

Texas Woman's University University Regulation and Procedure

Regulation and Procedure Name: Drug-Free Workplace Procedures and Drug Testing Policy for Faculty and Staff

**Regulation and Procedure
Number:** URP: 05.640

Policy Owner: Academic Affairs and Finance and Administration

POLICY STATEMENT

It is Texas Woman's University's ("TWU") intent to provide a drug-free, safe, healthy, and secure environment. This policy establishes guidelines governing the possession or use of drugs and or alcohol on the job. Its purpose is to comply with existing statutes and to promote better safety, attendance, morale, and a productive workforce.

Employees are expected and required to report to work in appropriate mental and physical condition for work. It is a violation of this policy to report to work Under the Influence of or in possession of any illegal drug, Controlled Substance, drug paraphernalia, or alcohol. It is also a violation of this policy to unlawfully manufacture, distribute, sell, possess, or use any illegal drug or Controlled Substance on TWU property or while conducting TWU business at any location. Employees may not assist or attempt to assist another person in this unlawful activity. An illegal drug, Controlled Substance, or drug paraphernalia for purposes of this policy is defined by appropriate federal or state statute or regulations.

APPLICABILITY

This policy is applicable to TWU Students, Faculty, and Staff.

DEFINITIONS

1. "Controlled Substance" means as defined in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C. § 812, and is further defined by federal regulation, 21 C.F.R. §§ 1308.11 through 1308.15.
2. "Conviction" means a finding of guilt (including a plea of guilty, plea bargain or nolo contendere) or imposition of sentence, or both by any judicial body charged with the responsibility of determining violations of federal or state criminal drug laws, alcoholic beverage control laws, or laws which govern driving while intoxicated.

3. "Employee" means an individual who is employed part-time, full-time, or in a temporary capacity as faculty, staff, or who is required to be a student as a condition of employment, undergraduate or graduate.
4. "Mandated Testing" means when an Employee of TWU is required to submit to drug tests by federal, state or local laws or regulations. Failure to submit and/or comply with testing could jeopardize TWU's relationship with law enforcement authorities, and may lead to changes in the TWU Employee's employment status.
5. "Medical Review Officer ("MRO")" means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
6. "Reasonable Suspicion" means when an Employee can be tested for alcohol or Controlled Substance when TWU has reasonable suspicion to believe that the Employee is Under the Influence of alcohol or a Controlled Substance while at work or on TWU business. A determination that reasonable suspicion exists must be based on specific observations concerning the appearance, behavior, speech, or body odors of the Employee, including behavior or symptoms which may indicate chronic and/or withdrawal effects of the use of alcohol or Controlled Substances. Reasonable suspicion must be established by satisfying two or more of the below criteria:
 - a. Observation of the actions/behaviors of the individual substantiated by two or more individuals;
 - b. Supervisor or other reliable individual witnessing the possession or use of alcohol or Controlled Substances; or
 - c. Any other legal measures (i.e., the involvement of TWU's campus police) used for alcohol or drug detection.
7. "Under the Influence" means intoxication is defined as the state of not having the normal use of one's mental or physical faculties as a result of introduction into the body of an alcoholic beverage or Controlled Substance.

REGULATION AND PROCEDURE

I. Procedure

TWU shall institute the following drug free workplace and drug testing procedures:

- A. When a supervisor/department head has a Reasonable Suspicion that an Employee is Under the Influence of or using alcohol or Controlled Substances, the supervisor/department head is required to report their observations to the Office of Human Resources immediately.

- B. The Office of Human Resources will arrange for the Employee to be escorted by a TWU Department of Public Safety officer to the Office of Human Resources and will provide instructions for undergoing a drug and/or alcohol test. The Employee's refusal to comply will be considered a violation of this policy and the Employee will be subject to disciplinary action up to and including employment dismissal under the appropriate disciplinary policies.
- C. Testing will be completed under the procedures established by the third-party entity engaged by TWU to conduct testing. If the test results are positive for alcohol and/or Controlled Substances and the test results are verified by the independent Medical Review Officer ("MRO"), a second test may be requested by the Employee. That test will be performed on the same specimen. Employees tested under this policy will be placed on paid leave of absence until initial test results are received. Employees requesting a second testing of the specimen will be on unpaid leave of absence until the results of the second tests are received. Should the second test show a positive result, the Employee will be subject to disciplinary action up to and including employment termination under the appropriate disciplinary policies.

II. Violations

TWU shall institute the following disciplinary process for violations of policy:

- A. Employees who violate this policy will be subject to disciplinary action, up to and including termination of employment. Violations of this policy will be handled in accordance with the appropriate TWU policy. (See URP 05.600: Staff Standards of Conduct and Disciplinary Process, URP 02.330: Faculty Responsibilities, Standards of Conduct, and Disciplinary Processes).
- B. Disciplinary sanctions imposed as a result of a disciplinary action under either of the foregoing policies may include mandatory participation in a TWU-approved drug/alcohol counseling and rehabilitation program or disciplinary action, up to and including employment dismissal. Additionally, policy violation(s) may have legal consequences. This policy does not alter TWU's existing doctrine of employment at-will which allows Employees and TWU to terminate employment at any time.

III. Worker's Compensation and Drug Testing

Worker's Compensation provisions and drug testing provisions are applicable as follows:

- A. Section 406.032 of the Texas Labor Code provides that worker's compensation benefits can be denied if an on the job injury occurred while the Employee was in a state of intoxication. If TWU has Reasonable Suspicion that drugs or alcohol proximately caused an Employee's injury,

TWU reserves the right to request substance abuse testing under procedures outlined in this policy.

B. For the purpose of “on the job injuries,” the definition of intoxication or under the influence is as follows:

1. The state of having an alcohol concentration of 0.08 or more, or the state of not having the normal use of mental or physical faculties due to the voluntary introduction into the body of:
 - a. An alcoholic beverage as that term is defined by section 1.04 of the Texas Alcoholic Beverage Code;
 - b. A Controlled Substance or Controlled Substance analogue as defined by section 481.002 of the Texas Controlled Substances Act, Health and Safety Code;
 - c. A dangerous drug as defined by section 483.001 of the Texas Dangerous Drugs Act, Health and Safety Code;
 - d. An abusable volatile chemical, glue, or aerosol paint (misused in an improper, illegal, or harmful way) as defined by section 485.001 of the Texas Health and Safety Code; or
 - e. Any similar substance, the use of which is regulated under state law.

IV. Criminal Drug Statute

Notification of criminal drug or alcohol statutes are as follows:

- A. Any Employee convicted of a violation of a criminal drug or alcohol related statute occurring on TWU premises must, as a condition of continued employment, abide by the terms of this policy and notify their supervisor and/or department head. Notification of a Conviction must be made in writing within five (5) calendar days after the Conviction. This requirement is mandated by the Drug-Free Workplace Act of 1988. Failure to abide by this reporting requirement may subject the Employee to disciplinary action, up to and including termination.
- B. Any Employee convicted of a violation of a criminal drug or alcohol related statute occurring off TWU premises must, as a condition of continued employment, notify their supervisor and/or department head within five (5) calendar days after the Conviction. An Employee’s off-the-job involvement with drugs and alcohol may have an impact on the workplace; therefore, TWU reserves the right to take appropriate disciplinary action for a Conviction off TWU premises.

- C. Any department head, or supervisor, who is informed of an Employee's Conviction, must report the Conviction to the Chief Human Resources Officer or designee immediately.
- D. Within 30 calendar days of receiving notice of the Conviction, an investigation will be conducted to determine whether disciplinary action will be taken against the Employee.
- E. TWU may also require the Employee to participate in and successfully complete a drug and or alcohol abuse assistance rehabilitation program approved for such purposes.

V. Employer Notification to Federal Contracting Agency

If an Employee working directly on a government grant or contract is convicted of a violation of local, state, or federal drug statute or regulation, the Employee's supervisor and/or department head must immediately inform their vice president and the Office of Research and Sponsored Programs, in writing, of the Conviction. The Office of Research and Sponsored Programs is required to report the incident to the federal government in accordance with sections 8102 and 8103 of the Drug-Free Workplace Act of 1988. The notification to the federal government must occur within ten (10) days of receiving notice from the Employee or otherwise receiving notice of the Conviction.

VI. Prescribed or Over-The-Counter Medication

Employees shall disclose to their supervisor and/or department head or to the Office of Human Resources, any use of a prescribed or over-the-counter medication that could either (1) adversely affect job performance, or (2) potentially impact the outcome of a drug test under this policy. Any such disclosure will be kept confidential and shared with appropriate personnel only on a need-to-know basis. Those Employees adversely affected by the medication during the normal course of duty and unable to perform their job duties and/or responsibilities may be placed on leave in accordance with leave regulations.

VII. Employee Assistance

An Employee Assistance Program ("EAP") is available to TWU Employees and their family members for confidential assistance with drug and alcohol problems. While self-referral to the EAP is encouraged, it does not preclude TWU's action under this policy if violations are discovered.

REVIEW

This policy will remain in effect and published until it is reviewed, updated, or archived. This policy is to be reviewed once every six years. Interim review may be required as a result of updates to federal and state law or regulations, Board of Regents policies, or internal processes or procedures.

REFERENCES

Drug-Free Workplace Act, 41 U.S.C. § 8103(a)(1)(D)(ii)

[Regent Policy B.20080: Illegal Use of Drugs and Alcohol Policy](#)

[URP 01.250: Alcohol Use](#)

[URP 01.255: Drug Free Workplace Policy](#)

[URP 05.650: Drug and Alcohol Testing for TWU Drivers of Commercial Motor Vehicles](#)

[URP 05.600: Staff Standards of Conduct and Disciplinary Process](#)

[URP 02.330: Faculty Responsibilities, Standards of Conduct, and Disciplinary Processes](#)

FORMS AND TOOLS

[Employee Assistance Program](#)

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