

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
349**

**EMPLOYEE/APPLICANT ALCOHOL AND DRUG TESTING**

**Supersedes:** AR 349 (06/17/12); (Temporary, 04/07/14); 09/16/14; (Temporary, 07/20/17)  
**Effective Date:** 8/30/17

**AUTHORITY**

NRS 284.406; 284.4061; 284.4062; 284.4063; 284.4064; 284.4065; 284.4066; 284.4067; 284.4068;  
284.4069; 284.407 NAC 284.653; 284.880 – 284.894; NAC 284.888

**PURPOSE**

To establish the Department of Corrections regulation concerning alcohol and drug testing/screening of department employees, when probable cause or reasonable suspicion is present, to ensure a drug-free work environment for the safety of inmates and staff.

**RESPONSIBILITY**

The Deputy Director of Support Services is responsible for the operational administration of this regulation.

The Human Resource Administrator is responsible to ensure implementation of this regulation.

All Department employees shall comply with the provisions of this regulation.

The Human Resources Division will be responsible to maintain alcohol/drug testing records.

**349.01 DRUG TESTING PROCEDURES FOR APPLICANTS**

1. Nevada Revised Statutes (NRS) require post-offer/pre-employment testing of applicants for positions designated by the State Personnel Commission as affecting public safety.
2. Applicants shall submit to a screening test to detect the general presence of a controlled substance unless they are currently employed in a designated public safety position at the time of application.
3. Upon completion of the interview process, and pursuant to AR 300, the Warden/Division Head shall forward the hiring recommendation packet to the Human Resources Division.
4. Upon approval of the hiring packet, the Human Resources Division shall issue a written conditional offer of employment to the candidate.
5. The applicant must complete and sign the Alcohol/Drug Test Consent Form (DOC-1004/TS-76) prior to testing. The original consent form is retained by the Human Resources Division.
  - A. Applicants will be referred to one of the contracted drug testing collection sites.

*(Locations will be given during hiring process)*

- B. Should the applicant refuse to sign the consent form or to take the test, the applicant will be advised their refusal will constitute withdrawal of the job offer.
  - C. The applicant must be informed that completion of the alcohol/drug test is required within 24 hours of conditional offer. Should the applicant not complete the test within the required 24 hours, it will constitute a withdrawal of the job offer
- 6. Test results will be returned to the Human Resources Division.
  - 7. The Department shall consider the results of the screening test when determining whether to employ an applicant.
    - A. The appointing authority shall not hire an applicant who tests “positive” for illegal controlled substances.
  - 8. The results of the screening test are confidential and will be securely maintained by the Human Resources Division. Screening tests must not be disclosed to anyone, except as provided in NRS 284.4068.

**349.02 EMPLOYEE-REASONABLE SUSPICION TESTING**

- 1. The Shift Supervisor, Warden, Assistant Warden or Division Head shall determine the need for alcohol and/or drug testing of employees based on objective facts of an employee’s workplace performance behaviors: speech, appearance, odor and/or incidents causing a supervisor to reasonably suspect an employee is under the influence while on duty or upon reporting to duty.
- 2. If there is reasonable belief an employee is impaired, the appointing authority or designee must complete a Report Form for Suspected Alcohol/Drug Impairment (TS-77)-and an Alcohol/Drug Test Consent Form (DOC-1004/TS-76) prior to administration of the test.
  - A. Forms may be obtained from the Stewart Shared Drive/Human Resources Forms.
  - B. The employee should be relieved of duty and quietly removed to a private area away from the work site.
  - C. A second supervisor should be present to objectively observe and evaluate behavior.
  - D. The employee must be informed of the specific facts supporting the belief and a written record of the specific facts must be prepared on the report form (TS-77).
  - E. The employee shall be advised whether they will be tested for alcohol, drugs or both.
  - F. If employee agrees, the employee shall sign the Alcohol/Drug Test Consent Form (DOC 1004/TS-76). Notice shall be provided to the employee that failure to agree to the alcohol/drug testing is treated as a positive result.
  - G. Complete forms necessary for the type of testing and contact law enforcement or transport the employee to the collection site with another supervisor of the same gender as the employee.

3. Human Resources shall be informed of the testing and the original TS-77 and DOC-1004/TS-76 forms shall be forwarded and retained by the Human Resources Division.

A. A copy of the TS-77 should be given to the employee.

B. A copy of the DOC-1004/TS-76 should be given to the employee and a copy is delivered to the collection site at the time of collection.

4. If the employee refuses to sign the consent form (DOC-1004/TS-76) or submit to the screening test, the employee shall be advised their refusal may result in dismissal. Such refusal should be noted on the form, witnessed and arrangements should be made for the safe transportation of the employee to their home. Should the employee insist on driving home, the employee shall be advised the Nevada Highway Patrol or other local law enforcement personnel will be notified.

5. The cost of any return to duty testing and counseling services will be at the expense of the employee.

6. An employee who does not pass a return to duty test will be subject to disciplinary action, up to and including termination.

7. An employee testing positive on an alcohol and/or drug screening test for a second time within a five-year period may be summarily terminated at the discretion of the appointing authority.

8. The results of the screening test are confidential and will be securely maintained by the Human Resources Division. Screening tests must not be disclosed to anyone, except as provided in NRS 284.4068.

9. Drug testing will be done at a collection site (see *Stewart Shared Drive/Human Resources Forms/Collection Sites*).

### **349.03 POST ACCIDENT TESTING**

1. During the performance of duties, employees involved in a motor vehicle accident causing bodily injury to himself or another person, substantial damage to property causing more than \$500 worth of damage, or reckless/careless operation of a motor vehicle causing two property accidents within a one-year period will result in alcohol and/or drug testing.

2. Testing for alcohol and/or drugs under post-accident conditions utilizes the following forms located in the commercial vehicle:

A. Alcohol/Drug Testing Consent Form (DOC-1004)

B. Chain of Custody lab form.

3. Testing for post-accident reasons, the employee and agency will be required to follow the procedures outlined in 349.04, 349.05, 349.06 and 349.07 as applicable.

4. It will be considered a positive test result if the employee: refuses to test; will not sign the required forms; or refuses to cooperate in the testing process in such a way that prevents completion of the test.

5. Any exceptions to this process shall be approved by the Director or Deputy Director.

#### **349.04 ALCOHOL BREATH TESTING FOR EMPLOYEES**

1. The forms utilized for alcohol breath testing are:

- A. Report Form for Suspected Alcohol/Drug Impairment (TS-77).
- B. Alcohol/Drug Testing Consent Form (DOC-1004/TS-76).
- C. NDOC Alcohol Test Request Form (DOC-1099).
- D. These forms may be obtained from the Stewart Shared Drive/Human Resources Forms.

2. ALCOHOL TEST ONLY (**two (2) options**)

- A. Call Nevada Highway Patrol (see *Stewart Shared Drive/Human Resources Forms/Collection Sites*) for contact information) and use the TS-69 form.

**OR**

- B. Take employee to a collection site (see *Stewart shared drive/Human Resources Forms/Collection Sites*) and use the NDOC Alcohol Test Request form (**DOC 1099**).

In rural areas with no collection sites capable of performing breath alcohol testing or if after hours, the breath alcohol test can be performed by law enforcement (see **Stewart Shared Drive/Human Resources/Collection Sites (back two pages)**) or the employee can be taken to a collection site for a blood alcohol test.

3. A confirmatory alcohol breath test must be conducted immediately following receipt of a positive preliminary test. If a blood draw is done, no confirmatory test is necessary.

- A. Transportation to the testing site may be provided by NHP or a designated employee of NDOC.
- B. A Supervisor, Warden, Assistant Warden or Division Head must accompany the employee to the confirmatory test site.
- D. The Supervisor, Warden, Assistant Warden or Division Head is responsible for providing appropriate transportation home following the completion of the testing.
- E. Employee should be placed on administrative leave pending the result(s).
- F. An employee must not have a concentration of alcohol in his/her breath greater than .02 gram upon reporting to, or while on duty, or have a positive reading of alcohol concentration from a blood test.
- G. Should a screening test indicate the concentration of alcohol is greater than .02 gram, the employee will be subject to disciplinary action.

H. The Human Resources Division shall provide the employee with written results within three (3) working days of receipt of the results.

I. The employee will then be placed on sick leave or leave without pay and mandatorily referred to the Employee Assistance Program (EAP) as described under AR 349.06.

J. Upon clearance from a licensed or certified counselor who has training or experience in substance abuse treatment, the employee must submit to and pass a return to duty alcohol screening test.

K. If both Drug & Alcohol tests are needed, it is recommended the alcohol testing be performed before the drug testing.

### **349.05 DRUG TESTING FOR EMPLOYEES**

1. Screening tests for controlled substances must be conducted by the State contracted medical laboratory.

2. The forms utilized for testing for controlled substances are:

A. Report Form for Suspected Alcohol/Drug Impairment (TS-77).

B. Alcohol/Drug Testing Consent Form (DOC-1004/TS-76).

C. Chain of Custody lab form. May be obtained from the Department Head or Human Resources.

3. The employee shall be advised, when completing the consent form, DOC-1004, pertinent information relevant to medication legally taken by the employee should be noted on the form and will be considered by the Medical Review Officer (MRO) when assessing a positive test.

4. Take employee to a collection site (see *Stewart shared drive/Human Resources Forms/Collection Sites* for contact information) and use a chain of custody form (see your Department Head for this form). The Supervisor, Warden, or Division Head shall arrange transportation and accompany the employee to the collection site

5. After an employee submits to a screening test, the employee should be placed on administrative leave and transported home.

A. The employee should be informed that, while on administrative leave, they must be readily available for department contact during normal work hours, (Monday through Friday, 8:00 a.m. until 5:00 p.m.).

6. The Human Resources Division shall provide the employee with written results of the screening test within three working days after receipt of the results.

A. An employee who fails a drug test has 72-hours upon receipt of notice to provide proof that the controlled substance was directed pursuant to a current and lawful prescription issued in his name.

B. The employee shall also be provided an opportunity to have the same sample tested by a certified laboratory of their choice and at their expense.

7. An employee who tests positive for a controlled substance will be subject to disciplinary action up to and including termination. The Nevada Department of Corrections controlled utilizes the list of federally listed Schedule I drugs, to include marijuana (cannabis). Any positive result, whether or not the employee has a medical marijuana
8. An employee testing positive for drugs will be required to:
  - A. Utilize sick leave or leave without pay;
  - B. Attend a mandatory counseling referral;
  - C. Provide documentation from a licensed or certified counselor who has training or experience in substance abuse treatment that the employee is able to return to duty; and
  - D. Submit to and pass a return to duty alcohol and/or drug screening testing as determined by the appointing authority.
9. If both Drug & Alcohol tests are needed, it is recommended the alcohol testing be performed before the drug testing.

#### **349.06 EMPLOYEE ASSISTANCE PROGRAM**

1. Employees testing positive for alcohol and/or drugs for the first time and who have committed no other acts of misconduct for which they may be subject to termination will require a mandatory referral to the Employee Assistance Program (EAP) and successful completion of a drug and alcohol diversion treatment program, prior to returning to work.
2. The Human Resources Division will contact the contracted EAP vendor of employee referral.
  - A. Human Resources Division will present the employee with an EAP referral memo and the EAP vendor's release of information form for signature.
  - B. Employee is required to contact EAP vendor within 48 hours of receipt of referral memo to schedule an appointment with a local counselor.
  - C. Employee may be subject to disciplinary action if he fails to contact the contracted EAP vendor within the required time period.
  - D. If the employee and employer agree, the employee may (in writing) agree to complete the EAP program prescribed for them and to participate in random testing by the department, in exchange for the ability to return to work.
3. The employee shall provide evidence to the Human Resources Division of their consultation with EAP and any recommended plan of treatment within five working days after the date of the initial consultation.
  - A. Employees referred to a rehabilitation program shall provide monthly updates on treatment progress.

B. Employees completing a rehabilitation program shall provide evidence of completion within five working days of completion of the program.

4. Refusal to attend or provide evidence of consultation to the employee assistance or failure to complete a rehabilitation program successfully will cause the employee to be subject to disciplinary action, up to and including termination.

### **349.07 RANDOM DRUG TESTING FOR CENTRAL TRANSPORTATION DRIVERS**

#### **349.07.1 PROHIBITED CONDUCT**

1. All Central Transportation drivers:

A. Shall not report for duty or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of .01 gram by weight or greater.

B. Shall not be on duty or operate a commercial motor vehicle while the driver possesses alcoholic beverages such as beer, wine or distilled spirits.

C. Shall not consume any beverage, mixture or preparation, (including any medication), containing alcohol, while operating a vehicle or performing safety sensitive functions.

D. Shall not perform safety sensitive functions within four hours after consuming alcohol.

E. Shall not refuse to submit to an alcohol and/or drug test for post-accident, random, reasonable suspicion (NAC 284.882), or follow-up testing.

F. Shall not report for duty, or remain on duty when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance does not adversely affect the driver's ability to operate a motor vehicle.

G. Shall not fail to report any therapeutic drug use.

H. Shall not report for duty, remain on duty or perform a safety sensitive function if the driver tests positive for a controlled substance.

2. Supervisors shall prohibit drivers from performing or continuing to perform their duties as a Central Transportation driver if they have actual knowledge or reasonable suspicion that the driver is in direct violation of the prohibitions.

A. All Central Transportation drivers will be subject to random alcohol or drug testing.

B. Drivers randomly selected for alcohol breath testing will be tested immediately before, during, or just after the driver has ceased performing safety-sensitive functions.

C. The minimum annual percentage rate for random alcohol breath testing shall be 10% of the average number of driver positions.

D. The minimum annual percentage rate for drug testing shall be 50% of the average number of driver positions.

E. The random selection process will be performed by the Department Personnel Division on a quarterly basis.

- (1) Random selections will be unannounced and spread reasonably throughout the year based on the annual percentage required to be tested.
- (2) Random selection, by its very nature, may result in a driver's being selected in successive selections more than once in a calendar year.
- (3) Alternatively, some drivers may not be selected in a calendar year.

3. The supervisor will be notified to either send the employee to the Personnel Division or will be notified of a time and date that the State contracted vendor will come to Central Transportation to perform the testing.

A. Each driver shall complete an Alcohol/Drug Testing Consent Form DOC-1004.

- (1) Drivers randomly selected to perform an alcohol breath test shall complete a Driver Authorization for Release of Test Results Performed by Law Enforcement Agency (DOC-10106).
- (2) The supervisor will be required to contact law enforcement agency and/or transport employees randomly selected to perform alcohol breath testing to confirmatory site as provided on attachment 006-007.

B. Drivers randomly selected for drug testing will proceed immediately to the contracted medical laboratory for screening or will be tested on-site by the State contracted Vendor, at the discretion of Human Resources.

- (1) The Personnel Division shall provide a DOT Chain of Custody lab form to the employee for drug testing.

C. If the driver engages in conduct that does not lead to a collection as soon as possible after notification, such action will be considered a refusal to test.

D. If a driver tampers with, dilutes, or otherwise changes a sample in order to cause inaccurate results, his actions will be considered a refusal to test.

E. If a driver is absent from work, the driver must submit to testing immediately upon returning to work.

4. The Department will be responsible for the cost incurred for all random testing.

#### **349.08 COLLECTION SITES FOR CONTROLLED SUBSTANCE TESTING AND CONFIRMATION TEST SITES FOR ALCOHOL TESTING**

1. See *Stewart Shared Drive/Human Resources Forms/Collection Sites* and use a chain of custody form (see your agency HR for this form) for drug testing and NDOC Alcohol Test Request Form (DOC 1099) for alcohol testing.



## REFERENCES

ACA 4<sup>th</sup> Edition: 4-4063; 4-4067; 4-4071

## APPLICABILITY

1. This regulation applies to all Department employees.
2. This regulation requires an Operational Procedure from the Human Resources Division.
3. This regulation does not require an audit.

  
James Dzurenda, Director

8/30/17  
Date