



## Model Plan for a Comprehensive Drug-Free Workplace Program

### VIII. Finding of Drug Use and Disciplinary Consequences

#### A. Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

1. Direct observation;
2. Evidence obtained from an arrest or criminal conviction;
3. A verified positive test result; or
4. An employee's voluntary admission.

#### B. Mandatory Administrative Actions

The [Agency] shall refer an employee found to use illegal drugs to the EAP, and, if the employee occupies a sensitive position, immediately remove the employee from that position without regard to whether it is a Testing Designated Position. At the discretion of the [Agency head], however, and as part of an EAP, an employee may return to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

#### C. Range of Consequences

Disciplinary action taken against an employee found to use illegal drugs may include the full range of disciplinary actions, including removal. The severity of the action chosen will depend on the circumstances of each case, and will be consistent with the Executive Order. The [Agency] shall initiate disciplinary action against any employee found to use illegal drugs.

[Insert either:]

a. provided that such action is not required for an employee who voluntarily admits to illegal drug use, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

[or if a safe harbor exists, add:]

b. but shall not discipline an employee who voluntarily admits to illegal drug use in accordance with subsection VIII(F) of this plan.

[In either case, add:]

Such disciplinary action, consistent with the requirements of any governing collective bargaining agreement and the Civil Service Reform Act and other statutes, [Agency] orders, and regulations, may include any of the following measures but some disciplinary action must be initiated:

1. Reprimanding the employee in writing;
2. Placing the employee in an enforced leave status;
3. Suspending the employee for 14 days or less;
4. Suspending the employee for 15 days or more;
5. Suspending the employee until the employee successfully completes the EAP or until the [Agency] determines that action other than suspension is more appropriate;
6. Removing the employee from service.

#### **D. Initiation of Mandatory Removal From Service**

The [Agency] shall initiate action to remove an employee for:

1. Refusing to obtain counseling or rehabilitation through an EAP as required by the Executive Order after having been found to use illegal drugs;
2. Not refraining from illegal drug use after a first finding of such use.

All letters to propose and decide on a separation action should be worked out in consultation with the [appropriate servicing personnel office].

#### **E. Refusal to Take Drug Test When Required**

An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal. No applicant who refuses to be tested shall be extended an offer of employment. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

#### **F. Voluntary Referral**

Under Executive Order 12564, the [Agency] is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except that such discipline is not required for an employee who (1) voluntarily admits his or her drug use; (2) completes counseling or an EAP; and (3) thereafter refrains from drug use.

[If you do not wish to create an absolute bar to discipline for individuals who voluntarily come forward, insert the following language:]

The decision whether to discipline a voluntary referral will be made by the agency head on a case by case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the [Agency], in

determining whether to discipline, shall consider that the employee has come forward voluntarily. In coming forward voluntarily, and consistent with Section XII(B), an employee may volunteer for a drug test as a means of identification. The results of this test, however, shall not constitute a second finding of illegal drug use under subsection (D).

[If you wish to create an absolute bar to discipline for individuals who voluntarily come forward, insert the following language:]

1. Because the Order permits an agency to create a "safe harbor" for an employee who meets all three of these conditions, the [Agency] has decided to create such a "safe harbor" and will not initiate disciplinary action against employees who satisfy the provisions of this Section.
2. A fundamental purpose of the [Agency's] Drug-Free Workplace Plan is to assist employees who themselves are seeking treatment for drug use. For this reason, the [Agency] will not initiate disciplinary action against any employee who meets all three of these conditions:
  - a. Voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means;
  - b. Obtains counseling or rehabilitation through an EAP; and
  - c. Thereafter refrains from using illegal drugs.

This self-referral option allows any employee to step forward and identify him/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP. In stepping forward, and consistent with Section XII(B), an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall not subject an employee to discipline assuming the three safe harbor requirements are met.

3. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit his or her problem, this provision is not available to an employee who requests protection under this provision after:
  - a. Being asked to provide a urine sample in accordance with this plan; or
  - b. Having been found to have used illegal drugs pursuant to Section VIII(A)(1) or VIII(A)(2).

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