

## Drug and Alcohol Policies for ESOs

Emergency responders are constantly exposed to potentially life-threatening situations, trauma, and the physical strain of working long hours with little sleep. The daily stress can greatly increase the risk of substance abuse and addiction as emergency responders turn to drugs or alcohol as coping mechanisms.

While Emergency Service Organizations (ESO) cannot change the day-to-day triggers responders face while on the job, they can mitigate the agency's liability exposures related to substance abuse by agency members through the development and enforcement of drug and alcohol policies. This bulletin offers risk management guidelines to assist ESOs in developing drug and alcohol policies for their organizations and includes a sample Drug and Alcohol Policy as an example of some of the important items to consider when developing a policy for your specific ESO.

### Policy Considerations

Researching the laws in your state and tailoring your policy accordingly can help you avoid fines and potential litigation from employees because of statutory breaches. Having a drug and alcohol policy in place can also protect your company from related liabilities.

It is recommended that policies include guidelines related to substance abuse, including alcohol consumption, over-the-counter and prescription medications, and illegal controlled substances, as well as drug and alcohol testing. Consider the following areas when developing a policy for your ESO.

### Alcohol Consumption

The IAFC states, "No member of a fire and emergency services agency should participate in any operational or support aspect of the organization while under the influence of alcohol." Additionally, they recommend that no alcohol be permitted on the premises of any operational portion of the ESO, including but not limited to the apparatus, the apparatus floor, the station living areas, and administrative offices. It is also recommended that ESOs that operate or host fund raising or social events provide a clear and distinct separation of the facilities in the policy to help enforce this position.

### Over-the-Counter and Prescription Medications

Not all drugs are necessarily illegal. An employee who is taking painkillers for an injury, for example, may become drowsy or present other impairment symptoms, which could affect their productivity and safety on the job. ESOs may address such situations by including a policy statement that requires/encourages members to notify management if they are taking such medication. According to the HIPPA Privacy Rule, employers "can ask [employees] for a doctor's note or other health information if they need the information for sick leave, workers' compensation, wellness programs, or health insurance" (US Department of Health and Human Services, 2018).

### Illegal Controlled Substances

ESO must not tolerate the possession, use, and/or sale of illegal controlled substances. If there is reasonable cause to believe a member of the department is involved with the possession, use, and/or sale of illegal controlled substances, consider suspension of duty until the completion of an internal and/or external investigation, which may include drug testing.

## Drug and Alcohol Testing

It is strongly recommended that policies address drug and alcohol testing, including provisions for pre-hire, random testing, testing for cause, and critical event testing resulting from any incident that causes measurable damage to apparatus or property; or injury/death of civilians or agency personnel.

The U.S. Occupational Safety and Health Administration's (OSHA) Improve Tracking of Workplace Injuries and Illnesses regulation, otherwise known as the electronic record-keeping rule, does not prohibit employers from establishing post-incident drug testing for the legitimate purpose of promoting workplace safety and health. However, OSHA officials clarified in a memo on October 11, 2018, that "action taken under a post-incident drug testing policy would violate the anti-retaliation provisions of the rule if the employer took the action to penalize an employee for reporting a work-related injury or illness."

Furthermore, ESOs may consider follow-up testing for employees who have tested positive for drug or alcohol abuse in the past. The policy should define the period and frequency of follow-up testing (e.g., every three months for one year after positive testing).

## Sample Drug and Alcohol Policy

The following sample Drug and Alcohol Policy (McCalmon, 2018) provides one example of items an ESO policy might address and may be adapted by the ESO's counsel, in whole or in part. It is recommended that ESOs carefully review the sample policy for consistency with the organization's existing policies and procedures and that the policy, whether used in whole or adapted, be reviewed by the ESO's legal counsel.

## Drug and Alcohol Sample Policy

The [Emergency Service Organization] recognizes the problem of drug and alcohol abuse in society, while also realizing that drug and alcohol dependency and abuse can be treated and controlled. We further recognize that drug and alcohol use by members of this organization would be a threat to the public welfare and the safety of all department members.

### Substance Abuse

The [Emergency Service Organization] is committed to safety. Therefore, the abuse of drugs or alcohol by members and others who interact with the [Emergency Service Organization]'s workplace is prohibited.

[Emergency Service Organization] prohibits:

- The use, possession or selling of illegal drugs on [Emergency Service Organization]'s premises, in [Emergency Service Organization]'s vehicles or while performing one's job duties or functions;
- The abuse or improper consumption of alcohol on [Emergency Service Organization]'s premises, in [Emergency Service Organization]'s vehicles or while performing one's job duties;
- The improper use, possession or selling of any drug, including prescription or over-the-counter medication, on [Emergency Service Organization]'s premises, in [Emergency Service Organization]'s vehicles or while performing one's job duties or functions; and
- Being under the negative influence of drugs (illegal or otherwise) or alcohol on [Emergency Service Organization]'s premises, in [Emergency Service Organization]'s vehicles or while performing a job function.

### Alcohol Consumption

Members may not drink alcohol on workplace premises unless permitted by [Emergency Services Organization]. Members who drink alcohol at work-related events or functions must do so responsibly. Intoxication, driving under the influence, and other acts that are a result of alcohol abuse while at a work-related event or performing a work-related function are strictly prohibited and can lead to discipline, including termination.

### Prescription and Over-the-Counter Medications

Members are permitted proper use of prescription or over-the-counter medications so long as their use does not impair their work or create a safety risk to the member and others who interact with the member. Members [e.g., are encouraged, must] make the [e.g., Human Resources Department, Personnel Department, Safety Department] aware if they are taking medication that will impair their ability to work productively or safely.

### Substance Abuse Testing

To enhance workplace safety, [Emergency Service Organization] may test members for drugs or alcohol at the following times:

- Pre-employment: after acceptance of a new [e.g., position, title, job] but before work begins;
- To comply with state or federal laws, such as the U.S. Department of Transportation regulations, Drug-Free Workplace laws, or state workers' compensation laws;
- After work-related accidents, incidents, or illness in situations in which member's drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use; and
- If [Emergency Service Organization] [management] has reasonable cause to suspect that a member is impaired because of drug or alcohol use in violation of [Emergency Service Organization]'s Drug and Alcohol Policy.

DISCLAIMER: This is a sample guideline furnished to you by VFIS. Your organization should review this guideline and make the necessary modifications to meet your organization's needs. The intent of this guideline is to assist you in reducing exposure to the risk of injury, harm, or damage to personnel, property, and the general public. For additional information on this topic, contact your VFIS Risk Control Representative at (800) 233-1957.

©2019 VFIS. All Rights Reserved.



## Follow-Up Testing

[Members who test positive for alcohol or drug abuse may request a second test [at their own expense], if circumstances permit.] [If a second test proves that the first test was incorrect, [Emergency Service Organization] will reimburse the applicant/members the cost of the test.]

[Members who have tested positive in the past [will, may] be retested every [e.g., three, six, twelve] months for the following [e.g., one, two, three] years after testing positive.]

## Reporting Wrongdoing

If you are aware of, or suspect, a violation of this policy by another employee or workplace participant, you should report it within a reasonable time to [e.g., your manager, your supervisor, Human Resources Department, Personnel Department, Safety Department].

If you do not feel comfortable reporting as listed above or if you did report and are not satisfied with the response, then you should direct your report or dissatisfaction to [e.g., Human Resources Department, Personnel Department, Safety Department, or the President, CEO, owner].

Please note that you are not required to confront the person or persons who have given you reason to report. However, if you are aware of, or suspect, a violation of this policy by another employee or workplace participant, you should make a reasonable effort to make the violation known within a reasonable time. Discussing or reporting violations of this policy to any person not listed above does not constitute a report.

## Retaliation Prohibited

Retaliation can include, but is not limited to, harassment, discrimination, or any other unfair treatment or abuse of power.

If you believe you or another are being subjected to retaliation for reporting a violation of this policy, or participating in an investigation of a violation of this policy, you should report the retaliation immediately in the manner provided above. Please note that you do not have to confront the person who is the source of the retaliation before reporting it, but to help prevent retaliation from continuing, you must report it.

Any employee or workplace participant who retaliates against another employee or workplace participant for making a good faith complaint of a violation of this policy, or for assisting in an investigation of a complaint of a violation of this policy, is subject to discipline or termination.

## Workplace Investigations

A report of retaliation for reporting a violation of this policy or a report of a violation of this policy that is made to those listed above will result in an appropriate investigation of the allegations. [Employer] may use third parties to investigate allegations. All employees and workplace participants have a responsibility to cooperate fully with any investigation. The interviews, allegations, statements, and identities will be kept confidential, on a need-to-know basis, consistent with the law and the investigation process and goals. Unreasonable refusal to participate in an investigation may lead to discipline, including termination.

Those found to have violated this policy or retaliated against another in violation of this policy are subject to discipline including, but not limited to, termination, consistent with the law, the results of the investigation, the severity of the conduct, and the policy violator's employment history, including any similar reports of prior violations and/or retaliation.

## Knowingly False Reports Prohibited

Any employee or workplace participant who makes a knowingly false report of a violation of this policy or retaliation will be subject to discipline, including termination.

## Questions about This Policy

If you have questions, suggestions or concerns about this policy, you should direct them to [e.g., your manager, your supervisor, Human Resources Department, Personnel Department, ESO Department, Compliance Department].

If you feel uncomfortable discussing your questions, suggestions or concerns about this policy with those listed above, you can direct them to the [e.g., Human Resources Department, Personnel Department, ESO Department, Compliance Department, or the President, CEO, owner].

---

## References

- International Association of Fire Chiefs (IAFC). (n.d.). Position statement: Drug and alcohol-free awareness. Retrieved from <https://www.iafc.org/topics-and-tools/resources/resource/iafc-position-drug-and-alcohol-free-awareness>
- McCalmon Group, Inc. (2018). Model policies: 7.6.1 Substance abuse testing.
- McCalmon Group, Inc. (2018). Model policies: 7.5.1 Substance abuse (restricted).
- Occupational Safety and Health Administration (OSHA). (2018). Standard interpretations: Clarification of OSHA's position on workplace safety incentive programs and post-incident drug testing (29 C.F.R. §1904.35(b)(1)(iv)). Retrieved from <https://www.osha.gov/laws-regs/standardinterpretations/2018-10-11>
- US Department of Health and Human Services (HHS). (2018). Employers and health information in the workplace. Retrieved from <https://www.hhs.gov/hipaa/for-individuals/employers-health-information-workplace/index.html>

DISCLAIMER: This is a sample guideline furnished to you by VFIS. Your organization should review this guideline and make the necessary modifications to meet your organization's needs. The intent of this guideline is to assist you in reducing exposure to the risk of injury, harm, or damage to personnel, property, and the general public. For additional information on this topic, contact your VFIS Risk Control Representative at (800) 233-1957.

©2019 VFIS. All Rights Reserved.

