



## **New York State Policy on Alcohol and Controlled Substances in the Workplace**

Use and abuse of alcohol and drugs has a detrimental effect on the productivity, attendance, and health of our work force. As a public employer, we must be vigilant to protect the safety and welfare of the public with whom we interact and the employees with whom we work.

The longstanding policy of the State is and has been that employees will be subject to criminal, civil and disciplinary penalties if they distribute, sell, attempt to sell, possess or purchase controlled substances while at the workplace or while performing in a work-related capacity. Such illegal acts, even if engaged in off duty, may result in disciplinary action. In those work locations where it is permitted, an employee may possess and use a controlled substance which is properly prescribed for him or her by a physician.

It has also been the continuing policy of the State that employees are prohibited from on-the-job use of, or impairment from, alcohol or controlled substances. In cases where an appointing authority or a designee has a reasonable suspicion that an employee is not able to perform his or her duties as a result of a disability which may be caused by alcohol or a controlled substance, the appointing authority may proceed under the provisions of Section 72 of the Civil Service Law and require that the employee undergo a medical examination to ascertain the cause of the disability. Where testing for alcohol or a controlled substance occurs, appropriate medical procedures and tests should be utilized to assure accurate and proper results. Confidentiality of the testing process and results is an important aspect of this procedure for any affected employee.

A "reasonable suspicion" must be based upon specific, reliable observation that the appointing authority or designee can articulate concerning the appearance, behavior, speech or body odor of the employee. The following observations may indicate drug or alcohol use: unsteady gait, odor of alcohol on the breath, thick or slurring speech, aggressive or abusive language or behavior, and disorientation or lethargy.

It is also not unreasonable for the appointing authority to consider the employee's time and attendance patterns, such as absences around weekends, pass days or payday, excessive use of sick leave, excessive lateness and unauthorized absences, on-the-job accidents, difficulty in recalling instructions or conversation, poor relationships with co-workers and supervisors, and other variations in productivity when making a determination as to whether a "reasonable suspicion" that an employee is suffering from a drug- or alcohol-related disability is present.

Such medical examinations may be required under the safeguards of Section 72 of the Civil Service Law for employees who are permanently appointed competitive employees or employees subject to due process before termination. Other State employees who are not entitled to any due process protection before being terminated or placed on involuntary leave may also be required to undergo such a medical examination, if appropriate under the circumstances.

Once a determination is made that an employee is using, is under the influence of, or is not able to perform his or her duties due to alcohol or a controlled substance, the appointing authority may determine the appropriate action to take. When considering the appropriate action to take, the appointing authority may determine that the affected employee should be disciplined because of the alcohol or drug use. Disciplinary action may be taken pursuant to the procedures contained in the collectively negotiated agreement or the law, as appropriate and required.

On the other hand, the appointing authority may determine that, given the nature of the job and the employee involved, the employee could benefit from the Employee Assistance Program (EAP). In such a case, the employee should be directed to the appropriate EAP coordinator to assist him or her with whatever problem exists. The Employee Assistance Program is a referral service set up at individual work sites and available to every employee. Should the employee have a drug or alcohol-related problem, EAP would provide the employee with a list of places which treat such conditions.

Where an employee is disabled by alcohol or drug use, the appointing authority may also decide to pursue the available disability leave procedures contained in Section 72 of the Civil Service Law. While employee union representation or concurrence is not required when pursuing Section 72 action, it is suggested that appropriate employee representatives be alerted as to the action contemplated.

An agency which has existing additional policies, procedures or practices which apply to its employees may continue to implement those policies, procedures and practices. The agency involved should notify its OER liaison of them. If an agency believes that a pre-employment or pre-appointment drug test should be utilized, that agency should consult with the Department of Civil Service to determine the job relatedness of such a test or to seek that Department's approval to include it in the required pre-employment or pre-appointment physical.

## **Federal Drug Free Workplace Act of 1988**

The Federal Drug-Free Workplace Act of 1988 included the following requirements for employers receiving federal grants or contracts of over \$25,000:

- publish an anti-drug policy statement and provide it to employees
- establish a drug awareness program
- establish as a term and condition of employment that employees report within five days, any criminal convictions for drug-related activity in the workplace
- notify the awarding federal agency of employee convictions
- take personnel actions against workplace substance abuse
- make a good faith effort to comply with the Federal Drug-Free Workplace Act.

As I indicated earlier, attached is a flyer which can be copied and distributed to staff as a means to continue compliance with the requirements of the Act. The flyer includes a message from Governor Pataki as well as information on the State's policy, the Employee Assistance Program and toll free numbers at which employees can obtain additional information about drugs and alcohol.

I encourage you to continue to use the Drug-Free Workplace training program to prepare supervisors to identify and address alcohol and drug problems. This three-hour program was initially developed in 1990 and agency trainers were prepared to deliver it. The program has been extremely well-received and was recently updated.

In addition, it should be noted that agencies impacted by the Federal Omnibus Transportation Employee Testing Act of 1991 must have their own policies, testing protocols in place, and employees trained as to the provisions of the Act. The Act mandates pre-employment, reasonable suspicion, random and post-accident drug and alcohol testing for employees required to maintain a Commercial Driver's License for their job and who drive vehicles carrying 16 passengers (including the driver) or vehicles weighing in excess of 26,001 pounds. Should you have any questions, please contact your agency liaison in the Governor's Office of Employee Relations.

## **Make New York State a Drug and Alcohol Free Workplace**

### **A Message from the Governor**

If you think it is not happening in your workplace, you are wrong. Alcohol and substance abuse are serious problems facing our work force today. It diminishes the quality of services and increases their costs. At the same time, the personal toll to individuals, families and our communities is staggering. We must be vigilant to protect the safety and welfare of the public we serve and our fellow employees. I ask each of you to join with me to keep New York State a drug and alcohol free workplace.

### **New York State Policy**

New York State prohibits on-the-job use of, or impairment from, alcohol and controlled substances. An employee may be required to undergo medical testing if a supervisor has a reasonable suspicion that he or she is unable to perform job duties due to a disability which may be caused by the use of alcohol.

If the cause of the disability is found to be drug or alcohol related, the personnel or employee relations officer, in conjunction with the employee's supervisor, may refer the employee to voluntary and confidential participation in the statewide Employee Assistance Program. Other available options include pursuing disability leave procedures or disciplinary measures.

Violations of the State policy on alcohol and substance abuse in the workplace may be the subject of disciplinary action pursuant to Section 75 of the Civil Service Law or the Disciplinary Articles of collectively negotiated agreements.

State employees are also subject to criminal, civil, and disciplinary penalties for the distribution, possession, sale, or the attempt to sell controlled substances both in the workplace and while performing in a work-related capacity. In work locations where it is permitted, an employee may possess and use medication which is properly prescribed by a physician.

"Controlled substances" refers to the hundreds of chemicals listed in the Controlled Substances Act by the federal government. All so-called "street drugs" (heroin, cocaine, crack, marijuana, speed, acid) are controlled substances.

A person using a prescribed drug under a doctor's supervision is not breaking any law. The use of prescribed drugs without a physician's prescription is illegal.

Addiction to, or misuse of, prescribed drugs could also subject an employee to medical testing under New York State's policy governing alcohol or substance abuse in the workplace.

### **Employee Assistance Program (EAP)**

The New York State Employee Assistance Program is a joint labor-management committee program open to all State employees and their families. The program is a confidential information, assessment and referral program that provides employee requested services. These services include:

- Assessment for referral to the most appropriate community resource provider for services related to emotional or physical illnesses, alcohol and other drug-related problems;
- Assistance with family-related problems;
- Advocacy, assistance and intervention with health insurance;
- Information on resources for issues such as child care, eldercare, legal, and financial support services;
- Workplace health and prevention programs;
- Workplace educational preventive, wellness programs.

Any State employee may contact NYS EAP by calling 1-800-822-0244.

### **For More Information...**

- New York State Substance Abuse Hot Line  
**1-800-522-5353**
- National Council on Alcoholism and Drug Dependent Hot Line  
**1-800-NCA-CALL**
- National Cocaine Hot Line  
**1-800-COCAINE**
- CSATS - National Drug and Alcohol Treatment Routing Service  
**1-800-622-HELP**

**STATE OF NEW YORK  
ANDREW CUOMO  
Governor**

**GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS  
GARY JOHNSON  
Director**