

## **Chapter 41**

### **Local Governmental Entity Drug-Free Workplace Policies**

#### **34-41-101 Definitions.**

As used in this chapter:

- (1) "Drug" means any substance recognized as a drug in the United States Pharmacopeia, the National Formulary, the Homeopathic Pharmacopeia, or other drug compendia, including Title 58, Chapter 37, Utah Controlled Substances Act, or supplement to any of those compendia.
- (2) "Drug testing" means the scientific analysis for the presence of drugs or their metabolites in the human body in accordance with the definitions and terms of this chapter.
- (3) "Local governmental employee" means any person or officer in the service of a local governmental entity or state institution of higher education for compensation.
- (4)
  - (a) "Local governmental entity" means any political subdivision of Utah including any county, municipality, local school district, local district, special service district, or any administrative subdivision of those entities.
  - (b) "Local governmental entity" does not mean Utah state government or its administrative subdivisions provided for in Sections 67-19-33 through 67-19-38.
- (5) "Periodic testing" means preselected and preannounced drug testing of employees or volunteers conducted on a regular schedule.
- (6) "Prospective employee" means any person who has made a written or oral application to become an employee of a local governmental entity or a state institution of higher education.
- (7) "Random testing" means the unannounced drug testing of an employee or volunteer who was selected for testing by using a method uninfluenced by any personal characteristics other than job category.
- (8) "Reasonable suspicion for drug testing" means an articulated belief based on the recorded specific facts and reasonable inferences drawn from those facts that a local government employee or volunteer is in violation of the drug-free workplace policy.
- (9) "Rehabilitation testing" means unannounced but preselected drug testing done as part of a program of counseling, education, and treatment of an employee or volunteer in conjunction with the drug-free workplace policy.
- (10) "Safety sensitive position" means any local governmental or state institution of higher education position involving duties which directly affects the safety of governmental employees, the general public, or positions where there is access to controlled substances, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, during the course of performing job duties.
- (11) "Sample" means urine, blood, breath, saliva, or hair.
- (12) "State institution of higher education" means the institution as defined in Section 53B-3-102.
- (13) "Volunteer" means any person who donates services as authorized by the local governmental entity or state institution of higher education without pay or other compensation except expenses actually and reasonably incurred.

Amended by Chapter 329, 2007 General Session

#### **34-41-102 Governmental drug-free workplace policies.**

- (1) Any local governmental entity or state institution of higher education may establish workplace policies and procedures designed to:

- (a) educate, counsel, and increase awareness of the dangers of drugs; and
  - (b) prohibit and discourage the detrimental use of drugs among its various classes of employees and volunteers.
- (2) A local governmental entity or state institution of higher education may test employees, volunteers, prospective employees, and prospective volunteers for the presence of drugs or their metabolites, in accordance with the provisions of this chapter, as a condition of hiring, continued employment, and voluntary services.
- (3) A drug-free workplace policy may include, but does not require, drug testing under the following circumstances:
- (a) preemployment hiring or volunteer selection procedures;
  - (b) postaccident investigations;
  - (c) reasonable suspicion situations;
  - (d) preannounced periodic testing;
  - (e) rehabilitation programs;
  - (f) random testing in safety sensitive positions; or
  - (g) to comply with the federal Drug Free Workplace Act of 1988, 41 U.S.C. Sec. 8101 et seq., or other federally required drug policies.
- (4) This section may not be construed to prohibit local governmental entities or state institutions of higher education from establishing policies regarding other hazardous or intoxicating substances.

Amended by Chapter 348, 2016 General Session

**34-41-103 Policy requirements.**

- (1)
- (a) Before testing or retesting for the presence of drugs, a local governmental entity or state institution of higher education shall:
    - (i) adopt a written policy or ordinance;
    - (ii) distribute it to employees and volunteers; and
    - (iii) make it available for review by prospective employees and prospective volunteers.
  - (b) The local governmental entity or state institution of higher education may only test or retest for the presence of drugs by following the procedures and requirements of that ordinance or policy.
- (2) The collection and testing of samples shall be conducted in accordance with Section 34-41-104 and not necessarily limited to circumstances where there are indications of individual, job-related impairment of an employee or volunteer.
- (3) The use and disposition of all drug test results are subject to the limitations of Title 63G, Chapter 2, Government Records Access and Management Act, and Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.
- (4) An employee, prospective employee, volunteer, or prospective volunteer shall submit a split urine sample for testing or retesting.
- (5) A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If the test results of the 30 ml urine sample indicate the presence of drugs, the donor of the test shall have 72 hours from the time the donor is so notified to request, at the donor's option that the 15 ml urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the donor and employer. In addition to the test results of the 30 ml urine sample, the test results of the 15 ml urine sample shall be considered at any

subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 have been complied with in the collection, handling, and testing of these samples.

Amended by Chapter 382, 2008 General Session

**34-41-104 Requirements for identification, collection, and testing of samples.**

- (1) The local governmental entity or state institution of higher education shall ensure that:
  - (a) all sample collection under this chapter is performed by an entity independent of the local government or state institution of higher education;
  - (b) all testing for drugs under this chapter is performed by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology;
  - (c) the instructions, chain of custody forms, and collection kits, including bottles and seals, used for sample collection are prepared by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology; and
  - (d) sample collection and testing for drugs under this chapter is in accordance with the conditions established in this section.
- (2) The local governmental entity or state institution of higher education may:
  - (a) require samples from its employees, volunteers, prospective employees, or prospective volunteers;
  - (b) require presentation of reliable identification to the person collecting the samples; and
  - (c) in order to dependably test for the presence of drugs, designate the type of sample to be used for testing.
- (3) The local governmental entity or state institution of higher education shall ensure that its ordinance or policy requires that:
  - (a) the collection of samples is performed under reasonable and sanitary conditions;
  - (b) samples are collected and tested:
    - (i) to ensure the privacy of the individual being tested; and
    - (ii) in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
  - (c) sample collection is appropriately documented to ensure that:
    - (i) samples are labeled and sealed so as reasonably to preclude the probability of erroneous identification of test results; and
    - (ii) employees, volunteers, prospective employees, or prospective volunteers have the opportunity to provide notification of any information:
      - (A) that any person named in Subsection (3)(c)(ii) considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs or other relevant medical information; and
      - (B) in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213;
  - (d) sample collection, storage, and transportation to the place of testing are performed in a manner that reasonably precludes the probability of sample misidentification, contamination, or adulteration; and
  - (e) sample testing conforms to scientifically accepted analytical methods and procedures.
- (4) Before the result of any test may be used as a basis for any action by a local governmental entity or state institution of higher education under Section 34-41-105, the local governmental entity or state institution of higher education shall verify or confirm any positive initial screening

test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical methods and shall provide that the employee, prospective employee, volunteer, or prospective volunteer be notified as soon as possible by telephone or in writing at the last-known address or telephone number of the result of the initial test, if it is positive, and told of his option to have the 15 ml urine sample tested, at an expense equally divided between the donor and the employer. In addition to the initial test results, the test results of the 15 ml urine sample shall be considered at any subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 have been complied with in the collection, handling, and testing of these samples.

- (5) Any drug testing by a local governmental entity or state institution of higher education shall occur during or immediately after the regular work period of the employee or volunteer and shall be considered as work time for purposes of compensation and benefits.
- (6) The local governmental entity or state institution of higher education shall pay all costs of sample collection and testing for drugs required under its ordinance or policy, including the costs of transportation if the testing of a current employee or volunteer is conducted at a place other than the workplace.

Amended by Chapter 13, 1998 General Session

**34-41-105 Rehabilitative and disciplinary actions.**

- (1) If a verified or confirmed positive drug test result indicates a violation of the local governmental entity's or state institution of higher education's written drug-free workplace policy, if an employee, volunteer, prospective employee, or prospective volunteer refuses to provide a sample in accordance with the written policy, or otherwise violates the written policy, an employer may use that test result, refusal, or violation as the basis for imposing any rehabilitative and disciplinary actions authorized by this section.
- (2) If the conditions required by Subsection (1) are met, the employer may:
  - (a) require the employee to enroll in a rehabilitation, treatment, or counseling and educational program, approved by the local governmental entity or state institution of higher education as a condition of continued employment or volunteer service;
  - (b) suspend the employee with or without pay for a period of time;
  - (c) terminate the employment or voluntary services;
  - (d) refuse to hire a prospective employee or use the services of a volunteer; and
  - (e) impose disciplinary measures in conformance with the usual procedures, including employment contracts of the local governmental entity or state institution of higher education.

Enacted by Chapter 18, 1994 General Session

**34-41-106 Employee not a person with a disability.**

An employee, volunteer, prospective employee, or prospective volunteer whose drug test results are verified or confirmed as positive in accordance with the provisions of this chapter may not, by virtue of those results alone, be defined as a person with a disability for purposes of:

- (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or
- (2) the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 through 12213.

Amended by Chapter 297, 2011 General Session

Amended by Chapter 366, 2011 General Session

**34-41-107 No physician-patient relationship created.**

A physician-patient relationship is not created between an employee, volunteer, prospective employee, or prospective volunteer, and the local governmental entity, state institution of higher education, or any person performing the test, solely by the establishment of a drug testing program in the workplace.

Enacted by Chapter 18, 1994 General Session