by the employee;

- e. Observation of deterioration in the employee's job performance that is likely to be attributed to drug or alcohol use by the employee; or
- f. Newly discovered evidence that an employee tampered with a previous drug test.

The above observations and sources of information must be documented. Before administering a drug or alcohol test, the supervisor must provide notice to the suspected employee specifying the basis for the supervisor's determination, and then provide an opportunity for the employee to respond. Should the supervisor elect to proceed with testing based on reasonable suspicion, the employee shall be placed on interim suspension pending the result of the reasonable suspicion testing.

- 2. Use of Weapon – Immediately following the discharge of a firearm or other weapon, or any use of physical force by a University Police Department officer that results in hospitalization, serious bodily injury, or fatality.
- 3. Post-accident – Each employee involved in an accident that occurs during the course and scope of employment shall be required to submit to a drug or alcohol test if there is a reasonable possibility that employee drug or alcohol use could have contributed to the accident.
- 4. Rehabilitation Monitoring – Any employee in a safety-sensitive or security-sensitive position who is participating in a substance abuse after-treatment program or who is being monitored by the University following an incident involving drug or alcohol abuse shall be required to submit to random drug testing.
- 5. Pre-employment – Each prospective employee accepting a safety-sensitive or security-sensitive position shall be required to submit to drug testing at a designated time and place following a job offer contingent upon a negative result of the test. A prospective employee who has a confirmed positive result for the presence of illegal drugs shall be eliminated from consideration for employment.
- 6. Pre-transfer – Each current 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.

7. Random Testing – Every employee in a safety-sensitive or security-sensitive position shall be required to submit to random drug testing. Employees selected at random are required to report for testing immediately. All such testing shall, if practical, occur during the selected employee's scheduled work hours.
8. Employees may otherwise be tested for drugs or alcohol if the test does not violate federal or state law.

ii. Confidentiality

1. All inquiries, investigations and discussions between supervisor and employee regarding reasonable suspicion and random testing shall be conducted in private and held confidential to the extent required by applicable law, including records created as a result.
2. All information and/or test results received by the University through its drug and alcohol testing program are confidential communications, but may be used or disclosed in any civil or administrative proceeding as allowed by applicable law. Only University employees who have a need to know will have access to test results, and those employees shall keep test results confidential.
3. The employee may waive any of the above provisions upon the employee's written request.

iii. Education and Referral for Treatment

1. The University will provide drug- and alcohol-awareness information to all employees. This includes University Policy 4:7, Drug Free Environment.
  2. If an employee receives a confirmed positive drug screen result, the employee may be directed by the State of South Dakota to participate in an approved drug abuse assistance or rehabilitation program which meets the requirements set forth by state law.
  3. Refusal by an employee to participate in an approved drug abuse assistance or rehabilitation program as directed by the State of South Dakota is considered failure by the employee to successfully complete the approved drug abuse assistance or rehabilitation program for disciplinary purposes.
- c. Authority to Inspect: When the University has reasonable suspicion that an employee has illegally manufactured, distributed, possessed or used controlled substances, alcohol or drug paraphernalia on University property or at any of its activities, the University reserves the right to inspect the employee's locker, desk, or other University property under the control of the employee.

d. Legal Drug Use

- i. The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited so long as the use conforms to the requirements of this policy, and as applicable, the prescription or manufacturer's directions for use. For purposes of this section, a prescription does not include a written certification for use of medical marijuana, pursuant to SDCL 34-20G-1(23). Employees who use medical marijuana pursuant to a validly issued written certification when not on property controlled by the University may subsequently report to work or participate in activities as long as such use does not cause impairment or inability to perform the duties of their position.
- ii. For employees in safety-sensitive or security-sensitive positions, the use of any non-prescription medication which carries a warning label indicating that mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and medical advice should be sought, as appropriate, before performing safety-sensitive or security-sensitive functions. The supervisor should use best judgment regarding whether or not to allow the employee to perform said functions.
- iii. Any employee in a safety-sensitive or security-sensitive position who is currently taking a medication prescribed by a physician that may affect the employee's mental functioning, motor skills, or judgment must, at the supervisor's request, obtain a release from the prescribing physician that the employee can safely perform his/her safety-sensitive or security-sensitive functions.

e. Employee Self-identification

- i. Any employee not on standby or like assignment who has consumed alcohol or legally prescribed drugs or non-prescription medications and is called in to work outside of regular hours may state they have consumed alcohol or legal drugs and indicate whether or not they are able to perform their job functions.
- ii. If the employee not on standby or like assignment believes they are not capable of performing the function, the supervisor will excuse the employee from doing so. To encourage employees to admit that alcohol or legal drugs have been consumed, they will not be subject to disciplinary consequences if they adhere to this policy. If an employee not on standby is called outside of regular scheduled hours and does not indicate that they have consumed alcohol or legal drugs and exhibits signs of impairment, the employee may be subject to reasonable suspicion testing.

f. Violations

- i. Employees who violate this policy will be subject to corrective or disciplinary actions, up to and including termination, pursuant to applicable SDBOR and University policies, and may have legal consequences.

#### 4. Procedures

- a. Once a supervisor has reasonable suspicion of an employee's using and/or under the influence of drugs or alcohol, or one of the above-listed incidents triggering drug and alcohol testing occurs, the supervisor should document the employee's behavior, physical state, and actions prior to meeting with the employee.
- b. The supervisor should then, if possible, obtain another member of management to verify the behavior, state, or actions of the employee indicating use or abuse of drugs or alcohol.
- c. If during normal business hours, the supervisor should contact the Office of Human Resources to discuss the situation before meeting with the employee. If after hours, the supervisor should contact the Office of Human Resources as soon as the Office is open. The Office of Human Resources shall provide instruction on the foregoing elements of this procedure, the relevant forms, and where to transport the employee for testing, should the employee consent.
- d. Once Human Resources staff have been consulted, the supervisor shall meet with the employee in a private location in the presence of a second management witness and provide the reasons for suspecting the employee is under the influence of drugs or alcohol.
- e. The employee should be given an opportunity to respond to the observations reported and the reasons stated. The employee's responses must be documented.
- f. The supervisor must advise the employee that refusal to test will be considered a positive test and may result in corrective or disciplinary actions, up to and including termination. The employee may then sign the form, *Authorization and Consent or Refusal to Submit to Substance Abuse Testing*, on the appropriate line. If an employee refuses to sign in order to indicate refusal to test, the supervisor shall note this on the form.
- g. If the employee consents to testing, the supervisor shall notify the Office of Human Resources and immediately transport the employee to the testing facility designated by the Office of Human Resources. Office of Human Resources shall retain this information for Workers' Compensation purposes.
- h. With the employee's consent, the supervisor will contact a family member or other individual selected by the employee in order to transport the employee to their home after collection is finished. In the alternative, the supervisor shall transport the employee to their home.
- i. Drug testing will be conducted by a certified drug testing laboratory that follows accepted standards of testing and chain-of-custody requirements. Testing will typically consist of urine sampling and/or breath testing for alcohol.
- j. All non-negative tests will undergo a second confirmatory test using the same sample to determine if there is a confirmed positive result. All positive confirmatory test result data shall be reviewed and compared with the medical information provided by the employee.

The lab shall then review documentation provided for all positive results to ensure accuracy.

- k. Employees with a confirmed positive result will be subject to the applicable SDBOR and University Policies for corrective or disciplinary action and termination for cause and/or may be offered the opportunity for treatment depending on the facts/circumstances of the incident for which the test was required, the employee's cooperation with this procedure, the employee's work and disciplinary history, the employee's prior rehabilitation opportunities, and whether the controlled substance constitutes authorized medical treatment.
  - l. The refusal by an employee to take an alcohol or drug test is considered equivalent to a confirmed positive result and subjects the employee to the same adverse employment action up to and including termination of employment.
  - m. Pre-employment, Pre-Transfer, and Rehabilitation Testing: Departments employing safety-sensitive or security-sensitive positions will designate an employee who will be responsible for the drug and alcohol testing function in their respective departments, to include record keeping and report generation.
  - n. Prospective employees, or employees hired contingent upon a negative drug test, will not be offered employment or will be terminated immediately if they have a confirmed positive result.
5. Responsible Administrator

The Vice President and General Counsel, designee, or successor is responsible for annual and ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy.

SOURCE: Approved by President on 12/04/2019. Revised; Approved by President on 10/06/2020. Revised; Approved by President on 07/29/2021. Revised; Approved by President on 02/22/2022.