

## DIVISION OF HUMAN RESOURCES

### 3.6 POLICY ON SUBSTANCE USE & MISUSE

#### (a) Purpose and Scope

##### (1) Purpose

The Maryland Judicial Branch recognizes that substance use, and misuse is a serious national crisis that has had a detrimental effect on the lives of many of our citizens and has exerted a negative effect on the operation of business and government. The Maryland Judicial Branch further recognizes that every employer, including the Maryland Judiciary, experiences a loss in productivity due to substance use and misuse absenteeism, injuries on the job, decreased work quality, and wasted resources. Substance use and misuse may cause an employee to function below established standards, make impaired decisions, have negative effects on their co-workers, and not be alert. The Maryland Judicial Branch is committed to a substance free workplace.

This is a uniform policy against substance use or misuse for Maryland Judicial Branch of Government employees and establishes uniform practices for the Maryland Judiciary to enforce this policy.

##### (2) Scope

(A) This policy applies to:

- (i) all persons employed by a court, unit, or judicial entity organized within the Judicial Branch including regular, temporary, and contractual employees regardless of the source of the employee's compensation (*e.g.*, county, state, federal, grant);
- (ii) volunteers, interns, and independent contractors; and
- (iii) employees of the State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Supreme Court of Maryland Standing Committee on Rules of Practice and Procedure.

(B) This policy does not apply to:

- (i) employees of the Attorney Grievance Commission and the Client Protection Fund;
- (ii) employees of the Register of Wills or the Orphans' Court; and
- (iii) justices, judges, and elected officials.

#### (b) Definitions

##### (1) Administrative Head:

- (A) For the Supreme Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Justice for all other employees of that Court;
- (B) For the Appellate Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Judge for all other employees of that Court;
- (C) For the circuit courts, the Clerk of the Court for all employees under the Clerk's supervision, and the County Administrative Judge for all state employees under their supervision;

- (D) For the District Court, the Chief Judge of the District Court, the Chief Clerk, or the Administrative Clerk or Administrative Commissioner for all employees under their supervision;
  - (E) For the Administrative Office of the Courts (AOC), the State Court Administrator;
  - (F) For units, the head of the unit where the employee works; or,
  - (G) Any person who serves as the authorized designee, by express written designation, of any of the foregoing persons.
- (2) Alcohol** – Any form of ethanol, or any beverage or substance containing ethanol.
  - (3) Alcohol-Related Offense** – a crime that requires alcohol possession or consumption as an element of the offense.
  - (4) Cannabis** – means the plant *Cannabis sativa* L. and any part of the plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration greater than 0.3% on a dry weight basis. Cannabis includes cannabis products but does not include hemp or hemp products as defined by Md. Code Ann., Agriculture § 14-101.
  - (5) Cannabis-Related Offense** – any crime that involves the use, sale, possession, distribution, dispensation, manufacture, or transfer of cannabis under Md. Code Ann., Crim. Law §§ 5-101 through 5-1101, excluding civil use offenses set forth in Crim. Law 5-601 (c)(2)(ii).
  - (6) Controlled Substance** – Any substance controlled under the Federal Controlled Substances Act (CSA), 21 U.S.C. § 801, et seq., as amended, and/or the Maryland Controlled Dangerous Substances Act, Md. Code Ann., Crim. Law §§ 5-101 through 5-1101.
  - (7) Drug** – Any controlled substance, non-prescription drug, or prescription drug, to include cannabis and related byproducts, taken into the body, which may impair one’s mental faculties and/or change one’s mood and/or physical performance.
  - (8) Impaired** – Reduced cognitive or physical ability that results from use of drugs, alcohol, cannabis, or controlled substances.
  - (9) Judiciary Human Resources Division (JHRD)** – The division within the AOC that is responsible for, but not limited to, the following functions for State employees in the Maryland Judiciary: human resources policy development, administration, and interpretation; talent acquisition; employment and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.
  - (10) Judiciary Premises/Property** – Includes Judiciary-owned or Judiciary-leased property, parking lots, and storage areas. The term also includes Judiciary-owned or Judiciary-leased vehicles and equipment wherever located.
  - (11) Non-Prescription Drug** – Any over-the-counter drug that is available without a written prescription by an authorized medical professional.
  - (12) Prescription Drug** – A drug that is legally available only by means of a prescription by an authorized medical professional.
  - (13) Substance Use or Misuse**
    - (A) Use of any illegal drug;
    - (B) The intentional misuse of any legal drug that results in workplace impairment and/or impaired job performance;
    - (C) The intentional use of any prescription drug in a manner inconsistent with its medically prescribed, intended use, or under circumstances where its use is not permitted;

- (D) The use of alcohol where such use results in workplace impairment and/or impairs job performance;
- (E) The use of cannabis where such use results in workplace impairment and/or impairs job performance; or
- (F) The intentional and inappropriate use of any substance, legal or illegal, which impairs job performance.

**(14) Unit** – The State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Supreme Court of Maryland Standing Committee on Rules of Practice and Procedure.

**(15) Workday** – An employee’s normally scheduled workday.

**(16) Work Time** – For purposes of this policy, time during which an employee:

- (A) Is on duty, whether at the employee’s principal worksite or at an alternate worksite; and/or,
- (B) With the requisite approval, travels to and from and participates in training activities, conferences, conventions, and seminars as a job requirement. Approved time spent traveling to and from the event outside the employee’s normal work and commuting schedule will count as hours worked.

### **(c) Prohibited Conduct**

- (1) Employees are prohibited from unlawfully manufacturing, distributing, dispensing, possessing, or using a controlled substance, committing alcohol-related offenses, or committing cannabis-related offenses, whether or not on the job. Although the possession of cannabis or its related byproducts, such as marijuana, may be legal under Maryland law and other states, please note that it is still a violation of federal law.
- (2) Employees must not report to work, or spend any work time, in an unfit condition to perform their duties. Reporting to work, or spending any work time, with mental or physical abilities impaired by drugs, alcohol, or cannabis is a violation of this policy and shall subject employees to disciplinary action.
- (3) Employees on official business, whether, or not, on or in Judiciary premises/property, are prohibited from using alcohol, using cannabis, purchasing, transferring, using, or possessing illegal drugs, or using any drug in any way that is illegal.

### **(d) Enforcement**

- (1) Where justified by reliable information and/or observation, criminal violations shall be referred to the appropriate law enforcement authority for further investigation and prosecution.
- (2) Employees must report any alcohol-related arrest, cannabis-related arrest, or drug-related arrest, or a citation resulting in a hearing, to their supervisor within the next business day, or as soon as practicable, but no later than five workdays after that arrest. Any such arrest or citation may be cause for an administrative investigation, notwithstanding the status or outcome of any related legal or civil proceedings.
- (3) Employees convicted of off-the-job alcohol-related, cannabis-related, or drug-related criminal or civil offenses may be in violation of this policy.

- (4) Any employee found to be in violation of any of the provisions of this policy may be subject to disciplinary action up to and including termination of employment or contractual agreement, and other lawful sanctions.
- (5) Supervisory employees are responsible for adherence to and implementation, enforcement, and monitoring of this policy.

### (e) Observation

- (1) A combination of signs observed concerning the appearance, behavior, body odors, or speech of the employee may constitute reasonable grounds for investigation of possible substance use or misuse by an employee during work. Such signs of possible substance use or misuse may include a combination of the following and is not limited to:
  - (A) A regular and frequent, continuous odor of alcohol, cannabis, or chemicals;
  - (B) Irregular speech pattern;
  - (C) Abnormal dilated or constricted pupils, and bloodshot eyes;
  - (D) Changes in physical appearance and motor skills; or
  - (E) Marked changes in personality and/or job performance.A supervisor and/or Administrative Head, observing such signs or receiving a report of them, in consultation with the JHRD, should investigate by appropriate measures, including direct observation and private questioning of the affected employee if possible.
- (2) If the supervisory investigation in consultation with the JHRD supports a conclusion of substance use or misuse by the investigated employee(s), the JHRD and the Administrative Head will determine next appropriate steps, which may include reasonable suspicion testing or a fitness for duty examination.
- (3) If an employee is required to complete reasonable suspicion testing, the employee will be notified directly by JHRD.

### (f) Testing

#### (1) Reasonable Suspicion Testing

- (A) The Administrative Head, in consultation with the JHRD, can require reasonable suspicion testing if a supervisory investigation supports a reasonable suspicion of substance use or misuse. The Administrative Head, or designee, and JHRD will meet with the employee to explain the observations and the requirement to undergo a drug and/or alcohol test.
- (B) An Administrative Head, in consultation with the JHRD, may require an employee to undergo testing when they cause or contribute to an accident that damages Judiciary vehicles, equipment, or property, or that result in an injury to themselves, another employee, or third party.

#### (2) Substances Covered by Drug and Alcohol Testing – Employees may be tested for the use of alcohol, drugs, and controlled substances. The drug testing panel for controlled substances includes amphetamines, barbiturates, benzodiazepines, opiates, cocaine, and phencyclidine (PCP).

#### (3) Testing Methods and Procedures:

- (A) All testing will be coordinated through the State Medical Director and conducted by a licensed independent medical laboratory. Testing will be conducted according to procedures established

by the laboratory to ensure the privacy of the employee, while also protecting against tampering with or alteration of the test results.

- (B) The Administrative Head must designate a member of management to transport the employee or arrange for transportation to the testing facility and arrange for the employee to be transported home after the testing.
- (C) The time spent taking an alcohol or drug test under subsection (1) of this section will be considered administrative leave. If the employee requests to be retested under subsection (4)(B) of this section, they will be required to take their own leave.
- (D) An Administrative Head may place the employee on administrative leave or other applicable leave pursuant to the Policy on Leave.

**(4) Consequences of Positive Test Results:**

- (A) A positive alcohol or drug test may result in disciplinary action up to and including termination of employment.
- (B) If an employee disputes a positive test result, the employee may contact JHRD for information regarding requesting a retest at the employee's own expense.

**(5) Refusal to Test** – An employee who refuses to submit to testing under this policy or who adulterates, dilutes, or otherwise tampers with a test specimen will be subject to discipline up to and including termination of employment.

**(6) Records** - All records concerning test results will be kept by the JHRD in medical files that are maintained separately from employee personnel files.

## **(g) Assistance and Treatment**

- (1)** An employee may contact [MyMDCares](#) for no-cost, confidential, support to help with personal issues that are interfering with work responsibilities.
- (2)** An employee or Administrative Head may request referral to the Employee Assistance Program (EAP) for an employee to access confidential professional assistance for substance use or misuse.
- (3)** The Administrative Head in consultation with the JHRD will make certain an employee has accommodations that are suitable when an employee is participating in a treatment or recovery program. Participation in a treatment or recovery program will neither relieve employees from the requirement of satisfactory job performance, nor insulate them from discipline, termination, or adverse management actions for failing to comply with any of the Judiciary's policies and procedures.
- (4)** Substance use or misuse related disciplinary actions, up to and including termination, may be, but do not have to be, held in abeyance pending an employee's completion of an assistance and treatment program.
  - (A) The option of holding a disciplinary action in abeyance is not an employee entitlement or right but is a privilege to be granted at the discretion of the Administrative Head, in consultation with Assistant State Court Administrator for JHRD, under appropriate circumstances.
- (5)** Employees will not be terminated solely for requesting referral or being referred to the EAP or voluntarily obtaining other assistance and/or treatment for a substance use or misuse. The Judiciary encourages any employee who needs such assistance and treatment to seek and obtain it.

#### **(h) Exceptions**

The Chief Justice of the Supreme Court of Maryland or the State Court Administrator may make exceptions to any provision of this policy.

#### **(i) Interpretive Authority**

The JHRD is responsible for the interpretation of this policy.

#### **(j) Not a Contract**

This policy does not constitute or create an express or implied contract. It is not intended to, and does not, create contractual obligations with respect to any matter it covers.