

**Policy GBEBB-2: EMPLOYEE ALCOHOL AND DRUG TESTING**

Status: DRAFT

Original Adopted Date: 12/16/1999 | Last Revised Date: 11/19/2020

**23D UPDATE EXPLANATION**

MSBA has modified this policy to make it clear that district employees cannot possess, use, distribute, or be under the influence of marijuana in the workplace even though Missouri law allows adults to legally possess and use marijuana.

The district is subject to the federal Drug-Free Workplace Act that requires employers who have federal contracts, directly or through the state, to prohibit the unlawful manufacture, distribution, dispensation, or use of controlled substances in the workplace. Marijuana is still a controlled substance under federal law.

In addition, the U.S. Department of Transportation has issued notice about positive test results:

We want to make it perfectly clear that the state initiatives will have no bearing on the Department of Transportation's regulated drug testing program. The Department of Transportation's Drug and Alcohol Testing Regulation - 49 C.F.R. Part 40 - does not authorize the use of Schedule I drugs, including marijuana, for any reason.

Therefore, Medical Review Officers (MROs) will not verify a drug test as negative based upon learning that the employee used "recreational marijuana" when states have passed "recreational marijuana" initiatives.

We also firmly reiterate that an MRO will not verify a drug test as negative based upon information that a physician recommended that the employee use "medical marijuana" when states have passed "medical marijuana" initiatives.

While drivers cannot use marijuana at all, other employees cannot come to work under the influence of the drug. The Missouri Constitution, art. XIV, sec. 1 7(d), allows employers to prohibit employees—even those with a valid, state-issued medical marijuana card—from being under the influence of marijuana while at work. The employer may discipline employees, up to and including termination from employment, for working or attempting to work while under the influence of marijuana. If such a policy is in place, employees cannot bring a claim against the employer for wrongful discharge, discrimination, or any similar cause of action or remedy.

However, "under the influence" is not easy to define. A positive test may be the result of legally using marijuana days or weeks before the test. MSBA encourages districts to train administrators on the signs that employees are under the influence and not rely solely on drug testing unless the employee is a driver. Employees who are incapable of performing the duties of their position because of alcohol or drug use can be disciplined.

If an employee who has a medical marijuana card seeks accommodation for a disability, the district should go through the process of determining whether the employee has a legal disability. If so, the district should begin the interactive process to determine what a reasonable accommodation would be. However, working while under the influence is not a reasonable accommodation and, so far, courts have not considered access to an illegal drug a reasonable accommodation.

MSBA has also modified this policy for clarity and changed the term "substance abuse treatment" to the more commonly used "substance use treatment."

## (District Provides Transportation Services)

### Provisions Applicable to All Employees

#### Alcohol and Drug Prohibitions

No employees may manufacture, use, possess, sell, distribute, or be under the influence of prohibited substances ("alcohol or drugs") in violation of the district's policy GBEBA, Drug-Free Workplace policy. All employees may be tested for alcohol and drugs if the district has reasonable suspicion that they employee has have consumed alcohol or drugs in violation of board policy.

#### Marijuana and Marijuana-Infused Products

Marijuana is illegal under federal law and is considered a prohibited drug under this policy. This policy's prohibitions apply even if an employee has been authorized under state law to use marijuana or marijuana-infused products for medicinal or recreational purposes.

#### Program Coordinator

The superintendent or designee will serve as the program coordinator and will implement the district's alcohol and drug testing program within the guidelines of this policy.

#### Training

All staff who have supervisory duties over other staff members will be provided training on the effects of drug and alcohol use. The training will include physical, behavioral, speech and performance indicators of drug and alcohol use. Supervisors of employees who operate district transportation will be trained in accordance with federal law. The superintendent or designee will secure training on identifying the signs that an individual is under the influence of alcohol or drugs and will select employees to receive the training. The training will include requirements under federal law for employees who operate district vehicles.

#### Testing Program

The district will use alcohol and drug testing facilities with appropriately trained personnel for alcohol and drug testing. The district's drug and alcohol and drug testing program shall provide individual privacy in the collection of specimen samples to the maximum extent possible. The specimen sample collection procedures and chain of custody shall ensure that specimen the security, proper identification, and integrity of the samples are not compromised.

#### Refusal to Submit to Tests

Drug or alcohol tests administered pursuant to this policy are mandatory. An employee refuses to submit when he or she fails to provide adequate breath or urine for testing when notified of the need to do so or engages in conduct that clearly obstructs the testing process.

#### Consequences

Employees who refuse to submit to a test, who test positive for prohibited substances or who take deliberate action with the intent to falsify test results will be subject to discipline, including termination, in accordance with board policy and law. Employees who test positive for prohibited substances will be subject to discipline, including termination, in accordance with board policy and law. Employees who obstruct the district's alcohol or drug testing process may be disciplined as if they submitted a sample that returned a positive test result and may also be subject to discipline for the act of obstruction itself. Employees obstruct the drug testing process when they:

1. Refuse to submit to a drug test under this policy;
2. Intentionally submit a falsified sample for testing (such as submitting someone else's sample as their own, providing a sample for another person to submit as theirs, submitting an old sample as if new, or submitting a sample containing a substance intended to cause a negative result on the test); or

3. Otherwise intentionally interfere or attempt to interfere in any way with the integrity of the sample collection and testing process under this policy.

Employees who have not been asked to submit a sample but obstruct the testing of another person's sample may be disciplined for the obstruction.

### **Treatment**

In addition to any disciplinary action taken, the district will provide employees a list containing the names, addresses, and telephone numbers of substance abuse treatment professionals and counseling and treatment programs when employees have a positive drug or alcohol or drug test result, refuse to take a test, or otherwise request information about substance abuse treatment.

### **District Records and Reports**

Alcohol and drug test results and records shall be maintained under strict confidentiality and released only in accordance with law. Upon written request, an employee shall receive copies of any records pertaining to his or her use of alcohol or drugs, including any records pertaining to his or her tests. Test records shall be maintained with the each employee's separate medical files of each employee. The district shall maintain records and reports of its alcohol and drug prevention program as required by law.

Records of drug and alcohol and drug tests and other related records shall be made available to a subsequent employer only as expressly requested in writing by the employee.

### **Notification to Employees**

The program coordinator shall ensure that all employees receive written materials explaining appropriate notice of the district's prohibitions on alcohol and drug use and alcohol misuse prevention program, including copies of or access to applicable policies, procedures or handbooks.

Employees shall sign statements certifying that they have received the materials.

### **Provisions Applicable to Drivers**

In addition to the alcohol and drug testing provisions applicable to all employees, the district, which employs operators of commercial motor vehicles ("drivers"), is required to implement a drug and alcohol testing program that fulfills federal requirements. The district will use laboratories certified by the U.S. Department of Health and Human Services to conduct drug specimen analysis. This comprehensive program shall include conducting pre-employment drug testing and reasonable suspicion, random, and post-accident testing for use of alcohol or drugs by drivers; notifying drivers of the requirements and consequences of the program; maintaining appropriate records; participating in the Commercial Driver's License Drug and Alcohol Clearinghouse; and complying with the Missouri Department of Revenue's reporting requirements.

As required by law, no drivers shall not report for duty within four hours of using alcohol. No drivers required to take a post-accident test shall not use alcohol for eight hours following the accident or until he or she they undergoes a post-accident alcohol test, whichever comes first.