



# STATE OF ARKANSAS

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## PERSONNEL

ADVAP 2-15

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### **Drug Free Workplace**

1. **GENERAL:** The Drug Free Workplace Act of 1988 requires contractors and grantees of federal agencies to certify that they will provide a drug free workplace. It is in the best interest of the people of the State of Arkansas that the standards established by this Act be applied to all agencies of the state regardless of whether the agency receives federal contracts or grants as set forth in Executive Order 89-2.

2. **POLICY:** All Department of Veterans Affairs (ADVA) employees are prohibited from using or possessing controlled substances or alcohol while on duty or working with the presence of alcohol or illegal drugs in the employee's body, or abusing legal drugs. Abusing legal drugs includes using drugs prescribed for another person. Legal drugs are defined as medications prescribed by a licensed physician or medical facility for an employee or another person. Employees who engage in drug or alcohol abuse face the risk of termination and the forfeiture of worker's compensation medical and indemnity benefits. In addition the ADVA will require a urinalysis to be performed immediately following, or as soon as practical after all accidents or incidents where there is injury, loss of limb or life, damage to, or loss of agency property. A urinalysis will be performed on all parties involved to determine that the accident or incident was not caused by negligence or impairment.

3. **POLICY WILL BE STRICTLY APPLIED:**

a. This rule will be strictly applied according to its terms. No terms or conditions not appearing under this policy apply. For example, no Administrative Review is required to implement disciplinary action pursuant to this policy. This is a special promulgated policy, not part of ADVA Policy 2-2, Disciplinary Rules and Procedures.

b. Nothing in this rule abrogates the employment at will doctrine. Any departmental error that is trivial or formal or merely academic and that does not prejudice the substantive rights of an affected party and that in no way affected the final outcome of the case will be deemed harmless error and will not be grounds for overturning the agency decision.

4. ALL EMPLOYEES ARE SUBJECT TO THE PROVISIONS OF THIS POLICY WHEN ENGAGED IN THE FOLLOWING ACTIVITIES:
  - a. When conducting ADVA business, whether on or off ADVA property.
  - b. When on ADVA property at any time, including parking lots, whether leased or owned by ADVA.
  - c. When driving or riding as a passenger in an ADVA vehicle.
  - d. When assigned to on-call status, required to remain available by telephone, in order to be called in to work.
5. INFORMATION IS CONFIDENTIAL: All data, information, and results related to employee drug and alcohol testing are confidential. Disclosure of information will only be to those individuals whose official business duties necessitate disclosure or as required by law.
6. THE FOLLOWING THREE LEVELS OF DRUG TESTING WILL BE USED:
  - a. Pre-Employment: All persons selected for new employment or a change of employment within ADVA must submit to a drug test as a precondition of employment. All hiring decisions are contingent on the selectee passing the drug test. This applies to current ADVA employees applying for different positions as well as external applicants.
  - b. Reasonable Cause: All employees are subject to reasonable cause drug and alcohol screening.
  - c. Random: Employees in safety sensitive positions or engaged in drug prevention activities are also subject to random drug testing as a condition of employment.
7. PRE-EMPLOYMENT DRUG TEST PROCEDURE:
  - a. Vacancy announcements for positions for which drug or alcohol testing is required will include notice of testing in the announcement. The job advertisements will include a statement advising applicants that they will be required to submit to drug and alcohol testing after a conditional offer of employment.
  - b. Upon conditional selection of an individual for employment, the hiring official must notify the selectee (via telephone or letter) that the selectee is conditionally selected for employment contingent on he/she successfully passing a pre-employment drug test, and provide instructions for taking the test.
  - c. ADVA will select the drug testing site and pay for the initial drug test.
  - d. Drug Test Must be Performed Within 48 Hours.
  - e. Within 48 hours of the initial notification the selectee must pick up a Chain of Custody form, take the form to the testing location, and provide a sample for testing.

- f. Keeping in mind that some testing locations are closed on weekends and holidays, the hiring official will not make the initial notification on the last workday before a weekend, holiday, or scheduled time off.
- g. If extenuating circumstances beyond the selectee's control prevent the selectee from providing a sample within 48 hours, the selectee must request an extension within 48 hours of the initial notification of selection. Scheduling or transportation problems experienced by the selectee are not extenuating circumstances. The decision of whether to grant the extension will be made by the hiring supervisor. The supervisor must notify the selectee of the decision verbally within one working day, followed by written notification.

8. **TWO-YEAR EMPLOYMENT BAN:** The following will result in the selectee (whether internal or external applicant) being banned from applying for employment with ADVA for two years:

- a. If the drug test is not performed within 48 hours (unless an extension is granted).
- b. If the drug test is positive. A test is considered to be positive if the test results indicate that the sample has been tampered with in any way or that the selectee has attempted to falsify the test results, including the use of masking agents or chemicals.
- c. If the selectee fails to appear for drug testing without notifying the hiring official that he/she is declining the position.

This ban applies to all drug tests, not pre-employment exclusively.

9. **DRUG TEST RESULTS:**

- a. Drug test results are forwarded directly to the Human Resources Office. HR then notifies the hiring supervisor whether the applicant is eligible or not eligible for hiring.
- b. If the results of the drug test are negative for controlled substances, the hiring supervisor will notify the selectee of his or her final selection and ask the selectee to complete the necessary documents for employment.
- c. If the results of the drug test are positive for controlled substances, the selectee will be notified in writing of the results and will not be considered further for the position. Internal applicants will be disciplined in accordance with this policy. External applicants will not be eligible for employment with ADVA until all of the following conditions have been met:
  - 1) The selectee has successfully completed a supervised drug rehabilitation program that has been approved by ADVA.

- 2) A two-year waiting period has expired.
- 3) The selectee passes a new employee drug screening.
- 4) The selectee signs an agreement to allow random drug testing during his/her first year of employment. ADVA will pay for the drug tests. If the selectee is hired for a safety sensitive or drug prevention position, the selectee must agree to random drug screening throughout his/her employment with ADVA.

10. IF SELECTEE DISAGREES WITH FINDINGS:

- a. If the selectee disagrees with the findings of the drug testing, the selectee may arrange to have a portion of the original sample retested at a laboratory certified by the National Institute of Drug Abuse. The selectee must arrange and pay for the second test. The second test must be performed within five working days after learning the results of the first test. If the second test is negative for the presence of drugs or alcohol, the hiring supervisor may either accept the second result or have a third test performed at the department's expense. The results of the third test will be considered conclusive.
- b. No applicant will be placed on the payroll before successful completion of the pre-employment drug screening, except as approved by the division director. Placement of any applicant on the payroll will be conditional contingent on the applicant successfully completing the pre-employment drug screening.

11. REASONABLE CAUSE DRUG TESTING PROCEDURE

- a. ADVA may require a blood test, urinalysis or other drug/alcohol screening for employees any time there is reasonable cause to suspect the employee has violated the Drug Free Workplace Rules. Reasonable cause to suspect a violation of the rules may be established by any of the following:
  - 1) Observed impairment of job performance.
  - 2) Uncharacteristic or erratic behavior.
  - 3) The employee's attendance changes, e.g., habitual absenteeism.
  - 4) Direct observation (by a manager, supervisor, or other ADVA employee) of drug or alcohol use or possession during working hours or while on ADVA premises.
  - 5) A workplace accident/incident or an accident involving an ADVA vehicle.
  - 6) Physical symptoms indicative of drug or alcohol use. For example, slurred speech, tremors, drowsiness, pupils dilated or constricted, irritability, hyperactivity, general motor impairment, disorientation, or the smell of alcohol on the breath.

- 7) Arrest or conviction for a drug or alcohol related offense or the identification of an employee as the subject of a criminal investigation into illegal drug possession, use, or trafficking.
  - 8) Evidence the employee has tampered with a previous drug or alcohol test.
  - 9) Evidence drugs have been tampered with or are missing from a unit or designated area to which the employee has access.
  - 10) Any other facts or circumstances which would cause a reasonable person to believe that the employee is in possession of, or under the influence of drugs or alcohol.
- b. Upon establishing reasonable cause, the employee's supervisor will promptly detail in writing the circumstances that formed the basis of the determination that reasonable suspicion existed to warrant the testing. A written record will be made of the observation leading to a controlled substances reasonable suspicion test within twenty-four (24) hours of the observed behavior. Original documentation will be kept for at least one (1) year. A copy of the documentation will be given to the employee upon request. The employee must be ordered to report for drug and alcohol testing.

12. RANDOM DRUG TESTING PROCEDURE:

- a. All positions within the Agency are "safety sensitive" or require integrity to a drug prevention job mission. Safety sensitive positions are those in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety.
- b. As a condition of employment in safety sensitive or drug prevention positions, employees agree to random drug testing. Employees in these positions will be randomly selected at intervals determined by ADVA. The Agency will generate a list of names for the random drug testing. Once an employee is selected for testing, the employee must report for drug testing procedures.
- c. If changes in the job duties associated with a position make the position safety sensitive or require integrity to a drug prevention job mission, any employee holding the position must agree to random drug testing as a condition of continued employment.

13. RANDOM/REASONABLE CAUSE TESTING COMPLIANCE:

- a. An employee selected under random or reasonable cause for drug or alcohol testing must report to the designated testing site within four (4) hours of notification. The employee is subject to random or reasonable cause testing only on scheduled workdays.

- b. An employee failing to submit to testing within four hours of notification will be terminated. If the employee tampers with the sample or in any way falsifies test results, including the use of masking agents or chemicals, the employee will be terminated and will not be eligible for rehire.
- c. If the employee is to be tested at a location other than the employee's work site, supervisors will be responsible for arranging transportation to the test site in cases of reasonable cause testing.

14. **FAILURE TO PROVIDE SAMPLE:** Normal drug screening uses a urinalysis test. If the employee or applicant is unable to provide a sample when he or she reports to the sampling site, the person to be tested may opt to provide a blood sample or a hair sample. If blood or hair is provided, the cost of testing will be at the employee or applicants own expense. Failure to provide a urine, blood, or hair sample will have the same consequences as testing positive for drugs or alcohol.

15. **IF EMPLOYEE DISAGREES WITH TEST RESULTS:** If an employee disagrees with the findings of the drug or alcohol test, the employee may arrange to have a portion of the original sample retested at a laboratory certified by the National Institute of Drug Abuse. The employee will arrange and pay for the second test. The second test must be performed within five working days of learning the results of the first test. If the second test is negative for the presence of drugs or alcohol, the supervisor may either accept the second test result or have a third test performed at the department's expense. The result of the third test will be considered conclusive.

16. **DISCIPLINARY ACTIONS FOR VIOLATIONS:** The supervisor of an employee who tests positive for drug or alcohol will be notified and the employee must abide by the following terms:

- a. First Offense
  - 1) Ten days suspension without pay.
  - 2) Sign and adhere to an ADVA "Return to Work Agreement" to refrain from all illegal drug use. Failure to sign or fulfill the terms of this agreement is a second offense.
  - 3) Enroll in the State of Arkansas Employee Assistance Program (EAP), request substance abuse services, and fully participate in all offered services. Contact the EAP before returning to work from the ten-day suspension. Failure to complete any of the above is a second offense.
  - 4) Participating in mandatory EAP random interval drug screening for at least one year. Failure to take these drug tests at the times determined by EAP is a second offense. The employee will pay the cost of the drug tests.
  - 5) Obtaining EAP Certification that the employee has successfully completed a substance abuse program designated by EAP. EAP notification of program non-compliance is a second offense.

b. Second Offense

- 1) Second offense includes the failure to meet any condition imposed as a result of a first offense.
- 2) Any employee committing a second offense under this policy will be immediately terminated. A terminated employee forfeits eligibility for workman's compensation, and medical and indemnity benefits.
- 3) Terminated employees will be eligible for re-employment consideration only after all of the following conditions are met:
  - a) The applicant has successfully completed a supervised drug rehabilitation program approved by ADVA.
  - b) A two-year waiting period has expired.
  - c) The applicant passes a new employee drug screening.
  - d) The applicant signs an agreement to allow random drug testing during the first year of employment at the department's expense.

17. EMPLOYEE ASSISTANCE PROGRAM:

- a. EAP is an established program capable of providing problem assessment, short-term counseling, referrals to other providers, follow-up services, and education and training.
- b. If an employee in the course of employment voluntarily enters EAP or an approved treatment program requesting services related to substance abuse, ADVA has the option of not requiring follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two-year period after completion of the program. Advance notice of a follow-up test will not be given to the employee to be tested.
- c. ADVA will not discharge, discipline or discriminate against an employee solely upon the employee's voluntarily seeking treatment for a drug-related or alcohol-related problem, entering an employee assistance program for drug-related or alcohol-related problems or entering a drug or alcohol rehabilitation program, if the employee has not previously tested positive for drug or alcohol use.

18. SUPERSESSION: This procedure supersedes, ADVAP 2-15, January 1, 2012, in its entirety.

19. FORMS PRESCRIBED:  
Chain of Custody Form (Original form must be obtained by Supervisor)  
ADVA Return to Work Agreement

By:

Nathaniel (Nate) Todd  
Director

DISTRIBUTION:  
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