

# MDOT SUBSTANCE ABUSE MANUAL

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SUBJECT: DISCIPLINE

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SECTION: 9

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APPROVED: \_\_\_\_\_  
Deputy Secretary, Department of Transportation

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## 1. Applicability

- 1.1 This policy applies to all Maryland Department of Transportation (MDOT) employees.
- 1.2 This policy shall apply to police officers within the Department. To the extent that this policy conflicts with the Law Enforcement Officers' Bill of Rights, the Law Enforcement Officers' Bill of Rights shall apply.
- 1.3 To the extent that this policy conflicts with federal regulations and the Collective Bargaining Agreements of the Maryland Transit Administration (MTA), namely the Amalgamated Transit Union AFL-CIO Local 1300, Office and Professional Employees International Union Local No. 2 and AFSCME Council #67 Local No. 1859, federal regulations and the rules of the Collective Bargaining Agreements shall apply.

## 2. Definitions

- 2.1 Alcohol-related driving offense – Driving or attempting to drive a vehicle or vessel while intoxicated or under the influence of alcohol.
- 2.2 Conviction – Any of the following:
  - 2.2.1 a judgment of conviction, whether entered upon a finding of guilt or acceptance of a plea of *nolo contendere*, and the imposition of sentence; or
  - 2.2.2 the staying of the entry of judgment and the placing of the defendant on probation after a finding of guilty (probation before judgment) or the acceptance of a plea of *nolo contendere*.
- 2.3 Controlled dangerous substance offense – Any of the following:
  - 2.3.1 a controlled dangerous substance violation under the Criminal Law Article of the Annotated Code of Maryland;

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- 2.3.2 an offense of the law of any other jurisdiction if the prohibited conduct would be a controlled dangerous substance violation if committed in this State; or
  - 2.3.3 driving or attempting to drive a vehicle or vessel while under the influence of drugs and/or alcohol or under the influence of a controlled dangerous substance.
- 2.4 Maryland Department of Transportation – Comprised of headquarters and five administrations as follows:
  - 2.4.1 Maryland Aviation Administration
  - 2.4.2 Maryland Port Administration
  - 2.4.3 Maryland Transit Administration
  - 2.4.4 Motor Vehicle Administration
  - 2.4.5 State Highway Administration; and
  - 2.4.6 The Secretary’s Office.
- 2.5 On-Duty – A period of time when an employee is:
  - 2.5.1 on all scheduled work periods;
  - 2.5.2 driving or attempting to drive a State vehicle or operate State equipment;
  - 2.5.3 required to report to the Department’s Medical Advisor or a network site;
  - 2.5.4 assigned extra work or volunteering to work on a regularly scheduled day off, holiday, or leave day; or
  - 2.5.5 working during any unscheduled emergency conditions.
- 2.6 Over-the-Counter Drugs – Medications that can be purchased without a medical provider's prescription and contain alcohol derivatives or other drugs which have a warning that they may impair an individual’s ability to operate a vehicle or machinery (for example, cold medicines, back pain relievers, allergy tablets, and alternative medicines.)
- 2.7 Prescription Medication – Substances prescribed by a medical provider which contain alcohol derivatives or other drugs which may impair an individual’s ability to operate a vehicle or machinery.
- 2.8 Substance Abuse Professional (SAP) – A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the

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National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders as provided by the Department.

- 2.9 Under the Influence of Alcohol – A person found to have a blood or breath alcohol content at a level determined by Maryland law.

### **3. Referral to a Substance Abuse Professional**

- 3.1 The Substance Abuse Professional (SAP) may be provided by the Department's Medical Advisor or the Employee Assistance Program (EAP).
- 3.2 Evaluation and rehabilitation may be provided by the Department's Medical Advisor or EAP.
- 3.3 Any time an employee is referred to a SAP, the employee shall be informed of:
- 3.3.1 resources available to the employee in evaluating and resolving problems associated with drug use and the misuse of alcohol; and
- 3.3.2 names, addresses, and telephone numbers of treatment programs.
- 3.4 The employee shall be evaluated by the SAP to determine whether the employee is in need of treatment or rehabilitation to resolve problems associated with drug and/or alcohol use.
- 3.5 A safety sensitive employee who fails to comply with the required treatment program set forth by the SAP will be suspended without pay pending charges for termination.
- 3.6 The first instance of a non-safety sensitive employee failing to comply with the required treatment program set forth by the SAP will result in suspension of 15 workdays.
- 3.7 The second instance of a non-safety sensitive employee failing to comply with the required treatment program set forth by the SAP will result in suspension without pay pending charges for termination.

### **4. Referrals to Law Enforcement Authorities**

- 4.1 When MDOT learns or, based on observation or reliable information, suspects that an employee has committed a controlled dangerous substance or alcohol

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offense while on duty, MDOT will refer the matter to an appropriate law enforcement authority for further investigation and prosecution.

## **5. Refusal to Submit to Testing**

- 5.1 A refusal to take a drug and/or alcohol test constitutes insubordination and a violation of the Substance Abuse Policy. A safety sensitive employee who refuses to submit to any drug and/or alcohol testing as specified in Section 2 General, subsections 5.2, 5.3 or 7.4 of this policy shall be referred to a SAP and suspended without pay pending charges for termination.
- 5.2 An applicant for employment in a safety sensitive position or classification who refuses to submit to testing shall be excluded from further consideration for that position or classification.
- 5.3 Any employee who is moved from a non-safety sensitive function to a safety sensitive function who refuses to submit to testing shall be referred to a SAP and excluded from further consideration for that position or classification. (promulgated by State authority)
- 5.4 In addition to any other applicable provision of this policy, an applicant/employee as specified in subsections 5.2 or 5.3 shall be removed from the list of eligibles for any safety sensitive classification and any safety sensitive position. (promulgated by State authority)
- 5.5 The first instance of a non-safety sensitive employee refusing to submit to testing shall result in the employee being referred to a SAP and receiving a suspension of 15 workdays. (promulgated by State authority)
- 5.6 The second instance of a non-safety sensitive employee refusing to submit to testing shall result in the employee being referred to a SAP and being suspended without pay pending charges for termination for insubordination and violation of the Substance Abuse Policy. (promulgated by State authority)

## **6. Positive Pre-Employment Tests**

- 6.1 An applicant for employment in a safety sensitive position or classification who tests positive for the use of drugs shall be excluded from further consideration for that position or classification. (promulgated by State authority)

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- 6.2 An employee who is moved from a non-safety sensitive function to a safety sensitive function who tests positive for the use of drugs and/or is found to have an alcohol concentration of 0.04 or greater shall be referred to a SAP and excluded from further consideration for that position or classification. (promulgated by State authority)
- 6.3 An applicant/employee as specified in subsections 6.1 or 6.2 shall be removed from the list of eligibles for any safety sensitive classification and any safety sensitive position. (promulgated by State authority)
- 6.4 In order to be reconsidered for a position/classification, an applicant/employee must submit a certificate from a physician certifying that the applicant/employee has:
- 6.4.1 successfully participated in a drug abuse rehabilitation program of at least 6 months in duration; and
- 6.4.2 been free of marijuana/cannabinoides, cocaine, opiates, phencyclidine (PCP), and amphetamines for at least 18 months immediately before reapplying.

## **7. Positive Tests – Safety Sensitive Employees**

- 7.1 A safety sensitive employee who tests positive for drugs and/or is found to have an alcohol concentration of 0.04 or greater as a result of a test conducted as specified in Section 2 - General, subsection 5.2 of this policy shall:
- 7.1.1 immediately be prevented from performing a safety sensitive function;
- 7.1.2 be referred to a SAP; and
- 7.1.3 be suspended without pay pending charges for termination for insubordination and violation of the Substance Abuse Policy.
- 7.2 A safety sensitive employee who tests positive for drugs and/or is found to have an alcohol concentration of 0.04 or greater as a result of a random drug and/or alcohol test performed as specified in Section 2 - General, subsection 5.3, of this policy shall be suspended for 15 workdays and be required to successfully participate in a drug and/or alcohol treatment program as deemed appropriate by the SAP. If the employee does not enroll in a drug treatment program during the suspension period, or if the employee fails to successfully participate and/or successfully complete the drug and/or alcohol treatment program for at least 6 months, the employee shall be suspended without pay pending charges for termination.

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- 7.3 A safety sensitive employee who tests positive for drugs and/or is found to have an alcohol concentration of 0.04 or greater in a random testing as specified in Section 2 - General, subsection 5.3 for a second time shall be subject to disciplinary action up to and including termination for violation of the Substance Abuse Policy.
- 7.4 A safety sensitive employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall:
- 7.4.1 be prohibited from performing a safety sensitive function until the employee's alcohol concentration measures less than 0.02; or
- 7.4.2 be prohibited from performing a safety sensitive function until the start of the employee's next regularly scheduled on-duty period, but not less than 8 hours (24 hours for employees performing FHWA safety sensitive functions) following the test; and
- 7.4.3 be referred to a SAP; and
- 7.4.4 be subject to disciplinary action up to and including a suspension of 5 workdays.
- 7.5 A safety sensitive employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 a second time shall be subject to disciplinary action up to and including employee termination. (promulgated by State authority)

## **8. Positive Tests – Non-Safety Sensitive Employees**

- 8.1 A non-safety sensitive employee who tests positive for drugs and/or is found to have an alcohol concentration of 0.04 or greater as a result of a test conducted as specified in Section 2 General, subsection 5.4 of this policy shall:
- 8.1.1 receive a suspension of 15 workdays (promulgated by State authority);
- 8.1.2 be referred to a SAP; and
- 8.1.3 be required to complete a drug and/or alcohol treatment program as deemed appropriate by the SAP.

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8.2 A non-safety sensitive employee who tests positive a second time for drugs and/or is found to have an alcohol concentration of 0.04 or greater within 1 year of another positive drug and/or alcohol test result of 0.04 or greater shall be immediately suspended without pay pending charges for termination and referred to a SAP. (promulgated by State authority)

## **9. Abuse of Prescription and/or Over-the-Counter Medications – Safety Sensitive Employees**

9.1 A safety sensitive employee who has been determined by the Department's Medical Advisor to be abusing over-the-counter and/or prescription medications shall: (promulgated by State authority)

9.1.1 immediately be prevented from performing a safety sensitive function;

9.1.2 receive a suspension of 15 workdays (promulgated by State authority);

9.1.3 be referred to a SAP;

9.1.4 be required to complete a drug and/or alcohol treatment program as deemed appropriate by the SAP. If the employee does not enroll in a drug and/or alcohol treatment program during the suspension period, or if the employee fails to successfully participate and/or successfully complete the drug and/or alcohol treatment program for at least 6 months, the employee shall be suspended without pay pending charges for termination. (promulgated by State authority);

9.1.5 not be allowed to return to duty until taking a return-to-duty drug test with a verified negative result;

9.1.6 not be allowed to return to duty until taking a return-to-duty alcohol test with an alcohol concentration of less than 0.02 (promulgated by State authority); and

9.1.7 be subject to a minimum of 6 follow-up drug and/or alcohol tests with verified negative results during the first 12 months of returning to duty as directed by the SAP. (promulgated by State authority)

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- 9.2 A safety sensitive employee who is deemed by the Department's Medical Advisor to be abusing over-the-counter and/or prescription medications for a second occurrence, shall be suspended without pay pending charges for termination and referred to a SAP.

## 10. Controlled Dangerous Substance Offenses – Safety Sensitive Employees

- 10.1 A safety sensitive employee who is arrested, charged or convicted of a controlled dangerous substance offense shall report the arrest, charge(s), conviction (a plea of guilty, a finding of guilty or a plea of *nolo contendere*) or probation before judgment to the Appointing Authority or the employee's supervisor on the employee's next scheduled workday or within 5 days of the event, whichever is earlier. Failure of the employee to report any of the above shall result in disciplinary action, up to and including the filing of charges for termination. (promulgated by State authority)
- 10.2 A safety sensitive employee charged with a controlled dangerous substance offense shall be suspended without pay pending charges for termination when the employee: (promulgated by State authority)
- 10.2.1 enters a plea of guilty;
- 10.2.2 is found guilty;
- 10.2.3 enters a plea of *nolo contendere*; or
- 10.2.4 is placed on probation before judgment after a finding of guilty.
- 10.3 A safety sensitive employee convicted of any controlled dangerous substance offense(s) shall be referred to a SAP and suspended without pay pending charges for termination.
- 10.4 A safety sensitive employee who is notified by a law enforcement or prosecutorial authority that the employee has been identified as the focus or target of an investigation into the possession, use, and/or trafficking in controlled dangerous substances shall report this information to the employee's Appointing Authority or the employee's supervisor on the employee's next scheduled workday, or within 5 days of the event, whichever is earlier. Failure of the employee to report this information may result in disciplinary action, up to and including the filing of charges for termination.

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## 11. Controlled Dangerous Substance Offenses – Non-Safety Sensitive Employees

- 11.1 A non-safety sensitive employee who is arrested, charged or convicted of a controlled dangerous substance offense shall report the arrest, charge(s), conviction (a plea of guilty, a finding of guilty, a plea of *nolo contendere*) or a probation before judgment to the Appointing Authority or the employee's supervisor on the employee's next scheduled workday or within 5 days of the event, whichever is earlier. Failure to report any of the above may result in disciplinary action, up to and including the filing of charges for termination. (promulgated by State authority)
- 11.2 A non-safety sensitive employee convicted of a controlled dangerous substance offense shall be referred to a SAP, receive a suspension of 15 workdays, and be required to complete a drug treatment program as deemed appropriate by the SAP.
- 11.3 A non-safety sensitive employee convicted a second time of a controlled dangerous substance offense shall be referred to a SAP and suspended without pay pending charges for termination for insubordination and violation of the Substance Abuse Policy. (promulgated by State authority)

## 12. On-Duty Alcohol-Related Driving Offenses – Safety Sensitive Employees

- 12.1 A safety sensitive employee who is convicted of an on-duty alcohol-related driving offense shall:
- 12.1.1 be immediately prevented from performing a safety sensitive function;
  - 12.1.2 receive a suspension of 15 workdays (promulgated by State authority);
  - 12.1.3 be referred to a SAP;
  - 12.1.4 be required to successfully complete a drug and/or alcohol treatment program as deemed appropriate by the SAP. If the employee does not enroll in a drug and/or alcohol treatment program during the suspension period, or if the employee fails to successfully participate and/or successfully complete the drug and/or alcohol treatment program for at least 6 months, the employee shall be suspended without pay pending charges for termination. (promulgated by State authority);
  - 12.1.5 not be allowed to return to duty until taking a return-to-duty drug test with a verified negative result;

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- 12.1.6 not be allowed to return to duty until taking a return-to-duty alcohol test with an alcohol concentration of less than 0.02 (promulgated by State authority); and
- 12.1.7 be subject to a minimum of 6 follow-up drug and/or alcohol tests with verified negative results during the first 12 months of returning to duty.
- 12.2 A safety sensitive employee who is convicted a second time of an on-duty alcohol-related driving offense or is found to be under the influence of alcohol a second time while on-duty or having been under the influence while on-duty as specified in subsection 12.1 shall be referred to a SAP and suspended without pay pending charges for termination. (promulgated by State authority)
- 12.3 A safety sensitive employee who fails to report pursuant to Section 2 - General, subsection 7.6 a charge or conviction of an alcohol-related driving offense committed while on-duty shall result in a suspension of 5 workdays.

### **13. Off-Duty Alcohol-Related Driving Offenses – Safety Sensitive Employees**

- 13.1 A safety sensitive employee who is convicted of an alcohol-related driving offense committed while off-duty shall be referred to a SAP or EAP, required to successfully complete an alcohol treatment program, and receive a suspension of 15 workdays. (promulgated by State authority)
- 13.2 A safety sensitive employee who is convicted a second time of an alcohol-related driving offense committed while off-duty shall be referred to a SAP or EAP and shall be suspended without pay pending charges for termination. (promulgated by State authority)
- 13.3 A safety sensitive employee who fails to report an arrest or charge of an alcohol-related driving offense committed while off-duty pursuant to Section 2 – General, subsection 7.6 shall receive a suspension of 5 workdays.
- 13.4 A safety sensitive employee who fails to report a conviction of an alcohol-related driving offense committed while off-duty pursuant to Section 2- General, subsection 7.6 shall receive a suspension of 5 workdays in addition to any discipline received as a result of the conviction.

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### 14. On-Duty Alcohol-Related Offenses – Non-Safety Sensitive Employees

- 14.1 A non-safety sensitive employee who is convicted of any alcohol-related driving offense committed while on-duty or who is found under the influence of alcohol while on-duty shall be referred to a SAP, receive a suspension of 15 workdays and required to complete an alcohol treatment program as deemed appropriate by the SAP. (promulgated by State authority)
- 14.2 A non-safety sensitive employee who is convicted a second time of an alcohol-related driving offense committed while on-duty, or who is found under the influence of alcohol while on-duty within 5 years of a conviction for any previous alcohol-related driving offense, or having been found under the influence of alcohol while on-duty, or having been found under the influence of alcohol while operating or attempting to operate a State owned vehicle shall be referred to a SAP and receive disciplinary action up to and including the filing of charges for termination for insubordination and violation of the Substance Abuse Policy. (promulgated by State authority)
- 14.3 A non-safety sensitive employee who fails to report an arrest or charge of an alcohol-related driving offense committed while on-duty pursuant to Section 2 – General, subsection 7.6 shall receive a suspension of 5 workdays.
- 14.4 A non-safety sensitive employee who fails to report a conviction of an alcohol-related driving offense committed while on-duty pursuant to Section 2 – General, subsection 7.6 shall receive a suspension of 5 workdays in addition to any discipline received as a result of the conviction.

### 15. Off-Duty Alcohol-Related Offenses – Non-Safety Sensitive Employees

- 15.1 A non-safety sensitive employee who is convicted of any alcohol-related driving offense committed while off-duty shall be referred to a SAP. (promulgated by State authority)
- 15.2 A non-safety sensitive employee who is convicted a second time for an alcohol-related driving offense committed while off-duty shall be referred to a SAP, receive a suspension of 5 workdays and shall be required to successfully participate in a treatment program. (promulgated by State authority)

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- 15.3 A non-safety sensitive employee who is convicted a third time for an alcohol-related driving offense committed while off-duty shall be referred to a SAP and suspended without pay pending charges for termination. (promulgated by State authority)
- 15.4 A non-safety sensitive employee who fails to report an arrest or charge of an alcohol-related driving offense committed while off-duty pursuant to Section 2 – General, subsection 7.6 shall receive a suspension of 5 workdays.
- 15.5 A non-safety sensitive employee who fails to report a conviction of an alcohol-related driving offense committed while off-duty pursuant to Section 2 – General, subsection 7.6 shall receive a suspension of 5 workdays in addition to any discipline received as a result of the conviction.

## **16. Possession of Alcohol – Safety Sensitive Employees**

- 16.1 A safety sensitive employee shall receive a suspension of 5 workdays when in possession of alcohol while on duty. (promulgated by State authority)
- 16.2 After the second incident within 5 years of a safety sensitive employee being in possession of alcohol during the circumstances outlined in subsection 16.1, the employee shall be subject to a suspension of 15 workdays and referred to a SAP. (promulgated by State authority)
- 16.3 After the third incident within 5 years of a safety sensitive employee being in possession of alcohol during the circumstances outlined in subsection 16.1, the employee shall be suspended without pay pending charges for termination for insubordination and violation of the Substance Abuse Policy and referred to a SAP. (promulgated by State authority)

## **17. Appeal Rights**

- 17.1 Employees may contest any discipline mandated by this policy in accordance with established appeal and/or grievance procedures as specified in COMAR 11.02.08, Transportation Service Human Resources System Policy and applicable MTA Collective Bargaining Agreements.

## **18. Authority**

- 18.1 Code of Federal Regulations, 49 CFR Part 29. (U.S. DOT Drug Free Workplace Act Implementation)

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- 18.2 Code of Federal Regulations, 49 CFR Part 40. (U.S. DOT Drug and Alcohol Testing Protocols)
  
- 18.3 Code of Federal Regulations, 49 CFR Part 655. (FTA Alcohol and Drug Testing)
  
- 18.4 Code of Federal Regulations, 49 CFR Parts 382, 383, 392 and 395. (FHWA CDL Holder Substance Testing Rules)
  
- 18.5 Code of Federal Regulations, 14 CFR Parts 61, 63, 65, 121, and 135. (FAA Drug and Alcohol Testing Rules)
  
- 18.6 Section 17-214 Health-General, Annotated Code of Maryland. (Notification Requirements for positive tests)
  
- 18.7 Governor's Executive Order No. 01.01.1991.16 – State of Maryland Substance Abuse Policy.
  
- 18.8 Section 2-103 Transportation Article, Annotated Code of Maryland. (General Authority to Promulgate Rules and Regulations)
  
- 18.9 Sections 6-201 and 6-201.2 Transportation Article, Annotated Code of Maryland. (Authority of the Maryland Port Commission to adopt regulations governing MPA and its personnel)
  
- 18.10 Code of Maryland Regulations, 11.02.08, Disciplinary Action
  
- 18.11 Code of Maryland Regulations, 11.02.11, Testing for Drugs and Alcohol

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