

PLEASE NOTE!

Please be aware that the "Sample" Drug and Alcohol Policy is being furnished to you as a courtesy and the language therein should be considered that of a sample. Because the Drug and Alcohol Policy is a sample, LUBA makes no claims, promises or guarantees about its accuracy, completeness or legal adequacy, nor provides any warranties, expressed or implied, with regard to its content. LUBA highly recommends that you consult legal counsel before implementing the policy for use in your operations.

IMPLEMENTATION SUGGESTIONS

1. Have your legal counsel review, edit and/or modify the “Sample” Drug and Alcohol Policy to verify that it meets your company’s needs.
2. Post in a conspicuous place(s) a reviewed and edited copy of the “Sample” Posting Notice, indicating that the drug and alcohol policy is being implemented within 30 days of the posting.
3. Provide all employees a signed copy of the “Notification Letter to Employees.”
4. Provide all employees with a copy of a reviewed and edited final version of the Drug and Alcohol Policy; explain its contents.
5. Once the contents of the Drug and Alcohol Policy have been reviewed with all employees, the Consent needs to be read, signed and dated by each employee and a witness.

“SAMPLE” DRUG AND ALCOHOL POLICY (MISSISSIPPI)

1. PURPOSE

To promote drug-free workplaces in order that employers in this state are afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from substance abuse by employees.

Under The Mississippi Code of 1972, Section 71- 3-7, “No compensation shall be payable if the intoxication of the employee was the **proximate cause** of the injury, or if it was willful intention of the employee to injure or kill himself or another. Under The Mississippi Code of 1972, Section 71-7-13, “An employer who discharges or disciplines an employee on the basis of a positive confirmed drug and alcohol test in accordance with this chapter shall be considered to have discharged or disciplined the employee for cause. An employee discharged on the basis of a confirmed positive drug and alcohol test in accordance with this chapter shall be considered to have been discharged for willful misconduct. If an employee refuses to submit to drug and alcohol testing administered in accordance with this chapter, the employer shall not be barred from discharging, or disciplining or referring the employee to a drug abuse assessment, treatment and rehabilitation program.

2. REQUIREMENTS

Under The Mississippi Code of 1972, Section 71-3-211, a drug-free workplace must provide a written policy statement on substance abuse. All employees must be given a written policy statement from the employer that contains:

- (a) A general statement of the employer’s policy on substance abuse notifying employees that the unlawful manufacture, sale, distribution, solicitation, possession with intent to sell or distribute, or use of alcohol or other drugs is prohibited in the person’s workplace.
- (b) A statement advising an employee or job applicant of the existence of this act;
- (c) A general statement concerning confidentiality;
- (d) A statement advising an employee of the employee assistance program, external employee assistance program, or organizations designed to assist employees with personal or behavioral problems;
- (e) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act if applicable to the employer.

3. BENEFITS AND EMPLOYEE COOPERATION

Those employees with drug and alcohol abuse problems make up only a small fraction of the workforce, and the Company regrets any inconvenience that may be caused to the many non-abusers by the problems of the few. It is believed,

however, that the benefits to be derived from the reduction in number of accidents, the greater safety of all employees, and the rehabilitation or termination of those who, because of alcohol or drugs, are a burden upon all other employees, will more than make up for any inconvenience or loss the rest of us experience. The Company solicits earnestly the understanding and cooperation of all employees and employee organizations in implementing the policies set forth herein.

4. TRAINING OF PERSONNEL

Under The Mississippi Code of 1972, Section 71-3-217 an employer must provide all supervisory personnel a minimum of two (2) hours of training prior to the institution of a drug-free workplace program under this act, and each year thereafter which should include, but is not limited to the following:

- Recognition of evidence of employee alcohol and other drug abuse;
- Documentation and corroboration of employee alcohol and other drug abuse;
- Referral of alcohol and other drug abusing employees to the proper treatment providers;
- Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and
- Explanation of any employee health insurance or HMO coverage for alcohol and other drug problems.

Under The Mississippi Code 1972, Section 71-3-215, an employer must provide all employees with an education program on alcohol and other drug abuse prior to instituting a private sector drug-free workplace program under this act. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one (1) hour should include, but is not limited to, the following information.

- (a) The explanation of the disease of addiction for alcohol and other drugs;
- (b) The effects and dangers of the commonly abused substances in the workplace; and
- (c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

5. GENERAL DEFINITIONS

- a. **Alcohol.** Ethyl alcohol.
- b. **The Act.** Sections 71-7-1, et.al., of the Mississippi Code of 1972, Ann.
- c. **Board.** The Mississippi Board of Health

- d. **Confirmation Test.** A drug and alcohol test on a specimen to substantiate the results of a prior drug and alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater specificity than that used in the previous drug and alcohol test.
- e. **Department.** The Mississippi State Department of Health.
- f. **Drug.** An illegal drug, or a prescription or nonprescription medication.
- g. **Drug and Alcohol Test.** A chemical test administered for the purpose of determining the presence or absence of a drug or alcohol or their metabolites in a person's bodily fluids.
- h. **Employee.** Any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state.
- i. **Employer.** Any individual, organization or government body, subdivision or agency thereof, including partnership, association, trustee, estate, corporation, joint stock company, insurance company or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within the state, or which has offered or may offer employment to one or more individuals in this state.
- j. **Illegal Drugs.** Any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or nonprescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate introduction into the body.
- k. **Initial Test.** An initial drug or alcohol test to determine the presence or absence of drug or alcohol or their metabolites in specimens.
- l. **Laboratory.** Any laboratory that is currently certified or accredited by the federal Clinical Laboratory Improvement Act, as amended, by the federal Substance Abuse and Mental Health Services Administration, by the College of American Pathologists, or that has been deemed by the State Board of Health to have been certified or accredited by an appropriate federal agency, organization or another state.
- m. **MRO.** Medical Review Officer
- n. **Medical Review Officer.** A licensed physician responsible for receiving laboratory results generated by an employer's drug and/or alcohol testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's

positive test result together with his or her medical history and any other relevant biomedical information.

- o. **Nonprescription Medication.** A drug that is authorized pursuant to federal or state laws for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.
- p. **Prescription Medication.** A drug prescribed for use by a duly licensed physician, dentist or other medical practitioner licensed to issue prescriptions.
- q. **SAMHSA.** Substance Abuse and Mental Health Services Administration
- r. **Specimen.** A tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

6. PRESCRIPTION AND NONPRESCRIPTION MEDICATIONS

No prescription drug shall be brought upon Company premises by any person other than the person whom the drug is prescribed by a licensed medical practitioner, and shall be used only in the manner, combination and quantity as prescribed. Employees must keep all prescribed medicine in its original container, which identifies the drug, date of prescription, and the prescribing doctor. Employees must also report to _____ (Management Positioned Individual) the use of any prescribed drug which may alter the employee's behavior or physical or mental ability prior to commencing work. The Company may change the employee's job assignment during the period of treatment.

7. PROHIBITIONS

- a. Use, possession, manufacture, distribution, dispensation or sale of illegal drugs or drug paraphernalia on Company premises or Company business, in Company supplied vehicles, or during working hours;
- b. Unauthorized use or possession, or any manufacture, distribution, dispensation or sale of a controlled substance on Company premises or Company business, in Company supplied vehicles, or during working hours;
- c. Unauthorized use or possession, or any manufacture, distribution, dispensation or sale of alcohol on Company premises or Company business, in Company supplied vehicles, or during working hours;
- d. Storing in a locker, desk, automobile or other repository on Company premises any illegal drug, drug paraphernalia, any controlled substance whose use is unauthorized, or any alcohol;

- e. Refusing consent to unannounced reasonable searches and inspections of Company premises and personal effects;
- f. Being under the influence of an unauthorized controlled substance, illegal drug or alcohol on Company premises or Company business, in Company supplied vehicles, or during working hours; being “under the influence” of alcohol and/or “being under the influence” of an unauthorized controlled substance or illegal drug is defined as testing positive;
- g. Use of alcohol off Company premises that adversely affects the employee’s work performance, his/her own or others’ safety at work, or the Company’s regard or reputation in the community;
- h. Switching or adulterating any urine sample submitted for testing;
- i. Refusing consent to testing or to submit a breath, saliva, urine or blood sample for testing when requested by management;
- j. Refusing to submit to an inspection when requested by management;
- k. Failing to adhere to the requirements of any drug or alcohol treatment or counseling program in which the employee is enrolled;
- l. Conviction under any criminal drug statute;
- m. Arrest under any criminal drug statute under circumstances which adversely affect the Company’s regard or reputation in the community;
- n. Failure to notify the Company of any arrest or conviction under any criminal drug statute within five days of the arrest or conviction;
- o. Failure to report to the _____ (Management Positioned Individual) the use of a prescribed drug which may alter the employee’s behavior or physical or mental ability;
- p. Failure to keep prescribed medicine in its original container;
- q. Refusing to sign a statement agreeing to abide by the Company’s Alcohol and Drug policy;
- r. Refusal to complete a Consent Form prior to testing;
- s. Refusal to complete the Chain of Custody Form after submission of a urine or blood specimen.

Any employee involved in any of the aforementioned activities at any time during a work shift or while working for, on behalf of, or while representing the Company, whether or not on Company Business, Company Premises or Property is in violation of the drug and alcohol policy. Any employee who violates the

policy is subject to disciplinary action, including, but not limited to, immediate termination. Depending on the circumstances, other action including, without limitation, (1) notification of the appropriate law enforcement, regulatory or licensing agencies and (2) denial, suspension or termination of workers' compensation benefits and unemployment compensation benefits. The policy equally applies to all employees. Compliance with these policies is required as condition of employment for all employees, without exception.

8. DRUG TESTING TYPES

An employer is authorized to conduct the following types of drug and alcohol tests:

- (a) Employers may require job applicants to submit to a drug and alcohol test as a condition of the employment application and may use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire.
- (b) An employer may require all employees to submit to reasonable suspicion drug and alcohol testing. There is created a rebuttable presumption that the employer had reasonable suspicion to test for drugs if the specimen provided by the employee tested positive for drugs in a confirmatory drug test.
- (c) An employer may require all employees to submit to neutral selection (random) drug and alcohol testing.

9. TESTING PROCEDURES

- a. **Individuals to be Tested** – All employees and job applicants are subject to testing under this policy.
- b. **Voluntary notification of drug use** – An employee who has not previously tested positive for drug or alcohol use, entered an employee assistance program for abuse-related problems, or entered a drug or alcohol rehabilitation program, and who comes forward voluntarily seeking treatment shall not be subject to discipline solely for coming forward. All such employees are urged to seek help immediately. Once a test has been scheduled, all employees are required to cooperate with the designated Medical Review Officer to provide information regarding prescriptive and over-the-counter medication which could cause a positive result.
- c. **Refusal to Test** – If an employee refuses to submit to a test for drugs and alcohol, he/she forfeits his/her eligibility for all workers' compensation benefits and will be terminated from employment.
- d. **Initial Test** – Employers who implement a drug and alcohol testing program pursuant to the Act shall contract with manufacturers, vendors, or other providers of drug and alcohol testing devices, or with a laboratory, for the purpose of initial drug and alcohol testing. The initial test is performed by an immunoassay test. The cutoff levels for screening tests

are listed below and are expressed in nanograms per milliliter (ng/ml), or billionths of a gram per thousandth of a liter:

Alcohol	.04	BAC
Marijuana metabolites	50	ng/ml
Cocaine metabolites	300	ng/ml
Opiates metabolites	300	ng/ml
Amphetamines	1000	ng/ml
Phencyclidine	25	ng/ml

No employee shall be terminated solely on the basis of a positive initial test.

Confirmation Test – Employers who implement a drug and alcohol testing program pursuant to the Act shall contract with a laboratory to conduct confirmation tests on specimens which produce a positive result in testing for drugs or alcohol in the initial. The cutoff levels for confirmation tests are:

Alcohol	.04	BAC
Marijuana metabolites	15	ng/ml
Cocaine metabolites	150	ng/ml
Morphine	300	ng/ml
Codeine	300	ng/ml
Phencyclidine	25	ng/ml
Amphetamine	500	ng/ml

e. Collection Site Procedures – Chain of Custody

- i. As part of the Company’s Drug-Free Workplace Policy, the Company will only utilize a certified or accredited laboratory licensed by the state of Mississippi.
- ii. Although reasonable privacy will be given, a witness may be present to prevent substitutions, contamination or adulteration of the specimen provided.
- iii. To avoid adulteration, contamination, or substitution of specimen, all information identifying the individual responsible for submitting the specimen shall be identified on the collection container and in the chain of custody form.

10. REPORTING OF RESULTS

a. Medical Review Officer (MRO)

- i. The laboratory shall report test results to the MRO within five working days after receipt of the specimen by the laboratory.
- ii. The laboratory shall report as negative to the MRO all specimens which are negative on the initial test or negative on the

confirmation test. Only specimens which are confirmed as positive on the confirmation test shall be reported positive to an MRO for a specific drug.

- iii. The laboratory shall transmit results to the MRO in a manner designed to ensure confidentiality of the information. The laboratory and MRO must ensure the security of the data transmission and restrict access to any data transmission, storage and retrieval system.
- iv. The MRO may request from the laboratory, and the laboratory shall provide, quantification of test results.
- v. Unless otherwise instructed by the employer in writing, all records pertaining to a given specimen shall be retained by the drug testing laboratory for a minimum of two years.
- vi. The MRO for our Company is _____ (refer to definition).

b. Employee Challenges

- i. Within five (5) working days after receipt of a positive confirmed test result from the testing laboratory, the Company shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant.
- ii. The Company shall provide to the employee or job applicant, upon request, a copy of the test results.
- iii. Within (10) working days after receiving notice of a positive confirmed test result, the employee or job applicant may submit information to the Company explaining or contesting the test results, and why the results do not constitute a violation of Company policy.
- iv. If an employee's or job applicant's explanation or challenge of the positive test results is unsatisfactory to the Company, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive results, shall be provided by the Company to the employee or job applicant. All such documentation shall be kept confidential by the Company and be made a part of the employee's medical and personnel records.
- v. Every specimen that produces a positive confirmed result shall be preserved in a frozen state by the laboratory that conducts the confirmation test for a period of one year from the time the results

of the positive confirmed test are mailed or otherwise delivered to the employer. During this period, the employee who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's expense, at a laboratory chosen by the employee. The laboratory that has performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

- vi. Employees and applicants have the right to consult the testing laboratory for technical information regarding prescription or non-prescription medication. The Company uses the following laboratory, which can be contacted at the address shown:

- vii. The Company shall pay the cost of all drug tests, initial and confirmation, which it requires of employees. An employee or job applicant shall pay the costs of any additional drug tests not required by the Company. After being notified of a positive test result, the employee has 72 hours in which to request that the MRO have the specimen tested in a different certified laboratory.

11. CONFIDENTIALITY

The results of drug tests and all related information, reports, statements and memoranda will be treated as confidential, and distribution shall be limited to those having a "need to know". Results may be revealed to the proper authorities if the situation requires. Otherwise, such information shall be released only pursuant to a written consent form signed voluntarily by the employee.

12. EMPLOYEE ASSISTANCE PROGRAM

Under The Mississippi Code of 1972, Section 71- 3 – 213 the following must be met:

(a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternatives to publicize such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance service providers, alcohol and other drug abuse programs, mental health providers, and other persons, entities or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the

existence of the resource file and summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

13. EFFECTIVE DATE NOTICE TO EMPLOYEES

- a. The policies set forth in this policy are effective immediately upon notice to employees, with the exception of the initial implementation of the policy in which employees will be provided notification 30 days prior. Each present employee will be furnished a copy of this policy and will sign a receipt for same. Later-hired employees will be furnished a copy before hire.
- b. The Company shall include notice of drug testing on vacancy announcements for those positions for which drug testing is required. A notice of the drug testing policy will also be posted in an appropriate and conspicuous location on the Company's premises, and copies of the policy will be made available for inspection by the general public during regular business hours.

14. RESERVATION OF RIGHTS

- a. The Company retains the sole right to interpret, change or discontinue this policy as may be necessary from time-to-time.
- b. Nothing in this policy should be construed as creating a contract of employment.

CONSENT FORM

15. CONSENT

I _____ (Employee's name), have carefully and thoroughly read the Company's Drug and Alcohol Policy and I understand my rights and obligations contained in that policy. I understand that it is a condition of my continued employment that I agree to follow, without reservation, that policy. I further understand and acknowledge that I have been given a list of drugs which may alter or affect a drug test. Finally, I understand that if I am injured during that course and scope of my employment and I test positive for the presence of prohibited alcohol and/or drugs, I may forfeit my eligibility for workers' compensation and unemployment benefits under Mississippi state law.

Witness

Employee Signature

Date

Date

“SAMPLE” NOTIFICATION LETTER TO EMPLOYEES

Dear Employee:

You are hereby advised that _____(employer name) has implemented a drug and alcohol policy and conducts a testing program, pursuant to Sections 71-;7-1, et.al., of the Mississippi Code of 1972, Ann. (hereinafter referred to as “the Act”), and you are hereby advised of the existence of said Act.

All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by _____(employer name) through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the Act and these regulations. Any information obtained by _____ (employer’s name) pursuant to the Act and these regulations shall be the property of the employer. _____(employer’s name) shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by _____(employer’s name) on a need to know basis, information related to drug and alcohol results unless: (a)The employee or job applicant has expressly, in writing, granted permission for _____(employer’s name) to release such information; it is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or there is risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information. The confidentiality provisions provided for by the Act shall not apply to other parts of an employee’s or job applicant’s personnel or medical files. If an employee refuses to sign a written consent form for release of information to persons as permitted in the Act, _____ (employer’s name) shall not be barred from discharging or disciplining the employee. An employee or job applicant to be tested shall be given (1) a medication disclosure form to permit the employee or job applicant to disclose and non-prescription or prescription medications that have been taken within the last forty-five (45) days which may result in a positive test result, and (2) a statement that the form shall be submitted directly to the laboratory in order that _____ (employer’s name) has not access to the information disclosed on the form. The procedure for submission of the form shall ensure that no person other than the laboratory has access to the information disclosed on the form.

“SAMPLE” POSTING NOTICE

NOTICE OF IMPLEMENTATION OF DRUG AND ALCOHOL POLICY

Effective (immediately or at least 30 days from the date of this notice) all employees will be covered by the Company’s new Drug and Alcohol Policy.

Pursuant to this policy, all employees and applicants may be required to submit to a drug test(s) to detect the presence or absence of any drug, including alcohol, or its metabolites which by way of the policy are prohibited. The Company intends to conduct pre-employment testing, reasonable suspicion, routine fitness for duty testing, post accident, random, and follow-up testing. These types of tests are further defined and explained in the policy itself. Any applicant who tests positive for the presence of a prohibited drug or alcohol will be terminated. Additionally, any employee who tests positive for the presence of a prohibited drug or alcohol following any on-the-job injury or accident may forfeit their rights to receive workers’ compensation benefits and/or unemployment benefits under Mississippi Laws.

For more information regarding this policy, see _____
(Management positioned individual).

“SAMPLE” LETTER NOTIFYING EMPLOYEE OF POSITIVE
TEST RESULTS

Dear (Employee’s name):

This letter is being given to you pursuant to the Company’s Drug and Alcohol Policy. The purpose of this letter is to inform you that the results of your recent drug test were positive. The Company will provide you with a copy of the test results upon your request. Please be advised that you have ten (10) working days from your receipt of this letter to submit information to the Company explaining or contesting the test results. Please review your copy of the Company’s Drug and Alcohol Policy for a more detailed explanation of your rights and the procedures you are required to follow should you decide to contest the validity of the test results. Pursuant to Section 1 and Section 7 of the Drug and Alcohol Policy, you are hereby terminated. (Additionally you may have forfeited your rights to receive workers’ compensation benefits and unemployment benefits under Mississippi State Laws.)

Sincerely,

(Company signature)

“SAMPLE” REHABILITATION AGREEMENT

Date:

Name:

Department:

Dear _____:

On _____, 20__, (Company Name) agreed to your request to seek counseling and referral to a rehabilitation program for alcohol and drug abuse. The following conditions apply to your rehabilitation program.

1. You must authorize the rehabilitation program to provide proof of enrollment in an alcohol and drug abuse rehabilitation program and proof of attendance at all required sessions on a monthly basis to _____ (Management Positioned Individual) of the Company. The Company will closely monitor your attendance and will terminate you if you do not regularly attend all required sessions.
2. If you are absent from work during the rehabilitation program, you must promptly submit a written doctor's certificate explaining the reason for such absence. The Company will terminate you if you are absent as a result of alcohol or drug abuse.
3. You will pay for all costs of rehabilitation which are not covered under the Company's benefit plan.
4. During the two years following completion of your rehabilitation program, the Company will test you for alcohol or drug abuse on a random basis. The Company will promptly terminate you if you refuse to submit to testing or if you test positive during this two-year period.
5. You must meet all established standards of conduct and job performance. The Company will terminate you if your on-the-job conduct or job performance is unsatisfactory.
6. Nothing in this agreement alters your status. The Company hopes its employment relationship with you will be a successful and enduring one. Nevertheless, you remain free to resign your employment at any time for any or no reason without notice. Similarly, (Company Name) reserves the right to terminate you, for any or no reason, without notice.

I voluntarily agree to all of the above conditions and authorize (rehabilitation program) to provide my supervisor with proof of my enrollment and attendance at the recommended rehabilitation program.

Employee's Signature

Supervisor's Signature

Supervisor's Name