STATE OF MINNESOTA
POLICY
ON
ALCOHOL AND OTHER DRUG USE BY STATE EMPLOYEES

I. Introduction

The State of Minnesota recognizes that alcoholism and other drug dependencies are a significant social problem with a potential for causing severe effects to the state's workforce. The State of Minnesota recognizes that it has a responsibility to maintain a drug free workplace. The state also recognizes that drug dependency may be an illness. Consistent with this understanding, however, the state has an obligation to ensure that its employees perform their jobs efficiently, safely and in a professional business-like manner.

The purpose of this document is to set forth the state's policy regarding alcohol and other drug use, including unlawful drug use or abuse, in the workplace.

II. Scope of Coverage

This policy is applicable to all employees of the Executive Branch and shall be enforced by each state agency. Questions regarding this policy should be addressed to agency Appointing Authorities or their Personnel Officers, or to Minnesota Management & Budget.

III. Definitions

A. "Work-related Alcohol and Other Drug Abuse" is defined as the use of mood-altering drugs, including all forms of alcohol, narcotics, depressants, stimulants, hallucinogens, marijuana or the use of prescription drugs when resulting behavior or appearance adversely affects work performance.

B. "Adversely Affects Work Performance" and "Under the Influence" shall be determined to be present if the employee is perceptibly impaired; has impaired alertness, coordination, reactions, responses or effort; if the employee's condition threatens the safety of him/herself or others; or if the employee's condition or behavior presents the appearance of unprofessional or irresponsible conduct detrimental to the public's perception of the state as an employer as determined by the supervisor or manager or others observing the employee.

C. "Controlled Substances" means those substances whose distribution is controlled by regulation or statute including, but not limited to, narcotics, depressants, stimulants, hallucinogens and cannabis.
D. "Mood-altering" or "Alter" means changed behavior which may limit an employee's ability to safely and efficiently perform his/her job duties, or poses a threat to the safety of the employee or others.

IV. State Employee Assistance Program

The state has in place a formal Employee Assistance Program to assist employees in addressing problems such as alcohol or other drug abuse. Employees who may have an alcohol or other drug abuse problem are encouraged to seek a professional assessment from the Employee Assistance Program before the problem affects their employment status. Participation in this program is voluntary and confidential, except as may be required pursuant to Public Law 100-690, Title V, Subtitle D.

V. Non-Discrimination

The state's policy on work-related substance abuse is non-discriminatory in intent and application. However, in accordance with Minnesota Statutes, Chapter 363, disability does not include any condition resulting from alcohol or other drug abuse which prevents a person from performing essential functions of the job or creates a direct threat to property or the safety of individuals.

VI. Consequence of Violations

Violations of this policy may constitute just cause for discipline, including possible discharge. Each situation will be evaluated on a case-by-case basis depending upon the severity and circumstances involved.

VII. Prohibitions

A. No employee shall report to work under the influence of alcohol, marijuana, controlled substances, or other drugs which affect his/her alertness, coordination, reaction, response, judgment, decision-making or safety.

B. No employee shall operate, use or drive any equipment, machinery or vehicle of the state while under the influence of alcohol, marijuana, controlled substances, or other mood-altering drugs. Such employee is under an affirmative duty to immediately notify his/her supervisor that he/she is not in appropriate mental or physical condition to operate, use or drive state equipment.
C. No employee shall unlawfully manufacture, distribute, dispense, possess, transfer, or use a controlled substance in the workplace or wherever the state's work is being performed.

During work hours or while on the state's premises, no employee shall use, sell, possess or transfer alcoholic beverages, with the following exceptions:

- Consumption, possession, sale or purchase of alcohol when authorized by a Commissioner under separate statutory or executive agency authority.

- Possession of alcohol while being transported in a state vehicle in compliance with applicable statutory requirements.

- Possession of alcohol while in an employee's personal vehicle on the state's premises in compliance with applicable statutory requirements.

Additionally, employees shall not participate in these activities during rest breaks or during overtime work.

D. Engaging in off-duty sale, purchase, transfer, use or possession of illegal drugs or controlled substances may have a negative effect on an employee's ability to perform his/her work for the state. In such circumstances, the employee is subject to discipline.

E. When an employee is taking medically authorized drugs or other substances which may alter job performance, as defined in III(D) above, the employee is under an affirmative duty to notify the appropriate supervisor of his/her temporary inability to perform the job duties of his/her position.

F. Agencies shall notify the appropriate law enforcement agency when they have reasonable suspicion to believe that an employee may have illegal drugs in his/her possession at work or on state premises. Where appropriate, agencies shall also notify licensing boards.

G. Employees are discouraged from consuming alcoholic beverages during lunch or dinner meals when returning immediately thereafter to perform work on behalf of the state. Employees are advised that in any situation subsequent to the intake of alcohol where the employee must continue conducting the state's business, any employee whose condition or behavior adversely affects his/her work performance shall be subject to possible discipline, up to and including discharge.

VIII. Supplemental Policies

State agencies may promulgate supplemental policies, which are not in conflict with this policy, including prohibiting the use or consumption of alcohol and/or controlled substances within a specified time period before the commencement of work. Such pre-work abstinence must be restricted to employees involved in sensitive security, treatment, or equipment operation and written notice must be disseminated to affected employees. Further, policies may be adopted only after meet and confer sessions are held with exclusive representatives and approval of MMB.
IX. Data Disclosure

Disclosure of information regarding employee alcohol and other drug use in the workplace must be consistent with applicable collective bargaining agreements and law. Questions in this area should be directed to the Employment and Labor Law Section of the Attorney General's Office or to Minnesota Management & Budget, Labor Relations Division.

X. Federal Grant Employees

Each employee engaged in the performance of work on federal grants or contracts is required to notify their agency of any criminal drug statute conviction for a violation occurring in the workplace no later than (5) five days after such conviction.

XI. Drug/Alcohol Testing

Other than the testing required by the Omnibus Transportation Employee Testing Act of 1991 and relevant U.S. Department of Transportation regulations, any alcohol and/or other drug testing undertaken by Appointing Authorities shall be in accordance with Minnesota Statutes 181.950-957 (1987), the Minnesota Drug and Alcohol Testing in the Workplace Act. Individual agency drug and alcohol testing policies must be in written form and must be reviewed by Minnesota Management & Budget prior to implementation.

All employees who are required to hold a Commercial Drivers License as a condition of employment are subject to drug and alcohol testing required by the OTETA of 1991 and relevant U.S. Department of Transportation regulations. These employees are subject to random, pre-employment, post accident, reasonable suspicion, return-to-duty and follow-up testing.

The specific requirements for testing are governed by regulations promulgated by the U.S. Department of Transportation. Information regarding the implementation of the testing is contained in the "State of Minnesota Drug and Alcohol Testing Plan". All employees subject to this testing shall be provided a copy of the "Plan" and information on the effects of alcohol and controlled substances.

XII. Effective Date

This Policy on Alcohol and Other Drug Use in the Workplace shall be in full force and effect beginning March 18, 1989.

08/24/88 Sect. XI. Rev 4/1/95 Rev. 9/8/09
Rev. 3/18/89 Sect. XI Rev 9/19/95
Commonly asked questions and answers about the State of Minnesota's Alcohol and Other Drug Use in the Workplace Policy

Why did the state create a statewide policy on alcohol and other drug use?

There are at least three reasons why a statewide policy on alcohol and other drug use exists:

- to ensure consistency in policies and rules, both written and oral, that exist across State agencies regarding enforcement of alcohol and other drug use in the workplace;
- to place all affected parties on proper advance notice of the state's policy and work rules in this regard;
- to respond to the law and the citizens by adopting a formal statement promoting a workplace that discourages alcohol and other drug use.

How are unprofessional and irresponsible conduct defined?

Such conduct, whether observed first-hand or reported, is defined on a case-by-case basis but would demonstrate behaviors offensive to the public or other employees, and/or indicate that the employee is not properly representing the state.

How is "under the influence" interpreted?

It is interpreted through observable signs of impairment in speech, physical appearance or behavior at work or if the employee's condition or behavior presents the appearance of unprofessional or irresponsible conduct detrimental to the public's perception of the state as an employer.

In regard to possession of illegal drugs at work, what is a "reasonable suspicion," and is it sufficient to require notification to law enforcement agencies and licensing boards?

"Reasonable suspicion" is a belief based on objective facts and rational inferences drawn from those facts sufficient to lead a responsible and prudent supervisor to suspect possession. It is a commonly used standard in many areas, including law enforcement.

Why not just ban all drinking during the work day?

There are some circumstances where drinking on duty may be appropriate (for example, troopers testing reactions to drinking; crime agents acting undercover; certain social functions; meetings for out-of-state business; conventions). It is impossible to anticipate every situation that may occur. Where drinking is an appropriate part of a work assignment, which should be very rare, it obviously is exempted from this policy.

The essential reason, beyond that noted above, is that we cannot regulate off duty activities of employees unless there is a connection between such conduct and his or her duties/responsibilities as a state employee.

Is the state trying to regulate off duty actions (for example, during meals or after work)?
No. Employees are discouraged from consuming alcohol only when returning to perform work on behalf of the state and when the employee's condition adversely affects his/her work performance. This is merely a notice-type policy. Our concern is when the employee is performing state work. Individual agencies have supplements to this policy banning the consumption of alcohol during lunch for certain categories of employees.

**Does the policy require employees to relate personal information to their supervisor when taking prescription or non-prescription medication?**

No. However, if use of those medications should result in an inability to perform job duties on the part of the employee, then the employee must so inform the supervisor. If the employee requests sick leave, the supervisor may require verification or deny payment of the sick leave.

**Are some of the issues contained in the policy considered "terms and conditions of employment" that should be addressed in collective bargaining?**

The policy has been published as a work rule which has been thoroughly discussed with exclusive representatives.

**Is an adverse reaction to proper prescription drugs considered abuse under this policy?**

Section E establishes a requirement that an employee experiencing a reaction notify the supervisor. Notification before something negative occurs would not violate the policy, unless unusual circumstances exist. Each situation is to be reviewed on its own facts.

**Does the policy cover on-call, call-backs, call-ins, or winter maintenance status employees?**

The policy generally covers reporting to work. Sensitive security employees may be covered by supplemental policies adopted in accordance with the overall policy.

**Is poor work performance always related to alcohol or drug abuse?**

No. Poor performance may be indicative of a number of things. Be cautious in assuming poor work is automatically related to alcohol or drug abuse.

**Can employees really recognize if they are not in appropriate condition to operate, use or drive state equipment?**

Yes. Part of our job is to teach employees to let us know before things get out of hand.

**Is discipline warranted if an employee determines he/she is not in appropriate condition to operate, use, or drive?**

We want to encourage self-reporting where a problem exists. However, the individual situation may justify discipline. Supervisors must evaluate what happened.

**Can an employee be disciplined for off duty sale, purchase, transfer, or use of controlled substances?**
Discipline may be appropriate if the act has a negative effect on the employee's ability to perform the work. To support discipline, you need to show the harmful effect on the state's business or that the employee is unavailable for work.

**Must an employee divulge the name of the medically authorized drugs or other substances which may be altering job performance under the affirmative "duty to notify" language?**

No. The policy does not generally require it, but in individual cases supervisors may require the information to verify a claim if it appears unsupportable.

**Is it a requirement to notify licensing boards before discipline is taken?**

No. Whether and when to notify such boards is a judgment call in the agency. Read the licensing board requirements as to when to report. Not all positions are covered by licensing boards. Caution should be used so that employees are not needlessly accused.

**Are employees allowed to drink off state premises on rest breaks or overtime?**

No. Employees on rest breaks or overtime, even off state premises, are still considered on duty.

**Does the policy create a double standard distinguishing between, for example, Highway Maintenance Workers and white collar employees?**

No. Just as coordination and reaction skills are critical for equipment operators, so are judgment and decision making skills critical for white collar employees. The policy clearly states that any employee whose condition or behavior adversely affects his/her work performance shall be subject to possible discipline.

**Does the policy prohibit illegal drug use at lunch or during dinner meals?**

Yes. This is covered under Section 7C prohibiting drug use during working hours.

**If an employee is sent home from work under Section 7E, must he/she receive paid leave?**

Yes. Under management's authority to maintain a safe workplace, you are permitted to relieve someone from work by sending him/her home, but pay is required in the form of sick leave or release time.

**Are any agencies doing drug testing?**

Corrections, Public Safety, and the Veterans Home Board conduct pre-employment testing as allowed under Minnesota statute. Transportation, Natural Resources and other agencies conduct testing under federal law covering employees required to have a Commercial Drivers License to perform the job. The MAPE, MLEA and MNA Labor Agreements contain provisions for reasonable suspicion drug and alcohol testing.

**Can employees use state funds to purchase alcoholic beverages?**
No. Employees are precluded from including the purchase of alcoholic beverages when applying for meal reimbursement. However, there is an exception noted in the policy regarding separate statutory or executive agency authority in section 7C.

**Can an employee be disciplined for private vehicle drunk driving off duty?**

Only if the connection with his/her work performance is established. The discipline cannot be based on the offense itself.

**Is an employee appropriately excused from work if he/she calls in and reports that he/she can't come in because of taking a prescription or non-prescription drug?**

This is not an automatic yes or no answer. The supervisor should quiz the employee and determine if the employee is able to report for direct observation before granting sick leave. Also, the supervisor should attempt to determine if there is other work the employee could do while taking the drug.

**What do you do if the employee has lost his/her driver's license as a result of alcohol or drug use in a vehicle?**

If the license is required for the job, it will affect the employee's ability to do the job. Long-term revocation may lead to reassignment, demotion, discharge or other actions.

**Can co-workers be disciplined for not reporting fellow co-workers who violate the policy?**

No. However, employees are encouraged, where dangerous situations exist, to bring them to the supervisor's attention.

**How should agencies communicate the Alcohol and Other Drug Use Policy to state employees?**

Agencies should use whatever means they feel are appropriate including, but not limited to, conducting training seminars, posting the policy or having the employees acknowledge receipt by means of signature. The Labor Relations Bureau will be available to answer questions and provide necessary materials.