

## **Drug-Free Workplace Program Commonwealth of Virginia**

### **How to customize this sample drug-free workplace program**

The following is a sample drug-free workplace program designed to assist you in your safety efforts in the Commonwealth of Virginia. This program includes Commonwealth of Virginia requirements for you to be eligible to receive a workers' compensation premium credit. See Va. Code Ann. § 65.2-813.2 (West 2023). Here is how to create your own program.

1. Copy the first page of the policy onto your company letterhead or add your company name and address at the top of the page.
2. In Section I, insert the **implementation date** for your drug-free workplace program.
3. In the fourth paragraph of Section I, add the **60-day general notice** date (which is 60 days from the date you implement your program).
4. In Section I, replace **[CompanyName]** with the name of your company.
5. In Section XI, select one of the two options concerning your employee assistance program (EAP) and delete the other that does not apply to your business. Your company is not required to pay for an EAP for your employees. ***However, you are required to provide a resource file of employee assistance providers in your area to meet the requirements of this section.*** To find providers in your area, search “substance abuse treatment facilities” online.
6. Employees are to sign the acknowledgement form and return it to the Human Resources/Personnel representative to place in their employee file.
7. Provide all existing and new employees with a copy of this policy. A copy of the policy must also remain conspicuously posted in employee common areas.

### **Updating your existing drug-free workplace program policy**

If you are using this sample drug-free workplace program to revise your current drug-free workplace policy, please complete the steps above and add a current date to the top of page one with the word “**Revised**” beside the date. Please note, in paragraph four of the policy statement, you do not need to add a 60-day general notice date if it was already included in your existing policy (this is a one-time notice).

This sample Virginia Drug-Free Workplace Program is providing a legal interpretation of Va. Code Ann. § 65.2-813.2 (West 2023), regarding the drug-free workplace credit.

[Company name and address or letterhead]

**Drug-Free Workplace Program  
Commonwealth of Virginia**

**I. Policy statement**

Implementation date: [XX/XX/20XX]

As part of our commitment to safeguard the health of our employees and to provide a safe environment for everyone, [Company Name] (hereinafter “Company”) has established a drug-free workplace program (“Program”).

The goal of this program is to balance our respect for individual privacy with our need to keep a safe, productive, drug-free environment. We encourage those who use illegal drugs or abuse alcohol to seek help in overcoming their problem through [an employee assistance program] [employee assistance service providers].

While Company understands that employees and applicants under a physician’s care are sometimes required to use prescription drugs, abuse of prescribed medications will be dealt with in the same manner as the abuse of illegal substances.

All employees are given a one-time notice as of the above implementation date that it is a condition of employment to refrain from reporting to work or working with the presence of alcohol and/or illegal drugs in their body. Employees are subject to drug testing under the standards of this Program on [XX/XX/20XX] (testing date), which is 60 days from the above implementation date.

Thereafter, Company will include notice of drug testing on employment vacancy announcements for positions for which drug testing is required. A notice of Company’s drug-testing policy will be posted in an appropriate and conspicuous location on Company’s premises, and copies of the drug-free workplace program must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer’s personnel office or other suitable locations.

**II. Confidentiality**

Except as otherwise provided in this section, all information, interviews, reports, statements, memoranda and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this section or in determining compensability.

- A. Company, laboratories, medical review officers, employee assistance programs (EAP), drug rehabilitation programs and their agents may not release any information concerning drug test results obtained pursuant to this section without a written consent form signed voluntarily by the person tested, unless such release is compelled by an administrative law judge, a hearing officer, or a court of competent jurisdiction pursuant to an appeal taken under this section or is deemed appropriate by a

professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:

1. The name of the person who is authorized to obtain the information.
  2. The purpose of the disclosure.
  3. The precise information to be disclosed; and specifically request drug testing and/or drug rehabilitation information.
  4. The duration of the consent.
  5. The signature of the person authorizing release of the information.
- B. Information on drug test results shall not be used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding.
- C. This subsection does not prohibit Company, agent of Company, or laboratory conducting a drug test from having access to employee drug test information or using the information when consulting with legal counsel in connection with actions brought under, or related to this section, or when the information is relevant to its defense in a civil or administrative matter.

### **III. Drugs that may be tested and positive levels**

- A. Company may test for the following drugs and alcohol:
1. Alcohol
  2. Amphetamines
  3. Cannabinoids
  4. Cocaine
  5. Phencyclidine HCl
  6. Methaqualone HCl
  7. Opiates
  8. Barbiturates
  9. Benzodiazepines
  10. Synthetic Narcotic
  11. Use of any other nonprescribed controlled substance identified as such in Chapter 34 (Va. Code Ann. § 54.1-3400 et seq.) of Title 54.1
- B. Positive testing levels are determined in accordance with Va. Code Ann. §§ 18.2-266 and 65.2-306 (West 2023).

### **IV. List of common medications that may affect a drug/alcohol test**

The following is a list of the most common medications, which may alter or affect a drug test, and is not intended to be all-inclusive:

Alcohol

All liquid medications containing ethyl alcohol (ethanol). Please read the label for

	alcohol content. As an example, Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contact Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is 26.9% (54 proof).
Amphetamines	Obetrol, Biphedamine, Desoxyn, Dexedrine, Didrex, Ionamine, Fastin.
Cannabinoids	Marinol (Dronabinol, THC).
Cocaine	Cocaine HCl topical solution (Roxanne).
Phencyclidine	Not legal by prescription.
Methaqualone	Not legal by prescription.
Opiates	Paregoric, Parepectolin, Donnagel PG, Morphine, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guiatuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid (Hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin, Tussi-organidin, etc.
Barbiturates	Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Butabarbital, Butalbital, Phrenilin, Triad, etc.
Benzodiazepines	Ativan, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranxene, Valium, Verstran, Halcion, Paxipam, Restoril, Centrax.
Methadone	Dolophine, Metadose.
Propoxyphene	Darvocet, Darvon N, Dolene, etc.

## **V. Reporting use of prescription or nonprescription medications**

- A. An employee or job applicant may confidentially report the use of prescription or nonprescription medications to a medical review officer, both before and after a drug/alcohol test, by contacting the medical review officer directly; Company will provide the contact information.
- B. Prescription or nonprescription medication is a drug or medication obtained with a prescription from an authorized health care provider or a medication that is authorized by federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments or injuries.
- C. A medical review officer is a licensed physician employed by or contracted with Company, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and

evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information.

## **VI. Medical review officer consultants**

Employees and job applicants may consult with a medical review officer for technical information, regarding prescription or nonprescription medication.

Company's medical review officer contact information is as follows:

Name: [REDACTED]  
Telephone: [REDACTED]  
Email: [REDACTED]

## **VII. Drug testing**

Under the Program, Company will conduct the following type of alcohol/drug tests:

### **A. Job applicant drug testing**

Company requires job applicants to submit to a drug/alcohol test and may use a refusal to submit to a drug/alcohol test or a positive confirmed drug/alcohol test as a basis for rejecting to hire a job applicant. A job applicant is a person who has applied for a position with Company and has been offered employment conditioned upon successfully passing a drug/alcohol test and may have begun work pending the results of the drug/alcohol test.

### **B. Reasonable-suspicion drug testing**

Company requires an employee to submit to reasonable-suspicion drug testing. Reasonable-suspicion drug testing is drug testing based on a belief that an employee is using or has used drugs/alcohol in violation of the drug-free workplace policy. Reasonable-suspicion may be drawn from specific, objective and articulable facts and reasonable inferences drawn from those facts considering experience. Among other things, such facts and inferences may be based upon:

1. Observable phenomena while at work, such as direct observation of drug/alcohol use or of the physical symptoms or manifestations of being under the influence of a drug/alcohol.
2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
3. A report of drug use provided by a reliable and credible source.
4. Evidence that an individual has tampered with a drug test during his or her employment with the current employer.
5. Information that an employee has caused, contributed to, or been involved in an accident while at work.
6. Evidence that an employee has used, possessed, sold, solicited or transferred drugs while working or while on Company's premises or while operating Company's vehicle, machinery or equipment.

C. Routine fitness-for-duty drug testing

Company requires an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the established policy or that is scheduled routinely for all members of an employment classification or group.

D. Follow-up drug testing

If the employee, in the course of employment, enters an EAP for drug/alcohol-related problems, or a drug/alcohol rehabilitation program, Company requires the employee to submit to a drug/alcohol test as a follow-up to the program, unless the employee voluntarily entered the program. In those cases, Company has the option to not require 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 testing date must not be given to the employee to be tested.

## **VIII. Challenges to test results**

A. An employee or job applicant who receives a positive confirmed test result may contest or explain the result to Company's designated medical review officer within five working days after receiving written notification of the test result. If an employee's or job applicant's explanation or challenge of the positive test is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result.

B. The terms "confirmation test," "confirmed test," or "confirmed drug test" mean a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy.

C. Confirmation testing shall be done in accordance with the following:

1. If an initial drug test is negative, Company may in its sole discretion seek a confirmation test.
2. Only licensed or certified laboratories may conduct confirmation drug tests.
3. All positive initial tests shall be confirmed using gas chromatography/mass spectrometry or an equivalent or more accurate scientifically accepted method approved by the United States Food and Drug Administration as such technology becomes available in a cost-effective form.
4. If an initial drug test of an employee or job applicant is confirmed as positive, Company's designated medical review officer shall provide technical assistance to Company and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

## **IX. Consequences of testing positive or a test refusal**

Company may take the following actions against an employee or job applicant based on a positive confirmed drug/alcohol test result or test refusal:

- A. Job applicant drug/alcohol testing  
Company may refuse to hire a job applicant who refuses to submit to a drug/alcohol test or has a positive confirmed drug/alcohol test result.
- B. Positive test or test refusal—denial of workers' compensation benefits/misconduct  
Upon a positive confirmed drug/alcohol test result or a test refusal, Company will consider the positive test or refusal as misconduct and will deny the employee's workers' compensation claim.
- C. Positive test or test refusal—termination of employment  
Upon a positive confirmed drug/alcohol test result or a test refusal, Company will consider the positive test or refusal as misconduct and may terminate the employee's employment.

## **X. Employee responsibility to notify laboratory**

An employee or job applicant is responsible for notifying the testing laboratory of any administrative or civil action brought about, concerning spoliation of evidence or other issues should the test results be subject to such action.

## **XI. Employee assistance program** *(If your company does not offer an EAP, delete this section and use XI. Drug and alcohol treatment case providers section below.)*

- A. Company maintains an employee assistance program ("EAP"). The purpose of an EAP is to provide help to employees and their families who suffer from alcohol abuse, drug abuse or other mental health issues. Employees may access these services without Company's involvement.
- B. It is the responsibility of an employee to seek assistance from an EAP before alcohol and drug problems lead to disciplinary actions. Once a violation of this policy occurs, subsequently seeking treatment through an EAP on a voluntary basis will not necessarily lessen disciplinary action and may, in fact, have no bearing on the determination of appropriate disciplinary action.
- C. Company's EAP will provide appropriate assessment, evaluation and counseling and/or referral for treatment of drug and/or alcohol abuse. Employees may be granted leave with a conditional return to work, contingent upon successful completion of the agreed-upon treatment regimen, which may include follow-up testing.

- D. The cost of seeking assistance from the EAP will be the responsibility of the employee and subject to provisions of Company's health insurance plan, if any. Please consult the provider concerning any costs that may be your responsibility.

**XI. Drug and alcohol treatment case providers** *(If your company offers an EAP, delete this section and use XI. Employee assistance program section above).*

- A. Although Company does **not** maintain an employee assistance program ("EAP"), Company does have a list of local providers of drug and alcohol treatment and family services that an employee may access without company's involvement.
- B. It is the responsibility of an employee to seek assistance **before** alcohol and drug problems lead to disciplinary actions. Once a violation of this policy occurs, seeking treatment on a voluntary basis will not necessarily lessen disciplinary action and may, in fact, have no bearing on the determination of disciplinary action.
- C. A medical provider can give an appropriate assessment, evaluation and counseling and/or referral for treatment of drug and alcohol abuse. Employees may be granted leave with a conditional return to work, depending on successful completion of the agreed-upon treatment regimen, which may include follow-up testing.
- D. The cost of seeking assistance will be the responsibility of the employee and is subject to provisions of Company's health insurance plan, if any. Please consult the provider for specifics concerning this issue.

**XII. Education**

Company will educate its employees about its drug-free workplace program, as follows.

1. Initial employee education.
2. Supervisor education and training.
3. Periodic re-education and training for all employees.

**XIII. Collective bargaining agreements**

Company's employees are not subject to any collective bargaining agreement; however, if one becomes applicable, there may be a right to appeal actions taken by Company due to an employee's confirmed drug test or refusal to take a drug/alcohol test with the Public Employees Relations Commission or applicable court.



## **Drug-Free Workplace Program Acknowledgement**

I hereby acknowledge that I have received and read [CompanyName's] ("Company's") drug-free workplace policy, a summary of the drugs which may alter or affect a drug test and a list of local employee assistance programs and drug and alcohol treatment programs. I have had an opportunity to have all aspects of this material fully explained. I understand that I must abide by the policy as a condition of initial and/or continued employment, and any violation may result in disciplinary action up to and including discharge.

Further, I understand that during my employment I may be required to submit to testing for the presence of drugs or alcohol. I understand that submission to such testing is a condition of employment with Company and disciplinary action up to and including discharge may result if:

1. I refuse to consent to testing.
2. I refuse to execute all forms of consent and release of liability that are usually and reasonably associated with such examinations.
3. I refuse to authorize release of the test results to Company.
4. The tests establish a violation of Company's drug-free workplace policy.
5. I otherwise violate the policy.

I understand that if I am injured in the course and scope of my employment and test positive or refuse to be tested, I forfeit my eligibility for medical and indemnity benefits under the Workers' Compensation Act.

I also recognize that the drug-free workplace policy and related documents are not intended to constitute a contract between Company and me.

**The undersigned further states that they have read the foregoing acknowledgement and know the contents thereof and sign the same of their own free will.**

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**Signature**

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**Date**

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**Witness**

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**Date**

## Notification of Positive Drug Test

Dear \_\_\_\_\_:

On [XX/XX/20XX] you were drug tested according to requirements of Company's drug-free workplace program and policy. In compliance with the policy drug testing standards, your urine/blood specimen was tested twice in a controlled laboratory environment.

Company has received the results from Company's medical review officer, and the result indicates that you have tested positive (failed the test) for the following substance(s):

_____ Cannabinoids (marijuana)	_____ Alcohol
_____ Amphetamines	_____ Cocaine
_____ Phencyclidine (PCP)	_____ Methaqualone
_____ Opiates	_____ Barbiturates
_____ Benzodiazepines	_____ Synthetic Narcotics

In keeping with our Company's drug-free workplace policy, the following disciplinary procedure(s) will take place immediately:

[Disciplinary action inserted here by company representative]

If you disagree with the test result or have some other related concern, you have the right to submit information explaining or contesting the test result, and explaining why the positive test result does not constitute a violation of our drug-free workplace policy, within five working days after receiving this notice. You also have the right, within 180 days of your challenge, to have your original specimen retested at another certified laboratory. Arrangements and costs will be your responsibility. Other challenge rights to which you may be entitled are included in your copy of our drug-free workplace policy previously distributed to you.

Our Company's medical review officer is [ \_\_\_\_\_ ]

Phone number [ \_\_\_\_\_ ]

You may contact your medical review officer to ask questions or discuss your drug test result.

Sincerely,

[Company representative]

[Title]