

Appendix D: Proposed Regulation on Drug Testing of NC State University Employees

(Sent by David Rainer, Associate Vice Chancellor for Environmental Health and Public Safety, to Faculty Chair Jeannette Moore on September 8, 2015. Feedback was requested to be received by the end of September, but the Governance and Personnel Policy Committee co-chairs have learned that we have more time than that. VC David Rainer will be at our Senate meeting on October 6th, and that is when we will discuss this.)

PROPOSED NEW REGULATION: REG#: Drug and Alcohol Free Workplace

Rationale: To affirm NC State’s commitment to a drug and alcohol free workplace and to comply with the Drug Free Workplace Act as well as other federal law. To notify employees of the consequences of using/being under the influence of illegal drugs or alcohol while on the job and the misuse/abuse of prescription medication while on the job. To define the scope of drug and alcohol testing (reasonable suspicion and post-accident) for employees.

Review Process:

- _____ Associate Vice Chancellor for EHPS/Associate Vice Chancellor for Human Resources authorize transmittal of draft PRR for review with Vice Chancellor for Finance and Administration
- _____ General Counsel preliminary review
- _____ Vice Chancellor for Finance and Administration review
- _____ Faculty/Staff Senate and Dean’s Council review
- _____ General Counsel final review
- _____ EOM approval
- _____ University Council (review/notification), if applicable
- _____ Board of Trustees (review/notification), if applicable

Drug and Alcohol Free Workplace

REG # [inserted by PRR website mgr.]

Authority: Vice Chancellor for Finance and Administration

History: First issued: [date], 2015

Related Policies:

[UNC Policy Manual 1300.1 – Illegal Drugs](#)

[NC State POL 04.20.02 – Alcohol Policy](#)

[NC State POL 04.20.05 – Illegal Drugs](#)

[NC State REG 04.20.01 – Alcohol Regulation](#)

[NC State REG 01.25.01 – University Record Retention and Disposition Regulation](#)

[NC State RUL 05.56.01 – General and Commercial Driver’s License Holders \(CDL\)](#)

Additional References:

[N.C. Gen Stat. § 90-86 et. seq. \(North Carolina Controlled Substances Act\)](#)

[Drug-Free Workplace Act of 1988](#)

[Chancellor’s Memo](#)

Additional Resources:

[Faculty and Staff Assistance Program \(FASAP\)](#)

[Post-Accident Testing Procedures](#)

[Reasonable Suspicion Testing Procedures](#)

[Reasonable Suspicion Testing Checklist](#)

[Drug Testing Consent Form](#)

Contact for Info: Associate Vice Chancellor for [Human Resources](#) (919) 515-3443

Associate Vice Chancellor for [Environmental Health and Public Safety](#) (919) 515-4238

1.0 Introduction

North Carolina State University (NC State) is committed to providing students, faculty, staff and visitors with a safe campus and workplace. NC State recognizes the health risks associated with illegal drug use, alcohol abuse and prescription drug misuse and supports employees who seek treatment for these conditions. At the same time, NC State acknowledges that substance abuse by employees can adversely affect the work environment and undermine NC State’s ability to fulfill its mission of scholarship, research, service and extension.

Therefore, to promote a safe learning and working environment, to comply with applicable state and federal law (including the Drug-Free Workplace Act of 1988) and to formalize current practices, NC State supports and maintains a drug and alcohol free workplace. This regulation is designed to further these goals and obligations by describing prohibited conduct and the consequences of engaging in such conduct. This regulation also describes when employees may be subjected to drug and alcohol testing.

2.0 Scope

This regulation applies to all NC State employees in pay status regardless of job classification or type.

2.1 Exceptions

- University Police officers who are subject to drug and alcohol testing by the North Carolina Criminal Justice Education and Training Standards Commission are exempt from the policy.
- Other than as noted in 10.5, individuals who are required to hold a Commercial Driver's License (CDL) due to their job responsibilities are exempt from this policy since those positions are subject to pre-employment, random, reasonable suspicion, and post-accident testing under the DOT Federal Motor Carrier Safety Act (RUL 05.56.01).

3.0 Definitions

3.1 Alcohol: A chemical substance which is the intoxicating agent in beverage alcohol, ethyl alcohol, ethanol or other low molecular weight alcohols including methyl or isopropyl alcohol.

3.2 Conviction: A finding of guilt (including a guilty plea or plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal statutes.

3.3 Controlled Substance: A chemical substance, or immediate precursor as listed in Schedules I through VI of Article 5 of the North Carolina General Statutes, or any controlled substance (or metabolite thereof) whose possession or use is prohibited under federal law including, but not limited to, amphetamines, methamphetamines, methylenedioxymethamphetamine (MDMA), cocaine, cannabinoids (i.e. marijuana), phencyclidine (PCP), opiates (i.e. heroin), barbiturates, benzodiazepines, etc.

3.4 Designer (Synthetic) Drug: A chemical substance that is made by altering the molecular structure of a legal and/or illegal drug to create a drug that is not explicitly banned by law.

3.5 Employee: Any person employed or employed by NC State regardless of the appointment type.

3.6 Illegal Drug: A controlled substance whose possession or use is prohibited by state or federal law. The term "illegal drug" does not include the use of a controlled substance pursuant to a valid prescription (or other uses allowed by law).

3.7 Positive Alcohol Test: Alcohol test result with a blood alcohol concentration (BAC) of 0.02 or above. A BAC 0.02 – 0.039 or above will result in removal from duty and evaluation for return to duty by management. A BAC of 0.04 or above will result in removal from duty and corrective measures as outlined in 8.0. In addition, a test will be treated as a "positive alcohol test" if an employee intentionally tampers with the testing process, violates identification procedures, or falsifies test information. A refusal to be tested shall also be regarded as a positive test.

The employee is subject to disciplinary action, up to and including dismissal/discharge for cause.

3.8 Positive Drug Test: Laboratory test result with a finding of a controlled substance in the urine of an employee at thresholds meeting or exceeding the limits established by the Substance Abuse and Mental Health Services Administration (SAMHSA), or for drugs not subject to SAMHSA guidelines, at levels identified as exceeding a level for proper use, and that was not caused by alternative medical explanation or scientifically insufficient data. A refusal to be tested shall be regarded as a positive test. In addition, a test will be treated as a “positive drug test” if an employee intentionally tampers with a sample provided for the drug testing, violates identification procedures, or falsifies test information.

3.9 Reasonable Suspicion: A belief based upon reliable, objective and articulable facts derived from direct observation of specific physical, behavioral, odorous presence, or performance indicators that would lead a reasonable person to believe that an employee may be under the influence of a prohibited substance.

3.10 Refusal to be Tested: The following are considered a refusal to be tested:

- Failure to submit to testing;
- Leaving the testing facility before testing is completed;
- Failure to provide a specimen or providing an insufficient specimen without a valid medical reason;
- Providing a substituted specimen, adulterated specimens, intentionally diluted specimens (positive diluted specimens are treated as positive test results.- negative diluted specimens will undergo recollection); and
- Failure to cooperate during the testing process in a way that prevents completion of the test.

3.11 Under the Influence: The presence of a chemical substance in a person (i.e. having alcohol or drugs in one’s body). See. 3.1, 3.3, and 3.4.

3.12 University Property: Any vehicle, building, facility, or land owned, leased or used by NC State.

3.13 Workplace: Any University property or other space used by an employee in performing his/her work responsibilities including a remote work location or an employee’s home (while telecommuting).

4.0 Employee Responsibilities

4.1 Employees are expected to proactively address substance abuse issues (i.e. seek counseling, request assistance) before problems negatively affect their work performance or work environment. The employee is encouraged to utilize the resources provided by the university.

4.2 Employees are responsible for knowing about and complying with the provisions in state (North Carolina) and federal law that make it a crime to possess, sell, deliver or manufacture controlled substances. Employees must also refrain from prohibited behavior as listed in 6.0.

4.3 Consistent with [NC REG 05.55.08 – Background Checks](#), employees are required to report any conviction of a criminal offense (other than a minor traffic violation) to their immediate supervisor within five (5) calendar days of the conviction.

4.4 Each employee is responsible for ensuring that he/she has (from a qualified medical provider) a thorough understanding of the effects and potential side effects of any prescriptions, over-the-counter drug or other substance that might impair the employee's ability to satisfactorily perform his or her job duties. If an employee is impaired, he/she should notify their supervisor and not report to work.

4.5 Employees must comply with university requirements as outlined for reasonable suspicion and post-accident testing.

4.6 Any employee operating a motor vehicle on the job who is involved in an accident is responsible for notifying their supervisor within one (1) hour or as soon as possible if physically unable to do so. If the supervisor is not available, a higher level manager must be contacted.

4.7 University employees who suspect that a fellow employee may be in violation of this regulation must immediately report their observations to their supervisor or Human Resources – Employee Relations.

5.0 University Responsibilities

5.1 The University, through the Office of Finance and Administration, will inform all employees of the Drug and Alcohol Free Workplace regulation upon initial employment with NC State. The Chancellor will provide annual notification of NC State's obligations under the Drug Free Workplace Act.

5.2 The University, through the Human Resources Division, will make training available for supervisors and managers on a Drug and Alcohol Free workplace.

5.3 The University (Human Resources and Environmental Health and Safety) will make available informational resources on substance abuse for employees.

5.4 For Faculty, EPA Non-Faculty, SPA, and Post-Doc employees, the university will provide a Faculty and Staff Assistance Program (FASAP) as a confidential service that offers professional assessment, counseling and referral services for employees and their family for the treatment of drug or alcohol problems. Employees may be eligible to take leave pursuant to the Family and Medical Leave Act (FMLA) or other applicable leave provisions while undergoing treatment for drug or alcohol abuse.

5.5 The University will keep an employee's efforts to obtain help confidential, to the extent permitted by law.

5.6 When applicable, the University will notify the appropriate federal contracting agency of an employee's illegal drug conviction for a violation occurring in the workplace. The notification will be provided within ten (10) days after receiving notice of the conviction.

6.0 Prohibited Conduct

6.1 Illegal Drugs

6.1.1 Employees may not possess, sell, deliver or manufacture controlled substances or designer drugs on University property or in the workplace, except as may be authorized by law (or by University policy).

6.1.2 Employees may not report to work under the influence of illegal drugs or use illegal drugs while on the job or in the workplace.

6.2 Alcohol

6.2.1 Employees may not possess, sell, deliver or manufacture alcohol on University property or in the workplace, except as may be authorized by law (or by University policy).

6.2.2 Employees may not report to work under the influence of alcohol. Employees may not use alcohol in the workplace or while work is being performed.

6.2.3 NC State has established policies regarding the serving, possession or consumption of alcohol on University property and at University sponsored events. An employee is permitted to consume alcohol at activities or events where the University has authorized such use pursuant to [NC State POL 04.20.02 \(Alcohol Policy\)](#) and [NC State REG 04.20.01 \(Alcohol Regulation\)](#).

6.3 Prescription Drugs/Over-the-Counter Drugs

6.3.1 Employees may not report to work under the influence of prescription/over-the-counter drugs or use prescription/over-the-counter drugs while on the job where such use impairs an employee's ability to satisfactorily perform the functions of his or her job.

7.0 Violations

7.1 Engaging in prohibited conduct as listed in section 6 of this regulation.

7.2 A confirmed Positive Alcohol Test or Positive Drug Test (including a refusal to test).

7.3 A refusal to complete a drug or alcohol (substance abuse) treatment program, when such program has been required as a condition of continued employment by NC State.

7.4 A refusal to submit to follow-up drug or alcohol testing, when such testing has been required as a condition of continued employment by NC State.

7.5 Any other conduct that NC State determines to be inconsistent with providing a drug and alcohol free workplace.

8.0 Disciplinary Action/Corrective Measures

8.1 Employees found to have violated this regulation may be subject to disciplinary action, up to and including dismissal or discharge for cause. Disciplinary action shall be decided on a case-by-case basis. Factors that may be considered in determining the level of disciplinary action include, but are not limited to, an employee's past performance record, the seriousness of the violation, whether the violation affected other members of the University community, whether the employee engaged in threatening or violent behavior, and any other mitigating or aggravating factors.

8.2 In addition to (or in lieu of) disciplinary action, the University may take other corrective measures to address violations of this regulation. Such corrective measures may include, but are not limited to, mandatory referral to FASAP, requiring an employee to successfully complete a substance abuse treatment program, or requiring an employee to submit to follow-up testing as a condition of continued employment.

8.3 Employees may be placed on investigatory (SHRA) or administrative leave (EHRA) with pay to allow the university time to investigate allegations of violations and to consider disciplinary action and/or corrective measures.

8.4 Employees who use illegal drugs or alcohol, or who inappropriately use prescription/over-the-counter drugs, will be held to the same standards of job performance and conduct as that of other employees, even if unsatisfactory job performance or unacceptable conduct is related to the use of illegal drugs or alcohol, or inappropriate use of prescription/over-the-counter drugs.

9.0 Reasonable Suspicion Testing

9.1 Drug and alcohol testing of employees may be conducted if there is reasonable suspicion to believe the employee has used drugs or alcohol--or is under the influence of drugs or alcohol--while at work.

9.2 When a supervisor is notified or suspects that an employee may be in violation of this regulation, the supervisor shall immediately contact a member of Employee Relations. Employee Relations will assist the supervisor in following NC State's Reasonable Suspicion Testing Procedures. Whenever feasible, Employee Relations (or designated representative) will provide such assistance at the work site.

9.3 The Reasonable Suspicion Testing Checklist will be completed by the supervisor and a witness (as outlined in the Reasonable Suspicion Testing Procedures).

9.4 If it is determined that the employee may be in violation of the regulation, the supervisor will inform the employee and ask them to submit to a reasonable suspicion drug and alcohol test.

10. Post-Accident Testing

Employees are subject to drug and alcohol testing following any on-the-job accident where, as a result of the accident:

- A life was lost;
- Any person was transported for medical treatment; or

- An employee driving a motor vehicle was cited for a moving traffic violation and any vehicle involved in the accident was removed from the scene by other than its own power.

10.1 As soon as possible after an accident, the employee will be transported at the University's expense to an approved testing facility. If the employee is transported to a medical center for treatment, a test may be conducted at that facility. Otherwise, the employee will submit to testing following the Post-Accident Testing Procedures.

10.2 Post-accident alcohol testing should be done within eight (8) hours of the accident. If a test cannot be completed within eight (8) hours of the accident, it will not be conducted.

10.3 Post-accident drug testing must be done within thirty-two (32) hours of the accident. If a test cannot be completed within thirty-two (32) hours, it will not be conducted.

10.4 Employees must submit to post-accident testing and must comply with the timelines for post-accident testing. If unable to meet specified timelines due to circumstances beyond the employee's control, such circumstances must be documented and submitted to Employee Relations. If an employee is capable of reporting the accident but does not do so (or fails to do so in a timely manner), he or she is subject to disciplinary action up to and including dismissal/discharge for cause.

10.5 CDL Holders who are involved in an on-the-job accident where no citation is issued but a person is transported for medical treatment will undergo non-DOT tests.

11.0 Test Results

11.1 Notification (Sarah? Need to consider requirements of NC DOL Controlled Substance Examination Regulation Act?)

The employee's supervisor shall notify the employee within twenty-four (24) hours after receiving the drug and/or alcohol test results. An employee has the right to request and receive a copy of his/her test results.

11.2 Negative Test Result

If the result of a drug or alcohol test is negative, the employee may return to work immediately and any documentation relating to the test shall be maintained pursuant to the University's records retention schedule.

11.3 Positive Alcohol Test Results

If the result of an employee's alcohol test indicates a Blood Alcohol Concentration (BAC) of 0.04 or higher, the employee must be immediately removed from performing his/her duties. The employee is subject to disciplinary action up to and including dismissal/discharge for cause. If retained, the employee will be subject to completing the Return-to-Duty procedures as defined by the university.

If the result of an employee's alcohol test indicates a BAC between 0.02-0.039, the employee will be removed from performing his/her duties for at least 24 hours and then will be evaluated by their supervisor before returning to duty. The employee remains subject to disciplinary action, up to and including dismissal/discharge for cause.

11.4 Positive Drug Test Results

If the result of an employee's drug test indicates a Positive Drug Test, the employee must be immediately removed from performing his/her duties. The employee is subject to disciplinary action, up to and including dismissal/discharge for cause. The employee has the right to request a re-test using the split sample for confirmation of the positive result. The employee shall bear the cost of the re-test.

In the event of a Positive Drug Test, a Medical Review Officer (MRO), a licensed medical doctor who has special training in the area of substance abuse, will review the results to ensure compliance with chain-of-custody procedures and will contact the employee to eliminate medical or other reasons for the Positive Drug Test. When the MRO has confirmed the Positive Drug Test, the MRO will report the result to the employer.

11.5 Dilute Test Results

Verified positive diluted specimens are treated as positive test results. The University will require employees with negative dilute specimens to undergo immediate unobserved recollection.

12.0 Return to Duty

If an employee who has had a Positive Alcohol Test or Positive Drug Test is allowed to remain employed (not dismissed or discharged for cause), the employee must be cleared to return to duty. To be cleared for return to duty, the employee must:

- Successfully complete any substance abuse evaluation and/or treatment program as directed by the University;
- Receive a negative test result from a return to duty test, which is a one-time (announced) drug or alcohol test for an employee who has completed the required substance abuse evaluation and/or treatment program;
- As a condition of continued employment, submit to six (6) additional follow-up tests, which are periodic (unannounced) drug or alcohol tests during the following twelve (12) months.
- Complete any other requirements as directed by the University in order to return to the workplace.

13.0 Records Maintenance and Confidentiality

All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by NC State through its drug and alcohol testing program are confidential and may not be disclosed except as required by law. Any information obtained by NC State pursuant to this

regulation shall be the property of NC State. NC State shall not release to any person other than the employee or other authorized personnel (as designated by NC State on a need-to-know basis), information related to drug and alcohol test results unless the employee expressly, in writing, grants permission for NC State to release such information; or it is necessary to produce such information as required or permitted by applicable law.

13.1 Upon written request, an employee may obtain copies of his/her records.

13.2 NC State must provide test results of employees to:

- any federal agency as required for employees governed by federal regulations;
- any other federal, state or local officials with regulatory authority over NC State or any of its employees, including but not limited to, the National Transportation Safety Board (NTSB) as part of an accident investigation.

13.3 NC State may disclose testing records to a decision-maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee that arises from the test results or a violation of this regulation.

13.4 Human Resources shall securely maintain all records and information in accordance with the University's record retention schedule and any other state and federal requirements.