

Department of the Navy Drug-Free Workplace Program

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Introduction

Welcome to training on the Drug-Free Workplace Program. The Department of the Navy (or DON) has a compelling obligation to eliminate illegal drug use by its employees due to its national defense responsibilities and the sensitive nature of its work. It is one of our nation's highest priorities. As a supervisor, it is important that you understand your role in the Drug-Free Workplace Program and drug-testing processes.

Drug-Free Workplace Law

Executive Order 12564, signed by then-President Ronald Reagan on 15 September 1986, requires that all federal agencies implement a program to achieve a drug-free workplace. The order also requires all employees to refrain from the use of illegal drugs on and off duty.

Public Law 100-71 passed by Congress on 11 July 1987, provides for consistent implementation of the Executive Order throughout the Federal Government and establishes requirements for accurate and reliable drug testing and confidentiality of test results.

The Drug-Free Workplace Plan, certified by the Department of Health and Human Services (or DHHS) and the Department of Justice (DOJ) on 27 April 1988, establishes the framework for implementation of the program in the Department of the Navy. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs establish strict procedures for collection and testing of urine samples from employees for detection of drug use.

Effects of Drug Use

Illegal drug use by a civilian employee of the DON is incompatible with the maintenance of high standards of conduct and performance. Moreover, illegal drug use could adversely affect personal safety, risk damage to government or personal property, and significantly impair day-to-day operations. The DON program is aimed at identifying illegal drug users in order to maintain a safe, secure workplace and efficient DON operation.

Random Drug Testing

Random drug testing is testing of employees in positions identified as “Testing Designated Positions (or TDPs)”. Random testing is unannounced testing. In other words, the selections of individuals who occupy TDPs from testing are made on a random basis without prior announcement.

TDPs are positions that meet certain criteria which would make the incumbent subject to random drug testing; hence, the position is referred to as a “Testing Designated Position”. The criteria for designating a position as a TDP is based on the effect that the incumbent of the position could have on public health and safety or national security through failure to adequately discharge the duties of his or her position.

Some examples of automatic TDPs include a Crane Operator, WG-5725; a Paramedic or Firefighter, GS-0640; and an Aircraft Mechanic WG-8852.

Some examples of functional TDPs include a Motor Vehicle Operator that transports hazardous materials, classified documents, or passengers; a Welder that services aircraft, ships, or submarines; and an Aircraft Freight Loader that handles explosives.

Laboratory

Urine is the only approved specimen matrix collected in the drug testing program. Each specimen will be collected as a split specimen (Bottle A and Bottle B). Once a drug test is conducted, all specimens are sent by FedEx to the Army Drug Testing Lab located in Ft. Meade, MD. Once received, the specimens are tested through the radioimmunoassay screen. Specimens are tested for the following drugs:

- Amphetamine
- Cocaine
- Codeine
- Ecstasy
- Heroin 6-Acetylmorphine
- Hydrocodone
- Hydromorphone
- Marijuana
- Methamphetamine
- Morphine
- Oxycodone
- Oxymorphone
- Phencyclidine

Note: The Department of the Navy also tests for any other drugs or classes of drugs subsequently approved by the Department of Health and Human Services for testing on any drug on the Schedules I or II of the Controlled Substances Act in cases of reasonable suspicion and after an accident or unsafe practice resulting in a death, injury requiring hospitalization, or damage to personal or government property in excess of \$10,000.

Possible Drug Test Results Defined

The following define each possible drug test result:

- A Negative result is deemed for a specimen that contains no drug or the concentration of the drug is less than the cutoff concentration for that drug or drug class and the specimen is considered a valid specimen.
- A result of Negative Dilute means the creatinine and specific gravity represented by a numerical value are out of the normal range.
- A Positive result is deemed for a specimen that contains a drug equal to or greater than the cutoff concentration.
- A result of Positive Dilute means the creatinine and specific gravity are out of the normal range; however, the result will still be reported as positive.
- An Adulterated result is when a substance is introduced to the sample preventing detection of drugs, or affects the reagents in either the initial or confirmatory drug test. Initial and confirmatory drug tests will be discussed on the following slides.
- There may be cases when a Substituted specimen is submitted in place of the donor's urine. This is evident by the creatinine or specific gravity values that are outside the physiologically producible ranges of human urine. Adulterated and substituted results are also referred to as a "non-negative" results.
- Lastly, when a result cannot be established for a specific drug or specimen validity test, the sample is deemed Invalid.

The Testing Process

Once received at the laboratory at Ft. Meade, MD, the specimens are initially tested using the radioimmunoassay screen. If the initial screening result is negative, the testing process is complete and the result will be reported to the Medical Review Officer (or MRO).

If the initial screening result from the immunoassay is positive, the specimen is subject to the confirmatory test using gas chromatography/ mass spectrometry (or GC/MS) techniques. This is regarded as the most accurate confirmation process by both the scientific and legal communities. GC/MS technology has been used for many years by forensic toxicologists and medical examiners for police, legal, and court work.

If confirmed positive, also known as "lab positive", the MRO contacts the employee to provide a legitimate medical explanation (or LME). This is the MRO Interview in which every employee has an opportunity to justify a confirmed positive result.

If the employee is able to provide an LME (for instance, he or she is on a current prescription from a medical doctor), he or she will provide documentation to the MRO and the confirmed positive result will be reported as a verified negative result. If the employee is unable to provide an LME to the MRO, the confirmed positive result will be reported as a verified positive result confirming illegal drug use. Ingestion of hemp products will not be accepted as justification for a positive marijuana test result.

Screening Levels

The following defines what drugs are being screened for along with screening levels:

- Amphetamine/Meth and Ecstasy have an initial cutoff of 500 nanograms per milliliter and a confirmatory cutoff of 250 nanograms per milliliter.
- Codeine, Morphine, and Heroin 6-Acetylmorphine have an initial cutoff and confirmatory cutoff of 2000 nanograms per milliliter and it must be positive for morphine.
- Marijuana has an initial cutoff of 50 nanograms per milliliter and a confirmatory cutoff of 15 nanograms per milliliter.
- Cocaine has an initial cutoff of 150 nanograms per milliliter and a confirmatory cutoff of 100 nanograms per milliliter.
- Phencyclidine has an initial cutoff and confirmatory cutoff of 25 nanograms per milliliter.

Prescription Medications

All employees, but especially those subject to random drug testing, must ensure any prescription from a licensed health care provider for medications they take is current. Expired prescriptions, or those under another person's name, even a spouse or child, are not legitimate medical explanations. Employees must communicate with their health care provider any concerns they may have about their prescriptions causing a positive test and ensure any doubt about the legitimacy of the prescriptions is resolved with the health care provider. Prescription medications must be in compliance with federal law.

It is important to note that even with a prescription, drugs illegal under federal law, such as medical marijuana, cannot form the basis for a legitimate medical explanation in a federally-mandated drug testing program.

Employees traveling to foreign countries are advised to be certain that locally available medications will not produce a positive test result or to ensure they have a bona fide prescription from a medical doctor. Extra caution should be used when purchasing and using over-the-counter drugs when in a foreign country, since claiming the over-the-counter drug caused the positive result will not be a legitimate medical explanation.

Medical Marijuana

Due to the legalization of medical marijuana in several states, there is a curiosity among the federal workforce on how legalization affects them. Marijuana is illegal under Federal law regardless of State Laws. In addition, there is no such thing as a

“prescription” for marijuana. Under the Controlled Substances Act marijuana is a Schedule I drug and, as such, cannot be prescribed. Note that individuals get a “recommendation” for marijuana to be filled at a dispensary and not a “prescription” to be filled at a pharmacy.

Pre-Employment Testing

Pre-employment testing is required by all individuals tentatively selected for employment in a TDP within the Department of the Navy. A verified positive or non-negative test result will preclude the command/activity from hiring an applicant. The applicant will then be notified that he or she will not be considered for any job vacancies within the Department of the Navy for a period of six months from the date the positive or non-negative test was verified by the MRO. This includes non-Testing Designated Positions.

Negative pre-employment drug test results can be used for hiring purposes for six months from the date of the verified result by the MRO. After the six-month period expires, a new pre-employment drug test must be done.

There are situations when pre-employment testing is not required. Pre-employment testing is not required under the following conditions: The individual currently occupies a testing designated position with the Department of the Navy; when an active duty military member is selected who will have a break in service from military to civilian duty that is three days or less, the individual is a Reservist military personnel in a drilling status, or the selection involves only a temporary position change of 30 days or less.

Also, pre-employment testing does not apply to management-directed actions including placement under reduction-in-force (RIF) procedures, management decisions to reassign, detail, demote, or upgrade a security clearance, and activities and commands are not authorized to test applicants for non-Testing Designated Positions.

Procedures for a Positive Test Result

In the event of a positive test result, the Drug Program Manager (DPM) and the Drug Program Specialist (DPS) receive all notifications from the MRO and forward them to the Drug Program Coordinator (DPC). The Medical Review Officer Report and the Chain-of-Custody Control form will be sent to the DPM.

At a minimum, the DPC forwards the notification email from the DPM to the Command Security Manager, Human Resources Office (HRO) Supervisor, and the employee’s supervisor of a positive result.

The Security Manager is required to notify the Department of the Navy Centralized Adjudication Facility (DONCAF) immediately and email the DPM the effective date when the action was complete.

The employee’s supervisor, will be required to immediately remove the employee from the TDP for placement in a less sensitive position, if available, through detail or reassignment. You will email the DPM when the action is complete with the effective

date.

The HRO Supervisor assigns action to a Labor/Employee Relations (LER) Specialist for prompt initiation of the appropriate disciplinary action: resignation or retirement submitted prior to issuance of proposal will result in a clean SF-50.

Administrative Actions for Positive Result

The Drug Program Coordinator will meet with the employee and his or her supervisor, to discuss the employee's mandatory requirement to seek help through the Civilian Employee Assistance Program (CEAP), rehabilitation and follow-up testing.

The Rehabilitation Program must be accredited and there is no required minimum length of treatment.

Follow-up testing is the only required direct observation test and has a minimum of one year.

For an employee working in a non-Testing Designated Position that is confirmed with a positive or non-negative drug test result, DONCAF is notified. The employee enrolls in CEAP, completes rehab and participates in follow-up testing.

For an employee working in a Testing Designated Position without a security clearance that is confirmed with a positive or non-negative drug test result, the employee is immediately removed from the TDP and generally reassigned to other duties through detail or reassignment. DONCAF is notified, the employee enrolls in CEAP, completes rehab and participates in follow-up testing.

For an employee working in a Testing Designated Position with a security clearance that is confirmed with a positive or non-negative drug test result, the employee is immediately removed from the TDP and generally placed on administrative leave or reassigned to other duties through detail or reassignment. DONCAF is notified, the employee enrolls in CEAP, completes rehab but follow-up testing is generally not applicable.

Disciplinary Actions for a Positive Result

Mandatory disciplinary action is enforced for a verified positive or non-negative drug test result. The first offense for an employee confirmed with a positive or non-negative drug test, results in a 14-day suspension up to removal from his or her position.

The second offense for an employee confirmed with a positive or non-negative drug test, results in initiation of removal from his or her position. Removal is not a foregone conclusion. If an employee refuses to seek help through CEAP or rehabilitation, the supervisor is to initiate removal of the employee from his or her position.

It is important to note that refusal to provide a urine sample, failure to appear for testing, and adulteration or substitution carry the same penalty as a verified positive or non-

negative test result, which ranges from a 14-day suspension up to removal for a first offense. A second offense requires removal from federal service. Suspected specimen adulteration or substitution at the time of collection, indicated by the temperature or color of the urine or other evidence, may form the basis for reasonable suspicion testing. Reasonable suspicion will be discussed momentarily in this training.

Safe Harbor

Safe Harbor is a voluntary self-referral by any employee to get assistance in dealing with illegal drug use. To be eligible, employees must request Safe Harbor by voluntarily identifying themselves as an illegal user of drugs to a supervisor or other high level management official prior to being identified through other means or being notified of a drug test. Safe Harbor insulates the employee from disciplinary action for illegal drug use, but it does not protect the employee from actions taken resulting from a loss of security clearance. Employees who previously requested Safe Harbor or previously tested positive for illegal drug use are not eligible.

Safe Harbor is for users of illegal drugs. Drug dealers or those involved in other drug-related misconduct are not eligible. An employee on probation is eligible for Safe Harbor if he or she has properly met the criteria established.

Employees approved for Safe Harbor receive a mandatory CEAP referral, are required to complete an accredited rehabilitation program, and are required to conduct follow-up testing for one year or as otherwise specified in a last chance agreement or settlement agreement. Any subsequent positive drug test or Safe Harbor request thereafter, is deemed a second finding of illegal drug use and requires initiation of removal from federal service.

For an employee working in a non-Testing Designated Position that is confirmed with an approved Safe Harbor request, DONCAF is notified. The employee enrolls in CEAP, completes rehab and participates in follow-up testing.

For an employee working in a Testing Designated Position without a security clearance that is confirmed with an approved Safe Harbor request, the employee is immediately removed from the TDP and generally reassigned to other duties through detail or reassignment. DONCAF is notified; the employee enrolls in CEAP, completes rehab and participates in follow-up testing.

For an employee working in a Testing Designated Position with a security clearance that is confirmed with an approved Safe Harbor request, the employee is immediately removed from the TDP and generally placed on administrative leave or reassigned to other duties through detail or reassignment. DONCAF is notified; the employee enrolls in CEAP and completes rehab but follow-up testing is generally not applicable.

Civilian Employee Assistance Program (CEAP)

For both a verified positive or non-negative test result and an approved Safe Harbor request, a mandatory CEAP referral applies. The employee will contact DONCEAP and be provided the contact information for a health care provider within the CEAP network and is responsible for making and keeping the appointment. The health care provider will evaluate the employee for further referral to the rehabilitation program most appropriate for the employee's specific needs.

Rehabilitation Program

As mentioned, any rehabilitation program the employee enters or is referred to from the health care provider must have accreditation. The program length will vary from one employee to another, as there may be additional issues that caused the illegal drug use which the employee may be facing. At all times throughout the rehabilitation program, strict confidentiality is maintained by clinical and drug program staff. Any information is shared only with management officials having a definite need to know so as to make appropriate personnel decisions.

Follow-Up Testing

All Department of the Navy employees referred through administrative action to counseling or rehabilitation through the CEAP for illegal drug use will be subject to unannounced drug testing as a follow-up to his or her program. The employee will be tested for a period of one year or for such time as specified in an abeyance agreement, rehabilitation program, or other form of written agreement. For employees in TDPs, this testing is separate from their regular random testing by the activity or command.

The correct response is a. DONCAF is notified. The employee enrolls in CEAP, completes rehab but follow-up testing is generally not applicable.

Reasonable Suspicion Testing

A test may be authorized when management has a reasonable suspicion that any employee in a TDP is using illegal drugs. This belief must be based on specific objective facts and reasonable inferences drawn from these facts. The process first includes determining if the employee is in a TDP or not.

Reasonable suspicion testing of employees in TDPs may be based upon, but not limited to, the following factors:

- Direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug such as mood swings, attitude change, change in personal appearance, and behavioral deltas;
- Arrest or conviction for an on or off-duty drug-related offense or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking;
- Information provided either by reliable and credible sources or independently corroborated;

- Newly discovered evidence where an employee has tampered with a previous drug test; the temperature or color of the urine specimen or other evidence that indicates probable adulteration, tampering, or substitution.
- Although reasonable suspicion testing does not require certainty, a mere “hunch” or “rumor” is not regarded as sufficient evidence to meet this standard.
- The testing via reasonable suspicion can be conducted in jail or a hospital.

A test may only be authorized for an employee in a non-TDP when management has a reasonable suspicion that the employee is using drugs illegally on-duty or performing work while drug impaired.

- If an employee is suspected of illegal use of drugs, the appropriate supervisor or management official will gather all information, facts, and circumstances leading to and supporting this suspicion.
- Approval for testing must be received from one level above the supervisor or manager requesting the test.
- Local instructions should provide specific procedures.
- If feasible, the decision to conduct a test will be made the same day the event or behavior occurred or as soon as management becomes aware of the event or behavior.
- The DPC will then be notified of the requirement to arrange for a test.

The appropriate supervisor or manager will detail, in writing, the circumstances which warranted the test. At a minimum, the report will include the appropriate dates and times of reported drug-related incidents, reliable and/or credible sources of information, reasons leading to the test, and second-level supervisory concurrence. If the collection is being performed under direct observation, the reason for this method of collection must also be documented. The DPC will retain a copy of this documentation.

Post-Accident or Unsafe Practice Testing

The Department of the Navy is committed to providing a safe and secure work environment. It also has a legitimate interest in determining the cause of serious on-the-job accidents or unsafe, on-duty, job-related activity so that it could undertake appropriate corrective measures. Drug testing after an accident or unsafe practice can provide invaluable information in the furtherance of that interest.

- If a supervisor or manager suspects that an employee has caused or contributed to an on-the-job accident or unsafe, on-duty, job-related activity, the employee, either TDP or non-TDP, may be subject to testing if the accident meets either of the following criteria:
 1. The accident or unsafe practice results in death, or personal injury requiring hospitalization, or
 2. the accident or unsafe practice results in damage to government or private property estimated to be in excess of \$10,000.
- If a supervisor or manager suspects that an employee has caused or contributed to an on-the-job accident or unsafe practice on-duty, job-related activity that meets either of these criteria, he or she will gather all information, facts, and

circumstances leading to the accident or unsafe practice. Hospitalization is defined as ambulance transport.

- Approval for testing must be received from one level above the supervisor or manager requesting the test. If feasible, the decision to conduct a test will be made the same day the event or behavior occurred or as soon as management becomes aware of the event or behavior. The DPC will then be notified of the requirement to arrange for a test. Written documentation should be prepared including the date, time, and circumstances surrounding the incident, the reasons leading to the test, and the second-level supervisory concurrence.
- The test can be conducted in jail or a hospital.

Deferrals

Deferrals are applicable to those employees subject to random testing. This generally requires an individual selection. Selections of shifts, shop codes, etc. generally do not produce deferrals. You must look at past practices and the collective bargaining agreement. Check with Labor/Employee Relations prior to making any changes.

Deferrals may be granted if the employee's first line or higher level supervisor concur that a compelling need exists.

The Drug Program Coordinator can approve or disapprove deferrals if the DPC appointment letter grants this authority.

Grounds for deferral may include telework or travel. An employee may request a deferral if he or she is in a non-duty status such as annual or sick leave, suspension, absent without leave or continuation of pay. An employee may request a deferral if he or she is working a different shift or performing a task or project that requires the employee's presence at the work site during the scheduled test time.

Deferral Process

An employee may not "self-defer". The supervisor will inform the Drug Program Coordinator of the deferral and it must be noted in the DPC's daily file for the record.

If the deferral is authorized and the test is not administered that day, the supervisor, will inform the employee that he or she may be tested within 60 days from the date of deferral. The DPC will track the deferral by matching up the employee's expected return date to any date within 60 calendar days that random drug tests are already scheduled for the employee to report for testing.

If random drug testing is not scheduled within 60 days, consider courtesy testing by a DPC who has random drug tests scheduled or having the employee conduct a random test at an off-base clinic, just as they would for an applicant test.

One selection equals one deferral, which equals one test. In other words, if the employee is not available the next time within the 60 calendar-day period, this does not mean there is now a second test.

There is no limit to the number of deferrals for which a selection has been made. If an employee is selected for a second time, and again is not available, now there are two deferrals.

Each deferral has its own 60 calendar-day clock. On the 61st day, the deferral expires.

Deferrals: Special Situations

There may be special or emergency circumstances where an employee will need to request a deferral. For instance, after being notified of a random drug test, the employee arrives at the testing location, but then suddenly has to leave without performing the drug test due to a family emergency. Perhaps the employee needs to race home due to a fire or robbery. Perhaps the employee received a text that his or her child is sick or has been injured at school. When these special situations occur, the DPC will immediately notify the supervisor of the employee's situation either before or after the employee leaves the area.

Management should require the employee to provide documents within a reasonable amount of time to support the special situation. If the employee provides adequate documentation to support the special situation, a deferral may be granted. If the employee cannot provide documentation to support the special situation, it then becomes a Labor/Employee Relations issue.

References

If you have any questions or need further information, feel free to contact the Drug Program Coordinator, Ken Stewart, by emailing kastewar@nps.edu.

Course Completion

You have completed training on the Drug-Free Workplace Program.