

**LOCAL GOVERNMENTAL ENTITY DRUG-FREE WORKPLACE
POLICIES AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill amends provisions related to local government entity drug-free workplace policies.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the requirements for a written policy or ordinance of certain local government entities for drug testing of employees, volunteers, potential employees, and potential volunteers;
- ▶ permits oral drug testing in addition to urine testing; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-41-101, as last amended by Laws of Utah 2023, Chapter 16

34-41-104, as last amended by Laws of Utah 1998, Chapter 13



28 [34A-2-302](#), as last amended by Laws of Utah 2020, Chapter 18

29 REPEALS AND REENACTS:

30 [34-41-103](#), as last amended by Laws of Utah 2008, Chapter 382

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section [34-41-101](#) is amended to read:

34 **[34-41-101. Definitions.](#)**

35 As used in this chapter:

36 (1) "Donor" means an employee, a volunteer, a prospective employee, or a prospective
37 volunteer of a local government entity or a state institution of higher education.

38 ~~[(1)]~~ (2) "Drug" means any substance recognized as a drug in the United States
39 Pharmacopeia, the National Formulary, the Homeopathic Pharmacopeia, or other drug
40 compendia, including Title 58, Chapter 37, Utah Controlled Substances Act, or supplement to
41 any of those compendia.

42 ~~[(2)]~~ (3) "Drug testing" means the scientific analysis for the presence of drugs or their
43 metabolites in the human body in accordance with the definitions and terms of this chapter.

44 ~~[(3)]~~ (4) "Local governmental employee" means any person or officer in the service of
45 a local governmental entity or state institution of higher education for compensation.

46 ~~[(4)]~~ (5) (a) "Local governmental entity" means any political subdivision of Utah
47 including any county, municipality, local school district, special district, special service district,
48 or any administrative subdivision of those entities.

49 (b) "Local governmental entity" does not mean Utah state government or its
50 administrative subdivisions provided for in Sections [63A-17-1001](#) through [63A-17-1006](#).

51 ~~[(5)]~~ (6) "Periodic testing" means preselected and preannounced drug testing of
52 employees or volunteers conducted on a regular schedule.

53 ~~[(6)]~~ (7) "Prospective employee" means any person who has made a written or oral
54 application to become an employee of a local governmental entity or a state institution of
55 higher education.

56 ~~[(7)]~~ (8) "Random testing" means the unannounced drug testing of an employee or
57 volunteer who was selected for testing by using a method uninfluenced by any personal
58 characteristics other than job category.

59 ~~[(8)]~~ (9) "Reasonable suspicion for drug testing" means an articulated belief based on
60 the recorded specific facts and reasonable inferences drawn from those facts that a local
61 government employee or volunteer is in violation of the drug-free workplace policy.

62 ~~[(9)]~~ (10) "Rehabilitation testing" means unannounced but preselected drug testing
63 done as part of a program of counseling, education, and treatment of an employee or volunteer
64 in conjunction with the drug-free workplace policy.

65 ~~[(10)]~~ (11) "Safety sensitive position" means any local governmental or state institution
66 of higher education position involving duties which directly affects the safety of governmental
67 employees, the general public, or positions where there is access to controlled substances, as
68 defined in Title 58, Chapter 37, Utah Controlled Substances Act, during the course of
69 performing job duties.

70 ~~[(11)]~~ (12) "Sample" means urine, blood, breath, saliva, or hair.

71 ~~[(12)]~~ (13) "State institution of higher education" means the institution as defined in
72 Section 53B-3-102.

73 ~~[(13)]~~ (14) "Volunteer" means any person who donates services as authorized by the
74 local governmental entity or state institution of higher education without pay or other
75 compensation except expenses actually and reasonably incurred.

76 Section 2. Section 34-41-103 is repealed and reenacted to read:

77 **34-41-103. Policy requirements.**

78 (1) (a) A local governmental entity or a state institution of higher education may not
79 test a donor for the presence of drugs, unless the local government entity or state institution of
80 higher education:

81 (i) adopts a written policy or ordinance for the testing;

82 (ii) distributes the policy or ordinance to employees and volunteers; and

83 (iii) makes the policy or ordinance available for review by prospective employees and
84 prospective volunteers.

85 (b) The local governmental entity or state institution of higher education may only test
86 or retest for the presence of drugs in accordance with the policy or ordinance described in
87 Subsection (1)(a).

88 (2) The local government entity or state institution of higher education:

89 (a) shall collect and test samples in accordance with Section 34-41-104; and

90 (b) if otherwise permitted by law, is not limited only to collecting or testing in
91 circumstances where there are indications of job-related impairment of an employee or
92 volunteer.

93 (3) The use and disposition of all drug test results are subject to the limitations of Title
94 63G, Chapter 2, Government Records Access and Management Act, and the Americans with
95 Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.

96 (4) A donor who is subject to testing under a policy or ordinance described in
97 Subsection (1)(a) shall submit a split urine or split oral sample for testing or retesting.

98 (5) Unless the policy or ordinance described in Subsection (1)(a) provides otherwise,
99 the local governmental entity or state institution of higher education may specify the type of
100 sample, described in Subsection (4), that the donor is required to submit.

101 (6) A split urine sample shall consist of at least 45 milliliters of urine, divided into two
102 specimen bottles with:

103 (a) at least 30 milliliters of urine in one bottle, for the initial test; and

104 (b) at least 15 milliliters of urine in the other bottle for retesting, if requested under
105 Subsection (7).

106 (7) If the test results of a urine or oral test indicate the presence of drugs, the local
107 governmental entity or state institution of higher education shall:

108 (a) give notice to the donor:

109 (i) of the test results; and

110 (ii) that the donor may, within 72 hours after the local government entity or state
111 institution of higher education provides the notice, request testing of the second sample; and

112 (b) test the second sample if the donor timely requests testing of the second sample.

113 (8) The expense of testing the second sample will be equally divided between the
114 donor and the local governmental entity or state institution of higher education.

115 (9) The test results of the samples shall be considered at any subsequent disciplinary
116 hearing if the requirements of this section and Section [34-41-104](#) are complied with in the
117 collection, handling, and testing of the samples.

118 Section 3. Section **34-41-104** is amended to read:

119 **34-41-104. Requirements for identification, collection, and testing of samples.**

120 (1) The local governmental entity or state institution of higher education shall ensure

121 that:

122 (a) all sample collection under this chapter is performed by an entity independent of the
123 local government or state institution of higher education;

124 (b) all testing for drugs under this chapter is performed by an independent laboratory
125 certified for employment drug testing by either the Substance Abuse and Mental Health
126 Services Administration or the College of American Pathology;

127 (c) the instructions, chain of custody forms, and collection kits, including [~~bottles~~]
128 containers and seals, used for sample collection are prepared by an independent laboratory
129 certified for employment drug testing by either the Substance Abuse and Mental Health
130 Services Administration or the College of American Pathology; and

131 (d) sample collection and testing for drugs under this chapter is in accordance with the
132 [~~conditions established in~~] requirements of this section.

133 (2) The local governmental entity or state institution of higher education may:

134 (a) in accordance with a policy or ordinance described in Subsection 34-41-103(1)(a),
135 require samples from [~~its employees, volunteers, prospective employees, or prospective~~
136 ~~volunteers~~] a donor;

137 (b) require presentation of reliable identification to the person collecting the samples;
138 and

139 (c) in order to dependably test for the presence of drugs, designate the type of sample
140 to be used for testing.

141 (3) The local governmental entity or state institution of higher education shall ensure
142 that [~~its~~] the local governmental entity's or state institution of higher education's ordinance or
143 policy requires that:

144 (a) the collection of samples is performed under reasonable and sanitary conditions;

145 (b) samples are collected and tested:

146 (i) to ensure the privacy of the individual being tested; and

147 (ii) in a manner reasonably calculated to prevent substitutions or interference with the
148 collection or testing of reliable samples;

149 (c) sample collection is appropriately documented to ensure that:

150 (i) samples are labeled and sealed [~~so as~~] to reasonably [~~to~~] preclude the probability of
151 erroneous identification of test results; and

152 (ii) ~~[employees, volunteers, prospective employees, or prospective volunteers have]~~ a
153 donor has the opportunity to provide notification of any information:

154 (A) that ~~[any person named in Subsection (3)(c)(ii)]~~ a donor considers relevant to the
155 test, including identification of currently or recently used prescription or nonprescription drugs
156 or other relevant medical information; and

157 (B) in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101
158 through 12213;

159 (d) sample collection, storage, and transportation to the place of testing are performed
160 in a manner that reasonably precludes the probability of sample misidentification,
161 contamination, or adulteration; and

162 (e) sample testing conforms to scientifically accepted analytical methods and
163 procedures.

164 (4) Before the result of any test may be used as a basis for any action by a local
165 governmental entity or state institution of higher education under Section [34-41-105](#), the local
166 governmental entity or state institution of higher education shall:

167 (a) verify or confirm any positive initial screening test by gas chromatography, gas
168 chromatography-mass spectroscopy, or other comparably reliable analytical methods; and
169 ~~[shall provide that the employee, prospective employee, volunteer, or prospective volunteer be~~
170 ~~notified as soon as possible by telephone or in writing at the last-known address or telephone~~
171 ~~number of the result of the initial test, if it is positive, and told of his option to have the 15 ml~~
172 ~~urine sample tested, at an expense equally divided between the donor and the employer. In~~
173 ~~addition to the initial test results, the test results of the 15 ml urine sample shall be considered~~
174 ~~at any subsequent disciplinary hearing if the requirements of this section and Section~~
175 ~~[34-41-104](#) have been complied with in the collection, handling, and testing of these samples.]~~

176 (b) provide the notice described in Subsection [34-41-103](#)(7), as soon as possible after a
177 positive test result, at the last known address or telephone number of the donor.

178 (5) Any drug testing by a local governmental entity or state institution of higher
179 education shall occur during or immediately after the regular work period of the employee or
180 volunteer and shall be considered as work time for purposes of compensation and benefits.

181 (6) The local governmental entity or state institution of higher education shall pay all
182 costs of sample collection and initial testing for drugs required under ~~[its ordinance or]~~ the

183 policy or ordinance described in Subsection [34-41-103\(1\)\(a\)](#), including the costs of
184 transportation if the testing of [~~a-current~~] an employee or volunteer is conducted at a place
185 other than the workplace.

186 Section 4. Section **34A-2-302** is amended to read:

187 **34A-2-302. Employee's willful misconduct -- Penalty.**

188 (1) For purposes of this section:

189 (a) "Controlled substance" is as defined in Section [58-37-2](#).

190 (b) "Local government employee" is as defined in Section [34-41-101](#).

191 (c) "Local governmental entity" is as defined in Section [34-41-101](#).

192 (d) "State institution of higher education" is as defined in Section [34-41-101](#).

193 (e) "Valid prescription" is a prescription, as defined in Section [58-37-2](#), that:

194 (i) is prescribed for a controlled substance for use by the employee for whom it was
195 prescribed; and

196 (ii) has not been altered or forged.

197 (2) An employee may not:

198 (a) remove, displace, damage, destroy, or carry away any safety device or safeguard
199 provided for use in any employment or place of employment;

200 (b) interfere in any way with the use of a safety device or safeguard described in
201 Subsection (2)(a) by any other person;

202 (c) interfere with the use of any method or process adopted for the protection of any
203 employee in the employer's employment or place of employment; or

204 (d) fail or neglect to follow and obey orders and to do every other thing reasonably
205 necessary to protect the life, health, and safety of employees.

206 (3) Except in case of injury resulting in death:

207 (a) compensation provided for by this chapter shall be reduced 15% when injury is
208 caused by the willful failure of the employee:

209 (i) to use safety devices when provided by the employer; or

210 (ii) to obey any order or reasonable rule adopted by the employer for the safety of the
211 employee; and

212 (b) except when the employer permitted, encouraged, or had actual knowledge of the
213 conduct described in Subsection (4):

214 (i) disability compensation may not be awarded under this chapter or Chapter 3, Utah
215 Occupational Disease Act, to an employee when the major contributing cause of the employee's
216 injury is the employee's conduct described in Subsection (4); or

217 (ii) disability compensation to an employee under this chapter or Chapter 3, Utah
218 Occupational Disease Act, shall be reduced by 15% when the employee's conduct is a
219 contributing cause of the employee's injury but not the major contributing cause.

220 (4) The conduct described in Subsection (3)(b) is the employee's:

221 (a) knowing use of a controlled substance that the employee did not obtain under a
222 valid prescription;

223 (b) intentional abuse of a controlled substance that the employee obtained under a valid
224 prescription if the employee uses the controlled substance intentionally:

225 (i) in excess of prescribed therapeutic amounts; or

226 (ii) in an otherwise abusive manner; or

227 (c) intoxication from alcohol with a blood or breath alcohol concentration of .05 grams
228 or greater as shown by a chemical test.

229 (5) (a) For purposes of Subsections (3) and (4), as shown by a chemical test that
230 conforms to scientifically accepted analytical methods and procedures and includes verification
231 or confirmation of any positive test result by gas chromatography, gas chromatography-mass
232 spectroscopy, or other comparably reliable analytical method, before the result of the test may
233 be used as a basis for the presumption, it is presumed that the major contributing cause of the
234 employee's injury is the employee's conduct described in Subsection (4) if at the time of the
235 injury:

236 (i) the employee has in the employee's system:

237 (A) any amount of a controlled substance or its metabolites if the employee did not
238 obtain the controlled substance under a valid prescription; or

239 (B) a controlled substance the employee obtained under a valid prescription or the
240 metabolites of the controlled substance if the amount in the employee's system is consistent
241 with the employee using the controlled substance intentionally:

242 (I) in excess of prescribed therapeutic amounts; or

243 (II) in an otherwise abusive manner; or

244 (ii) the employee has a blood or breath alcohol concentration of .05 grams or greater.

245 (b) The presumption created under Subsection (5)(a) may be rebutted by a
246 preponderance of the evidence showing that:

247 (i) the chemical test creating the presumption is inaccurate because the employer failed
248 to comply with:

249 (A) Sections 34-38-4 through 34-38-6; or
250 (B) if the employer is a local governmental entity or state institution of higher
251 education, Section 34-41-104 [and], Subsection [~~34-41-103(5)~~] 34-41-103(7), or, if applicable,
252 Subsection 34-41-103(6);

253 (ii) the employee did not engage in the conduct described in Subsection (4);
254 (iii) the test results do not exclude the possibility of passive inhalation of marijuana
255 because the concentration of total urinary cannabinoids is less than 50 nanograms/ml as
256 determined by a test conducted in accordance with:

257 (A) Sections 34-38-4 through 34-38-6; or
258 (B) if the employer is a local governmental entity or state institution of higher
259 education, Section 34-41-104 [and], Subsection [~~34-41-103(5)~~] 34-41-103(7), or, if applicable,
260 Subsection 34-41-103(6);

261 (iv) a competent medical opinion from a physician verifies that the amount of
262 controlled substances, metabolites, or alcohol in the employee's system does not support a
263 finding that the conduct described in Subsection (4) was the major contributing cause of the
264 employee's injury or a contributing cause of the employee's injury; or

265 (v) (A) the conduct described in Subsection (4) was not a contributing cause of the
266 employee's injury; or
267 (B) the employee's mental and physical condition were not impaired at the time of the
268 injury.

269 (c) (i) Except as provided in Subsections (5)(c)(ii) and (iii), if a chemical test that
270 creates the presumption under Subsection (5)(a) is taken at the request of the employer, the
271 employer shall comply with:

272 (A) Title 34, Chapter 38, Drug and Alcohol Testing; or
273 (B) if the employee is a local governmental employee or an employee of a state
274 institution of higher education, Title 34, Chapter 41, Local Governmental Entity Drug-Free
275 Workplace Policies.

276 (ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34,
277 Chapter 38, Drug and Alcohol Testing, may be disclosed to the extent necessary to establish or
278 rebut the presumption created under Subsection (5)(a).

279 (iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34,
280 Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, may be disclosed to the
281 extent necessary to establish or rebut the presumption created under Subsection (5)(a).

282 (6) (a) A test sample taken pursuant to this section shall be taken as a split sample.

283 (b) One part of the sample is to be used by the employer for testing pursuant to
284 Subsection (5)(a):

285 (i) at a testing facility selected by the employer; and

286 (ii) at the employer's or the employer's workers' compensation carrier's expense.

287 (c) The testing facility selected under Subsection (6)(b) shall hold the part of the
288 sample not used under Subsection (6)(b) until the sooner of:

289 (i) six months from the date of the original test; or

290 (ii) when the employee requests that the sample be tested.

291 (d) The employee has only six months from the date of the original test to have the
292 remaining sample tested:

293 (i) at the employee's expense; and

294 (ii) at the testing facility selected by the employee, except that the test shall meet the
295 requirements of Subsection (5)(a).

296 (7) If any provision of this section, or the application of any provision of this section to
297 any person or circumstance, is held invalid, the remainder of this section shall be given effect
298 without the invalid provision or application.

299 Section 5. **Effective date.**

300 This bill takes effect on May 1, 2024.