



JUN 02 2016

TO: All Employees SGM No. 2016-04
FROM: Principal Deputy Director
SUBJECT: Interim Drug Testing Based on Reasonable Suspicion

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off duty. In a letter to all executive branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all Federal workers. The Indian Health Service (IHS) is committed to maintaining a drug-free workplace for all its employees and the patients we serve. The IHS has developed an interim policy to address concerns of suspected illegal drug use in the workplace. The purpose of this interim policy is to ensure a drug-free workplace and to provide guidance on drug testing based on a reasonable suspicion.

Reasonable Suspicion is defined by (but not limited to): direct observation of drug use or physical symptoms for drug use, abnormal conduct, a report from a reliable source, evidence that an employee has tampered with drug results, erratic behavior while at work, or evidence that the employee has used, possessed, sold, solicited, or transferred drugs while working or at work.

Attachment A, "Dealing with Suspected Drug Abuse in the Workplace," provides policy guidance to supervisors and managers on the interim process. Attachment B, "IHS Reasonable Suspicion Documentation & Testing," is required and must be utilized for documenting all information, facts, and specific circumstances that exist.

Decisions regarding "reasonable suspicion" drug testing, additional employee interviews, securing the work environment, and additional actions must be made in conjunction/consultation with the second line supervisor (concurring official), the IHS Drug Testing Program Coordinator, and the local servicing Human Resources office.

The IHS is concerned with the well-being of all employees and the patients we serve, the successful accomplishment of our mission, and the need to maintain employee productivity. The

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intent of this interim policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with Federal service.

This interim policy will remain in effect until a comprehensive drug-free workplace program is developed and implemented.

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Mary Smith

Attachments A & B

Dealing with Suspected Drug Abuse in the Workplace

All supervisors should be prepared to deal with a situation where an employee may be impaired due to the use of illegal drugs or substances. Although these situations are not common, knowing what to do is important. These situations could become highly charged as an impaired person may not be a rational person. Documentation of observations and responses is critical. When investigating a potential situation involving possible drug use, “reasonable suspicion” testing may be indicated.

Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
2. A pattern of abnormal conduct or erratic behavior;
3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking (There must be nexus between off-duty misconduct and employee’s official duties);
4. Information provided either by reliable and credible sources or independently corroborated; or,
5. Newly discovered evidence that the employee has tampered with a previous drug test.

Examples of reasonable suspicion include but are not limited to:

- Direct observation of drug use or physical symptoms of drug use (slurred speech, uncoordinated movement, etc.)
- Abnormal conduct
- A report from a reliable source that an employee is or appears to be under the influence of drugs
- Evidence that an employee has tampered with his/her drug results
- Erratic behavior while at work or inability to perform work
- Evidence that the employee has used, possessed, sold, solicited, or transferred drugs while working or at work

If an employee is suspected of using illegal drugs, the appropriate supervisor will gather and document all information, facts, and circumstances leading to and supporting this suspicion. The attachment “IHS Suggested Reasonable Cause/Reasonable Suspicion Documentation” should be utilized as a format for documenting the specific circumstances that exist. Any witnesses should be asked to provide documentation. The second line supervisor becomes the concurring official, who must be immediately consulted.

Decisions regarding “reasonable suspicion” drug testing, additional employee interviews, securing the work environment, and additional actions must be made in conjunction/consultation with the second line supervisor (concurring official) and the Servicing Employee Relations Specialist.

If the employee refuses to take the drug test:

The supervisor has to question the employee about why s/he doesn't want to take the drug test. No matter what answer the employee gives, the supervisor must document that s/he asked the question and what the employee's response was and any additional information/explanation provided by the employee.

If the matter giving rise to the requested drug test was based on the supervisor's observations and/or any witnesses' observations of the employee's conduct, performance or behavior, the supervisor must provide a written statement as well as secure witness statements as to the behavior or demeanor of the employee giving rise to the concern. These statements must be as specific as possible (i.e. lack of coordination, slurred speech, incoherent conversation(s), confusion, etc.). Statements such as "not right" or "odd" will not suffice. The supervisor needs to exercise great diligence in documenting the behavior of the employee.

Based on the information obtained above, the supervisor must contact their appropriate employee relations specialist for guidance and advice. In determining what action to take, the Douglas Factors must be addressed.

If the employee agrees to the drug test and "passes":

There is no longer basis for any action based on drug use, but there may still remain a basis for action based on the employee's conduct or performance. The supervisor needs to discuss with the employee the employee's actions that led the supervisor to suspect drug use. Employee relations guidance is critical to the supervisor taking the appropriate action and the supervisor must consult with the appropriate employee relations specialist.

If the employee agrees to the drug test and is found positive for drugs:

If the person is responsible for direct patient care, the employee should be removed from patient care responsibilities immediately.

The appropriate disciplinary action, if applicable, will depend on the nature of the position (e.g. patient care or admin) and the severity of the offense. The supervisor must work with their appropriate employee relations specialist to guide and provide assistance to the supervisor.

Reasonable Suspicion Testing Form

Please record the following information to document your reasonable cause/reasonable suspicion test determination.

Employee's Name (Last, First, Middle Initial): _____
Job Title: _____
Location of Incident: _____ Date: _____ Time Observed: _____
Supervisor's Name: _____

When completing this document, list all observations you noticed. Be as specific as possible including names of employees/witnesses, when and where you noticed these behaviors occurring, what the employee was doing at the time and any witnesses of these events.

Once the observations are documented, the supervisor should immediately meet with the second line supervisor (concurring official), and make a decision as soon as possible on whether or not the employee should be further interviewed and whether or not to send the employee for reasonable suspicion testing. If the decision is to send the employee for testing, this form is then to be submitted to the Director, Division of Personnel Security and Ethics, IHS. Testing will be in accordance with HHS drug testing procedures.

1. Was the employee arrested or convicted for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking? Yes: ____ No: ____

2. If based on direct observation, describe how you became aware that this employee was suspected of impaired behavior and exactly what information was provided, any witnesses (request documentation from each witness), the response from the employee when interviewed, etc.

3. If not direct observation, was information provided either by reliable and credible sources or independently corroborated? (Documentation required) Yes: ____ No: ____

4. Was there any newly discovered evidence that the employee has tampered with a previous drug test? Yes: ____ No: ____

Observations (Please check all that apply, and include descriptions of unusual behavior)

Appearance:

- | | | | |
|---|--|--|---|
| <input type="checkbox"/> Normal | <input type="checkbox"/> Tremors/ Twitches | <input type="checkbox"/> Flushed or Pale | <input type="checkbox"/> Dilated Pupils |
| <input type="checkbox"/> Sleepy | <input type="checkbox"/> Sores/ Puncture Marks | <input type="checkbox"/> Heavy Eyelids | <input type="checkbox"/> Bloodshot eyes |
| <input type="checkbox"/> Disheveled
below) | <input type="checkbox"/> Excessive Sweating | <input type="checkbox"/> Cleanliness | <input type="checkbox"/> Other (explain |

Description/Notes: _____

Behavior/ Demeanor:

- | | | | |
|------------------------------------|-----------------------------------|--|---|
| <input type="checkbox"/> Nervous | <input type="checkbox"/> Erratic | <input type="checkbox"/> Mood Swings | <input type="checkbox"/> Lethargic |
| <input type="checkbox"/> Irritable | <input type="checkbox"/> Paranoid | <input type="checkbox"/> Verbally/Physically Abusive | <input type="checkbox"/> Highly Excited |

IHS Reasonable Suspicion Documentation & Testing

- Confusion/Inattentive Combative Fatigue/ Sleeping/ Drowsiness Other (explain below)

Description/Notes: _____

Motor Skills:

- Normal Swaying Falling Unbalanced Other (explain below)
 Unsteady Lack of Coordination Fidgety Stumbling

Description/Notes: _____

Speech:

- Normal Slurred Loud Other (explain below)
 Incoherent Exaggerated Talking Excessively

Description/Notes: _____

Odor:

- Normal Smell of Alcohol Excessive Cologne
 Body Odor Smell of Marijuana Other (explain below)

Description/Notes: _____

Referred for Testing: Yes No

Comments: _____

Supervisor's signature certifies the accuracy that the answers given on this questionnaire are to the best of his/her knowledge and belief.

Supervisor's Name: (print) _____ Supervisor Signature: _____

Supervisor's Title: _____

Office Telephone Number: _____ Office Address: _____

Concurring Supervisor's printed Name: _____

Concurring Supervisor's signature: _____ Date: _____

IHS Drug Testing Program Coordinator Review:

Review By: _____ Date: _____