

Drug-Free Workplace

The ESD shall provide a drug-free workplace.

1. Definitions

- a. **Controlled substance:** A controlled substance shall include any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or other drug as classified under the federal Controlled Substances Act, as modified under ORS 475.035.
- b. **Alcohol:** Alcohol shall include any form of alcohol for consumption, including beer, wine, wine coolers or liquor.
- c. **Conviction:** A finding of guilt (including a plea of no contest) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- d. **Criminal drug statute:** A federal or state criminal statute involving the manufacture, distribution, dispensation, possession or use of any controlled substance or alcohol.
- e. **Drug-free workplace:** A site for the performance of work at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance or alcohol.

2. Purpose

The purpose of this policy is to promote safety, health and efficiency by prohibiting, in the workplace, the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance or alcohol.

3. Applicability

This policy applies to all employees, including, but not limited to, those exempt, unclassified, management service, classified and temporary employees who are paid directly or indirectly from funds received under a federal grant or contract.

4. Prohibitions

An employee shall not, in the workplace, unlawfully manufacture, distribute, dispense, possess or use a controlled substance or alcohol.

5. No ESD employee shall knowingly sell, market or distribute steroid or performance enhancing substances to kindergarten through grade 12 students with whom the employee has contact as part of employee's ESD duties; or knowingly endorse or suggest the use of such drugs.

6. Compliance with Policy¹

An employee shall, as a condition of employment, abide by the provisions of this policy.

7. Sanctions and Remedies¹

- a. The ESD, upon determining that an employee has engaged in the unlawful manufacture, distribution, dispensation or possession of a controlled substance or alcohol or upon having reasonable suspicion, under section 8. of this policy, of employee unlawful use of a controlled substance or alcohol in the workplace, shall, pending any criminal drug statute conviction for a violation occurring in the workplace, take action with regard to the employee determined to be appropriate which may include transfer, granting of leave with or without pay or suspension with or without pay.
- b. Within 30 days of an employee's criminal drug statute conviction for a violation occurring in the workplace, the ESD shall:
 - (1) Take action with regard to the employee determined to be appropriate which may include discipline up to and including termination; and/or
 - (2) Require satisfactory participation by the employee in a drug abuse assistance or rehabilitation program approved for such purpose by a federal, state or local health, law enforcement or other appropriate agency.

8. Basis for Reasonable Suspicion of Employee Use of Controlled Substance/Alcohol

Reasonable suspicion of employee use of an unlawful controlled substance or alcohol shall be based upon any of the following:

- a. Observed abnormal behavior or impairment in mental or physical performance (for example, slurred speech or difficulty walking);
- b. Direct observation of use in the workplace;
- c. The opinion of a medical professional;
- d. Reliable information concerning use in the workplace, the reliability of any such information shall be determined by employer;
- e. A work-related accident in conjunction with a basis for reasonable suspicion as listed above.

9. Employee Assistance Program

An employee having a drug or alcohol problem is encouraged to seek assistance, on a confidential basis, under the Employee Assistance Program if such program is provided by the employer.

¹ESDs directly receiving grants or contracts of \$100,000 or more from the federal government are required to meet this obligation.

10. Leave for Participation in Abuse Assistance or Rehabilitation Program

The ESD shall, upon employee request, grant leave with or without pay to permit an employee to participate in a drug abuse assistance or rehabilitation program.

11. Establishment of Drug-Free Awareness Program

The ESD shall establish a drug-free awareness program to inform employees of the:

- a. Dangers of drug abuse in the workplace;
- b. Existence of and content of this policy for maintaining a drug-free workplace;
- c. Availability of drug-counseling, rehabilitation and employee assistance programs; and
- d. Penalties that may be imposed for drug abuse violations occurring in the workplace.

12. Notification by Employee of Conviction¹

An employee shall, as a condition of employment, notify the ESD of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

13. Notification by Malheur Education Service District of Employee Conviction

The ESD shall notify the appropriate federal granting or contracting agency of an employee's criminal drug statute conviction for a violation occurring in the workplace no later than 10 days after receiving notice of such conviction.

14. Provision of Copy of Policy to Employees

The ESD shall provide to each employee a copy of this policy.

END OF POLICY

Legal Reference(s):

[ORS 243.650](#)

[ORS 342.721](#)

[ORS 342.723](#)

[ORS 342.726](#)

[ORS Chapter 475](#)

[ORS 657.176](#)

[ORS 809.260](#)

[OAR 581-022-0416](#)

Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701-707 (2006); General Principles Relating to Suspension and Debarment Actions, 34 C.F.R. §§ 85.600 - 85.645 (2006).

Controlled Substances Act, 21 U.S.C. § 812; Schedules of Controlled Substances, 21 C.F.R. §§ 1308.11 - 1308.15 (2006).

Safe and Drug-Free Schools and Communities Act, 20 U.S.C. §§ 7101-7117 (2006).