



MARIJUANA AND ALCOHOL-FREE WORKPLACE POLICY AND PROCEDURES – Statewide	
DHR-STW-Policy #: DHR-STW-103.1	Authority: 29 Del. C § 5806; 29 Del. C. § 9003D; 18 U.S.C. § 922
Effective Date: May 3, 2023	Revision Date: February 5, 2024
Supersedes: N/A	Signature: <i>Claire M. DeMatteis</i>
Application: Executive Branch Agencies	

### 1. Policy Purpose Statement

The State of Delaware (State) has a long-standing commitment to provide a safe, quality-oriented, and productive work environment. Alcohol and drug misuse poses a threat to the health and safety of State employees and to the security of the company's equipment and facilities. For these reasons, the State is committed to the elimination of drug and alcohol use and misuse in the workplace.

### 2. Scope

This policy applies to Executive Branch employees, unpaid interns, joint employees, and apprentices. Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, including business trips, business meetings, and business-related social events.

Executive Branch agencies may promulgate supplemental, more restrictive alcohol and drug-free policies as needed to comply with federal or state laws.

### 3. Definitions and Acronyms

- **Controlled Substance** – a drug, substance, or immediate precursor in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).
- **Deliver or Delivery** – the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- **Manufacture** – the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual’s own use or the preparation, compounding, packaging or labeling of a controlled substance:
  - a. By a practitioner incident to the practitioner’s administering or dispensing of a controlled substance in the course of the practitioner’s professional practice; or
  - b. By a practitioner, or by the practitioner’s authorized agent under the practitioner’s supervision, for the purpose of, or incident to, research, teaching, or chemical analysis and not for delivery.

- **Marijuana** – all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation (edibles, etc.) of the plant, its seeds or resin. Marijuana does not include products approved by the U.S. Food and Drug Administration.
- **Workplace** – the on-site location where employees conduct official State business during their scheduled hours of employment which includes their State assigned on-site location, an alternate on-site State location, a State vehicle, and State property such as State parking lots and areas accessible to the public.

#### **4. Policy**

- a. The following constitutes a violation of this policy:
  - 1) The use of alcohol, marijuana, or misuse or abuse of other controlled substance(s) in the workplace.
  - 2) Impairment in the workplace from the use of alcohol, marijuana, or other controlled substance(s).
- b. As a condition of employment, employees shall abide by this policy in addition to their agency's supplemental alcohol and drug-free policy and procedures, if applicable. Employees shall report to their workplace unimpaired and prepared to perform their required duties and assignments.
- c. Depending on the job duties, and applicable laws, regulations, or collective bargaining agreements certain positions may be subject to additional requirements such as pre-employment and random drug testing.
- d. When a supervisor suspects that an employee is impaired while performing their job duties, the principal evidence should include the observation and documentation of the employee's physical condition and/or behavior, such as:
  - A lack of coordination;
  - Glassy eyes;
  - Bloodshot eyes;
  - Odor of alcohol or marijuana;
  - Dilated pupils;
  - Unsteady movements or gait;
  - Impaired or incoherent speech;
  - Impaired perception of time and distance;
  - Admissions made by the employee;
  - Being disoriented;
  - Drowsiness; or
  - Euphoria.
  - 1) When rendering a determination of an employee in an impaired condition, supervisors should consider whether the employee's condition may be caused by other factors, rather than assuming it is the result of substance abuse.
  - 2) If an employee is unable to participate in a discussion about their behavior or is determined to be in an impaired condition, consult with your Agency Labor Relations if considering removing the employee from the workplace.
  - 3) If a decision is made to remove the employee from the workplace, arrangements are to be made for travel through a ride-share or via the employee's emergency contact.
- e. All records and information concerning personnel actions related to this policy shall remain confidential and shall be disclosed only with the employee's permission, or when the agency determines that disclosure is necessary to maintain safe operations. Disclosure and

recordkeeping shall be made in accordance with relevant federal and state laws, statewide policies and procedures, regulations, agency policies, collective bargaining agreements, and other binding sources of legal authority.

- f. Employees who voluntarily self-disclose that they have a drug and/or alcohol problem may be considered for referral to EAP, and if referred, required to comply with any recommended treatment; and required to follow the agency's return-to-duty process.
  - All costs associated with drug and/or alcohol rehabilitation and treatment will be the responsibility of the employee. Such costs may be covered by State employee health insurance providers. All employees are encouraged to review their health insurance plans to ensure they have a desired scope of coverage. Note: Examinations or treatment including laboratory testing to obtain or maintain employment is NOT covered under State employee health insurance plans.
- g. All marijuana use is prohibited for sworn law enforcement officers or public safety constables who are or may be required to carry firearms as part of their essential job duties.
- h. The State is dedicated to a fair and equitable application of this policy. Agency management shall use and apply all provisions of this policy in an unbiased and impartial manner.
- i. Violation of this policy may be grounds for discipline up to and including dismissal based on the standard applicable to the employee.

## **5. Procedures**

### **a. Agency Management Responsibilities:**

- 1) Agency management shall abide by this policy, in addition to their Agency's supplemental alcohol and drug policies, if applicable.
- 2) Supervisors and managers shall contact their Human Resources with any questions regarding the application of this policy.

### **b. Employee Responsibilities:**

- 1) Employees shall abide by this policy, in addition to their Agency's supplemental alcohol and drug policies, if applicable.
- 2) Employees must acknowledge receipt of this policy within the required time frame.
- 3) Employees shall report to their workplace prepared to perform their required duties without being impaired of alcohol, marijuana, or other controlled substance(s).

## **6. Exclusions or Exceptions**

- This policy provides minimum standards and agencies may impose stricter standards as necessary to comply with federal and state laws or regulations applicable to their agency's positions.
- The consumption of alcohol at events when the State has authorized such use is permitted and is not prohibited under this policy. Use must be sanctioned by the State, permitted by the appropriate state agency when applicable and only individuals of legal drinking age may consume alcohol at such events.

## **7. Dissemination and Training**

- This policy shall be distributed to all newly hired employees at the commencement of employment, and employees must acknowledge within 30 days.

- Agencies must post a copy of this policy in a conspicuous place or places in the workplace, including providing links on relevant websites.
- Employees must attend required training as assigned.

## **8. Data Reporting**

- All agencies are required to keep records of complaints alleging violation of this policy in accordance with the State's retention schedule.
- All records and information concerning personnel actions related to this policy shall remain confidential and shall be disclosed only with the employee's permission, or when the agency determines that disclosure is necessary for safe operations.

## **9. Associated Policy/Regulations/Information**

- [Employee Assistance Program \(EAP\)](#)
- [Drug-Free Workplace Policy and Procedures](#)
- [Standards of Conduct Policy and Procedures](#)

## **10. Appendices and Forms Associated with this Policy**

- None.

## **11. Policy Owner**

- Division Name: Division of Talent Management
- Policy Administrator: Director of the Division of Talent Management
- Website: [DHR - Talent Management \(delaware.gov\)](https://delaware.gov/dhr-talent-management)

*This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law. If there is a conflict with, i.e., the law or regulation and this policy, the law and/or regulation govern.*