

Rule 5-113 A: Drug Free Workplace Provisions

I. Purpose and Scope

This rule applies to all staff members at the University of Utah, with the exception of University of Utah Hospitals and Clinics Staff. With respect to Health Sciences Center Staff Members who are not University of Utah Hospitals and Clinics Staff, any conflict between this Rule and Policy 5-114 shall be resolved in favor of the application of Policy 5-114.

II. Definitions

- A. Drug or Alcohol Violation: Engaging in misuse of a controlled substance, including illegal drugs or prescription medications, or misuse of alcohol or in unlawful behavior regarding the manufacture, distribution, dispensation, possession, and/or use of a controlled substance, including prescription medications, or misuse of alcohol at a University workplace, or while otherwise representing the University.
- B. University of Utah Hospital and Clinics: University of Utah Hospital and Clinics staff.
- C. University Staff (non-Health Sciences): All staff and administrators at the University of Utah, with the exception of University of Utah Hospital and Clinics Staff and other Health Sciences Center Staff who are in patient sensitive positions, as defined by Policy 5-114.
- D. Patient Sensitive Activities: Activities involving patient contact, patient diagnostic or therapeutic functions, or a position in which the individual works in or has job-related access to patient care areas.
- E. Patient Sensitive Positions: Positions involving patient contact, patient diagnostic or therapeutic functions, or a position in which the individual works in or has job-

related access to patient care areas. All positions with University Hospitals and Clinics are considered to be Patient Sensitive Positions.

- F. Safety-Sensitive Activities: A work activity where impaired performance could result in a significant incident affecting the health and safety of self or others, or in substantial damage to property or the environment. This includes (but is not limited to) activities related to making decisions that affect public safety and life safety operations on campus.
- G. Security-Sensitive Activities: Activities involving access to systems, sensitive facilities, finances and/or property where impaired performance could result in a significant impact to the institution. Examples include, without limitation, vital computer systems or programs, access to accounting systems or financial accounts.
- H. Corrective Action: Employment related action undertaken to correct or modify unacceptable job performance or behavior to acceptable standards.
- I. Cognizant Administrator: Director level or above and at least one level higher in the organization over the staff member involved in an alleged violation of this rule or Policy 5-113.
- J. Sanctions: All corrective/disciplinary actions that may be taken with staff pursuant to Policy 5-111.
- K. Conviction: Finding of guilt for a crime by a court of competent jurisdiction, including a "No Contest" plea. 12. Workplace: Any location operated or maintained by the University. 13. Work Off Campus: Performance of official University business by an employee at any time and at any place away from the University.
- L. Controlled Substance: Any substance designated by law as controlled. (Ref. A.)

- M. Drug/Alcohol Impaired Job Performance or Attendance: Misuse of alcohol or a controlled substance, at work or outside of work , which impairs job performance or attendance.
- N. Illegal Drug or Alcohol Use: Any use of drugs or alcohol in violation of law.
- O. Over the Counter Drug Use Concern: A concern regarding over the counter drug use arises when a staff member is under the influence of any over the counter drug that interferes with the effective performance of the functions of the staff member's job or poses a direct threat to safety or security.
- P. Prescription Drug Use Concern: A concern regarding prescription drug use arises when a staff member is under the influence of any legally prescribed drug that interferes with the effective performance of the functions of the staff member's job or poses a direct threat to safety or security.
 - 1. Inquiries regarding prescription drug use by staff members are governed by the Americans with Disabilities Act of 1990 as amended, and therefore should be made only as authorized by the Office of Equal Opportunity and Affirmative Action (OEO/AA).

III. Rule

A. University Staff Accountability

- 1. It is the policy of the University to ensure a work environment that fosters productive University staff employees free from substantial job-performance impairment arising from the misuse or illegal use of alcohol or controlled substances.
- 2. It is the University's vital responsibility to hold University staff accountable for excellence in the performance of their job functions while appropriately supporting individual staff members who may be struggling with drug and alcohol issues.

3. Rules to guide the uniform application of testing and corrective/disciplinary actions for staff in order to maintain a safe and productive workplace are outlined below.
4. The University is committed to maintaining a safe and healthy environment free from the misuse or illegal use of alcohol and controlled substances.
5. The University is committed to ensuring that there is no impairment from prescription drug use or over the counter drug use that substantially adversely affects a staff member's ability to perform the staff member's job in a safe and effective manner.

B. Testing

Staff members engaged in safety-, security- or patient-sensitive activities or employed in patient-sensitive positions (as described in the definitions above) may be subject to drug testing.

1. Before being hired and placed in or reassigned to a safety-, security- or patient-sensitive activities or positions.
2. After being involved in an accident or critical incident. (The staff member is required to be tested for alcohol within eight (8) hours and for drugs within 32 hours, following the accident.)
3. When a supervisor, in consultation with a trained HR Professional in the Division of Human Resources, determines there is reasonable suspicion that an employee performing or assigned to a safety-, security- or patient-sensitive activity or position is using, under the influence of, or in possession of alcohol or drugs.
4. At random, during, just before, or just after, working in a safety-, security- or patient-sensitive activity or position. (work assignments may be interrupted for the testing.)

5. After returning to a safety-, security- or patient-sensitive activity or position following removal due to a positive test result.

a. At least 6 follow-up tests may be conducted during the 12-month (one (1) year) period following the employee's return to work.

b. As many as 30 follow-up tests may be conducted during the 60-month (5-year) period following the employee's return to work.

C. Alcohol Testing (Safety-, Security-, and Patient-Sensitive Activities or Positions)
Alcohol testing will be conducted in accordance with U.S. Department of Transportation criteria and standards. (Ref. B.)

1. If a staff member's breath alcohol test indicates a blood alcohol content equal to or greater than the lower threshold currently designated by the Department of Transportation, a second confirmation test will be performed.

2. If the confirmation test indicates blood alcohol content equal to or greater than the lower threshold, the University will remove the employee from a safety or security sensitive position for at least 24 hours.

a. Unannounced follow-up testing may occur for up to five (5) years after the employee returns to a safety-, security- or patient-sensitive position.

b. The employee may be reassigned to a non safety-, non security- or non patient-sensitive function.

3. If a staff member's test indicates a blood alcohol content equal to or greater than the upper threshold currently designated by the Department of Transportation, the University may, without limitation; a. remove the staff member from a safety-, security-, or patient-sensitive activity or position b. refer the staff member to the Employee Assistance Program (EAP), and

- a. require the staff member to follow the recommendations of the EAP before allowing the employee to return to a safety-, security- or patient-sensitive activity or position
- b. conduct random follow-up testing for at least one year after the staff member returns to a safety-, security- or patient-sensitive activity or position , and/or
- c. reassign the staff member to a non safety-, security- or patient-sensitive activity or position
- d. impose corrective/disciplinary action, up to and including termination of employment

D. Drug Testing (Safety-, Security- or Patient-Sensitive Activities or Positions)

1. Drug (controlled substance) testing, analysis, and medical review of tests will be conducted in accordance with U. S. Department of Transportation criteria and standards. (Ref. 2) If the test result indicates the presence of prohibited drugs and/or drug levels, the University may, without limitation;
 - a. remove the staff member from a safety-, security- or patient-sensitive activity or position
 - b. refer the staff member to the EAP, and
 - c. require the staff member to follow the recommendations of the substance EAP before allowing the employee to return to a safety-, security- or patient-sensitive activity or position
 - d. conduct random follow-up testing for at least one year after the staff member returns to a safety-, security- or patient-sensitive activity or position , and/or

- e. reassign the staff member to a non safety-, security- or patient sensitive activity or position
- f. impose corrective/disciplinary action, up to and including termination of employment

E. Non Safety-, Security- or Patient-Sensitive Activities or Positions

- 1. If a supervisor believes that a staff member who is not engaged or employed in a safety-, security-, or patient-sensitive activity or position, is impaired at work due to drugs or alcohol, disciplinary/corrective action should be based on job performance and/or behavior, and the impact on the workplace. Poor performance and/or conduct, including without limitation disruptive behavior, will be addressed as outlined in Policy 5-111, as would similar behavior caused by any other factors.

F. Refusal to submit to test

- 1. A staff member's refusal to submit to alcohol or controlled substance testing as set forth in this rule, including failure to provide any requested sample, will be deemed a positive (failed) test result.

G. Treatment--Employee Self-Referral and Employee Assistance Program

- 1. Self-Referral: Staff members with alcohol or drug problems are strongly encouraged to voluntarily seek assistance from their physicians, other appropriate health care providers or the University's Employee Assistance Program before these problems interfere with the safe and effective performance of their job. Staff members may seek help without their supervisor's knowledge. Although voluntarily seeking assistance will not bar the University from treating the staff member like other staff members under this policy, the University will consider voluntary requests for help in determining any leniency in the discipline to be imposed. The University will

not assume any financial or other responsibility for drug or alcohol treatment except as may be provided by University benefits.

2. Employee Assistance Program: The University's Employee Assistance Program offers free, confidential counseling and/or referral services to eligible staff members with alcohol or drug problems.

H. Disciplinary Action

The University may impose disciplinary action on any staff member who violates this rule, up to and including termination of employment. For staff members engaged or employed in safety-, security- or patient-sensitive activities or positions, violation of this policy may be considered egregious behavior (see Rule 5-111C). For other positions, disciplinary action will be imposed under the disciplinary policies of the University.

I. Conviction of a Workplace Violation

Although a criminal conviction is not required to demonstrate a violation of Policy 5-113 or this Rule 5-113A, a staff member who is convicted in a court of law of a crime that constitutes a violation of Policy 5-113 or this Rule 5-113A occurring in the work place must, in accordance with the 'Drug Free Workplace Act' of 1988, provide notification of the conviction to the Division of Human Resources within five (5) days of the conviction. Failure to do so may result in immediate dismissal of the staff member. The University will notify the appropriate granting agency, when applicable, within ten (10) days after receiving notice of a conviction from a staff member or otherwise receiving actual notice of such conviction.

The University reserves the right to impose sanctions, including dismissal, against any staff member convicted of a crime that constitutes a violation of Policy 5-113 or this Rule 5-113A if the University considers it to be in the best interest of the University to do so. All convictions resulting from buying, selling, transferring, or trafficking in controlled substances in the workplace will be cause for termination of employment.

J. Prescription and Over the Counter Medications

A staff member undergoing medically-prescribed treatment with a controlled substance or who is self medicating with over the counter substances, which might impair the staff member's ability to work in a safe and effective manner, must report this treatment to the staff member's supervisor or to Human Resources. The supervisor will assess the staff member's ability to work and take appropriate action to ensure safe and effective operations. The supervisor will also refer the staff member to the Office of Equal Opportunity and Affirmative Action (OEO/AA) for information about rights and obligations under the Americans with Disabilities Act (ADA). Prescribed medication should be kept in its original container, which identifies the drug, date and prescribing doctor.

A staff member who fails to inform the staff member's supervisor of medical treatment that may impair the staff member's ability to work safely and who is involved in an accident or behavior that is detrimental to the University because of, or related to, that treatment, will be subject to discipline. Any staff member who qualifies for protection under FMLA, ADA, or Section 504 of the Rehabilitation Act, will receive the protection provided by law.

IV. References

Federal and State Laws related to this Policy: {cross-references to relevant statutes and regulations, including regulations of the Utah Board of Regents}

- A. [Controlled substances](#) designated by the United States Department of Justice, Drug Enforcement Administration
- B. [Procedures](#) for Transportation Workplace Drug and Alcohol Testing Programs, link:
- C. Other relevant University Policies

V. Contacts

Policy Owner: Questions about this Policy and any related Rules, Procedures and Guidelines should be directed to the Director of Employment Services.

Policy Officer: Only the Vice President for Human Resources or designee has the authority to grant exceptions to this Policy.

VI. History

Current version: Revision. 0:

Effective date: November 7, 2011.

Date approved by Academic Senate: November 7, 2011

Date approved by Board of Trustees: Trustee approval is not required for Rules.

Editorially revised April 5, 2022 to replace gender-specific pronouns.

[Background information](#)