

## Sample Massachusetts Substance Abuse Policy<sup>1</sup>

Ari Kristan and Catherine E. Reuben  
Hirsch Roberts Weinstein LLP  
[akristan@hrwlawyers.com](mailto:akristan@hrwlawyers.com) // [creuben@hrwlawyers.com](mailto:creuben@hrwlawyers.com)  
(617)348-4316

### Purpose

The purpose of this policy is to foster a substance-free, healthful, and safe work environment for all at the Company.

### Prohibitions

All employees are prohibited from the following:

- The manufacture, possession, use, sale, distribution, dispensation, receipt, or transportation of illegal substances while on Company property or while otherwise engaged in Company business.
- The use of alcohol, marijuana, or illegal substances while on duty.
- The use of alcohol, marijuana or illegal substances preceding duty when such use affects the employee's fitness for duty.
- Being under the influence of substances while on Company property or while otherwise engaged in Company business or during employment.

Violation of this policy will not be tolerated and may subject the violator to discipline, up to and including termination of employment.

Any employee who refuses to submit to testing as provided for in this policy may also be subject to disciplinary action, up to and including termination of employment.

### Definitions

**Possession:** To have on one's person, in one's personal effects, in one's vehicle or otherwise under one's care, custody, or control.

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<sup>1</sup> This sample policy is provided for educational purposes only and should not be relied on as legal advice. Consult with counsel regarding your legal obligations with respect to drug testing, and how to properly and lawfully tailor and implement this policy for your business.

**Substance:** Any alcohol, drugs, marijuana, prescription drugs or other substances that have known mind altering or function-altering effects upon the human body or that impair one's ability to safely perform his or her work.

**Premises:** For the purpose of this policy all property, facilities, buildings, structures, installations, work locations, work areas, or vehicles owned, operated, leased, or under the control of the Company. Private vehicles parked on premises or properties are also included under this definition. Although the vehicle used by an employee is not under the control of the Company, this Policy shall be construed as prohibiting the use of substances by the employee while traveling to and from the premises, or to any other location at which the employee has been designated to work, in such vehicle.

**Under the Influence:** The condition wherein any of the body's sensory, cognitive, or motor functions or capabilities is altered, impaired, diminished, or affected due to substances. This also means the detectable presence of substances within the body, regardless of when or where they may have been consumed, having an alcohol test result of 0.02 or greater alcohol concentration of blood or breath, and/or having a positive test for other substances.

### **Post-Offer Testing**

Prior to beginning work for the Company, and depending on the position, employees to whom an offer of employment is made may be subject to substance abuse testing. A positive finding for which the individual cannot offer an acceptable explanation will generally result in withdrawal of the offer of employment.

### **Post-Accident / Injury Testing**

If a workplace accident occurs causing injury to an employee or damage to property under circumstances that raise a question about possible substance use, the employee may likewise be subject to substance abuse testing.

### **Reasonable Suspicion**

The Company may require an employee to submit to a substance abuse test if the employee's supervisor or another individual in a management position reasonably suspects that the employee is using, is under the influence of, is in the possession of, or is unlawfully distributing substances, or has otherwise violated this policy's prohibitions with respect to substances. The following is a non-inclusive list of factors that may lead to reasonable suspicion under this policy:

- Odors (e.g., smell of alcohol or marijuana)
- Movements (unsteady, fidgety, dizzy)



- Eyes (dilated, glassy, bloodshot, watery, pupils abnormally dilated or constricted, involuntary eye movements)
- Face (flushed, sweating, confused or blank look, constant sniffing, redness under nose)
- Speech (slurred, slow, distracted mid-thought, inability to verbalize thoughts)
- Indicia of drug use (needle marks, possession of drug paraphernalia)
- Personality (change in personality, argumentative, agitated, irritable, forgetful)
- Other observations (extreme drowsiness, sleeping, unconsciousness, slowed reaction rate, erratic behavior)

If there is reason to suspect that the employee is working while under the influence of a substance in violation of this policy, the employee may be suspended until the results of the substance abuse test are made available to the Company.

### **Random Selection Testing**

Employees in safety-sensitive positions may be subject to unannounced substance abuse testing at any time on a random basis as a condition of their continued employment.

### **Reporting to Law Enforcement**

Where available evidence warrants, the Company may bring violations of this policy to the attention of appropriate law enforcement authorities.

### **Medications**

Employees taking legally prescribed or over-the-counter medications (including medical marijuana) that have the potential to negatively impact the employee's ability to perform his/her job functions in a safe and effective manner (e.g., medications which caution against use while operating machinery) must report such use to their immediate supervisor, and may be required to present medical documentation describing the effects such medication may have on the employee's ability to perform his/her tasks. The Company may take such action as it deems appropriate, including but not limited to temporarily transferring the employee to a different position, permitting the employee to take a leave of absence or other steps, depending on the circumstances.

### **Workplace Searches**

Management may conduct searches of Company property, including lockers, and an employee's personal property, in cases where there is reason to suspect a violation of this policy. An employee who refuses to consent to and/or cooperate in the conducting of such searches may be subject to disciplinary action up to and including termination of employment.

### **Testing Procedures / Confidentiality of Test Results**

Any drug testing required or requested by the Company will be conducted by a laboratory licensed by the state. All expenses related to the test will be incurred by the Company. Employees asked to undergo substance abuse testing will be asked to sign a consent form. Refusal to sign the form may result in discipline, up to and including termination. Specimens that are found to be adulterated or substituted will be considered a refusal to test, and therefore may result in termination of employment or ineligibility for hire. The Company will strive to keep the employee's test results confidential, treating them the same as other medical records and disseminating the results only on a need-to-know basis.

### **Positive Results**

If an employee tests positive on a drug test, the employee will be placed on unpaid administrative leave. The employee will be given the opportunity to explain the positive result and will be informed that employee may have the same sample retested at a laboratory of their choice at their cost.

Employees with confirmed positive results may be subject to disciplinary action, up to and including termination.

### **Prior Reporting of a Substance Abuse Problem**

The Company strives to treat employees consistently with regard to discipline for violations of this policy. So, if an employee violates this policy in a manner that could result in termination (for example, testing positive for drug use after having been involved in a workplace accident), the employee's after-the-fact revelation that they suffer from addiction will generally not result in them being treated in a more lenient manner. This Company is committed to providing reasonable accommodations to employees that suffer from addiction and other disabilities. While *addiction* to drugs or alcohol is a protected disability, the actual *use* of such substances is not, particularly if such use creates a safety hazard on the job. For this reason, employees are encouraged to seek help if they have a drug or alcohol problem *before* such problem results in a failed test or other violation of this policy. If an employee or a member of the employee's family is struggling with addiction, please tell us, and let us help. For example, the Company may be able to provide the employee with time off, access to support services, a different schedule, or other accommodations to help the employee address the situation.

**ACKNOWLEDGEMENT OF RECEIPT OF SUBSTANCE ABUSE TESTING POLICY**

I, \_\_\_\_\_, acknowledge that I have received a copy of the Substance Abuse Testing Policy (the "Policy"). I have read and understand the Policy. I understand that, if I violate the Policy, I may be subject to disciplinary action, including termination. I further understand that, under the Policy, I may be subject to substance abuse testing. I also understand that if I am asked to submit to a substance abuse test, and refuse to do so, I may be subject to disciplinary action, including termination. I will contact my supervisor if I have any questions about any aspect of the Policy. I further understand that that I am an employee-at-will and that the Policy does not alter that status.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

