

Kansas Administrative Regulations

Department of Administration

Article 9.—Hours; Leaves; Employee-Management Relations

1-9-19a. Drug screening test for certain employees.

(a) Any employee holding one of the following positions may be required to submit to a drug screening test in accordance with K.S.A. 75-4362, and amendments thereto, based upon reasonable suspicion of illegal drug use by that employee:

(1) Any safety-sensitive position;

(2) any position in an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, that is not a safety-sensitive position;

(3) any position in the Kansas state school for the blind, as established under K.S.A. 76-1101 *et seq.*, and amendments thereto;

(4) any position in the Kansas state school for the deaf, as established under K.S.A. 76-1001 *et seq.*, and amendments thereto; and

(5) any employee of a state veteran's home operated by the Kansas commission on veteran's affairs, as described in K.S.A. 76-1901 *et seq.* and K.S.A. 76-1951 *et seq.*, and amendments thereto.

(b)(1) "Safety-sensitive position" shall be defined as provided by K.S.A. 75-4362(g), and amendments thereto.

(2) "Reasonable suspicion" means a judgment, supported by specific, contemporaneous, articulable facts or plausible inferences, that is made regarding the employee's behavior, appearance, or speech or supported by evidence found or reported that indicates drug use by the employee. Reasonable suspicion may be based on one or more of the following:

(A) An on-the-job accident or occurrence in which there is evidence to indicate any of the following:

(i) The accident or occurrence was in whole or in part the result of the employee's actions or inactions;

(ii) the employee exhibited behavior or in other ways demonstrated that the employee may have been using drugs or may have been under the influence of drugs; or

(iii) a combination of the factors specified in paragraphs (b)(2)(A)(i) and (ii) is present;

(B) an on-the-job incident that could be attributable to drug use by the employee, including a medical emergency;

(C) direct observation of behavior exhibited by the employee that could render the employee unable to perform the employee's job, in whole or part, or that could pose a threat to safety or health;

(D) information that has been verified by a person with the authority to determine reasonable suspicion and that indicates either of the following:

(i) The employee could be using drugs or is under the influence of drugs, and this circumstance is affecting on-the-job performance; or

(ii) the employee exhibits behavior that could render the employee unable to perform the employee's job or could pose a threat to safety or health;

(E) physical, on-the-job evidence of drug use by the employee or possession of drug paraphernalia;

(F) documented deterioration in the employee's job performance that could be attributable to drug use by the employee; and

(G) any other circumstance providing an articulable basis for reasonable suspicion.

(c) Any appointing authority may ask any employee in a position specified in subsection (a) to submit to a drug screening test under the circumstances of reasonable suspicion as a condition of employment. Refusal to comply with this requirement shall be considered the equivalent of receiving a confirmed positive result for referral or disciplinary purposes.

(d) Each employee required to submit to a drug screening test shall be notified of that requirement in writing and shall be advised of all of the following aspects of the drug screening program:

(1) The methods of drug screening that may be used;

(2) the substances that can be identified;

(3) the consequences of a refusal to submit to a drug screening test or a confirmed positive result; and

(4) the reasonable efforts to maintain the confidentiality of results and any medical information that are to be provided in accordance with subsection (k).

(e) Drug screening tests may screen for any substances listed in the Kansas controlled substances act.

(f) Any employee who has reason to believe that technical standards were not followed in deriving the employee's confirmed positive result may appeal the result in writing to the director within 14 calendar days of receiving written notice of the result.

(g) A retest by the original or a different laboratory on the same or a new specimen may be authorized by the director, if the director determines that the technical standards established for test methods or chain-of-custody procedures were violated in deriving a confirmed positive result or has other appropriate cause to warrant a retest.

(h) An employee who receives a confirmed positive drug screen result shall be subject to dismissal in accordance with K.S.A. 75-2949d and K.S.A. 75-4362, and amendments thereto as follows:

(1) Except as provided in paragraph (2) of this subsection, the employee shall not be subject to dismissal solely on the basis of the confirmed positive result if the employee has not previously had a confirmed positive result or the equivalent and the employee successfully completes an appropriate and approved drug assessment and recommended education or treatment program.

(2) The employee shall be subject to dismissal if the employee is a temporary employee, is in trainee status, or is on probationary status at the time the employee is given written notice of the drug screen requirement.

(3) The employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee fails to successfully complete an appropriate and approved drug assessment and recommended education and treatment program.

(4) The employee shall be subject to dismissal, in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed positive result or the equivalent.

(5) This regulation shall not preclude the appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, for other circumstances that occur in addition to a confirmed positive result and that are normally grounds for discipline.

(i) Each employee who intentionally tampers with a sample provided for drug screening, violates the chain-of-custody or identification procedures, or falsifies a test result shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto.

(j) If the result of a drug screening test warrants disciplinary action, an employee with permanent status shall be afforded due process in accordance with K.S.A. 75-2949, and amendments thereto, before any final action is taken.

(k)(1) All individual results and medical information shall be considered confidential and, in accordance with K.S.A. 75-4362, and amendments thereto, shall not be disclosed publicly. Each employee shall be granted access to the employee's information upon written request to the director.

(2) Drug screening test results shall not be required to be kept confidential in civil service board hearings regarding disciplinary action based on or relating to the results or consequences of a drug screen test.

(3) Each appointing authority shall be responsible for maintaining strict security and confidentiality of drug screening records in that agency. Access to these records shall be restricted to the agency's personnel officer or a designee, persons in the supervisory chain of command, the agency's legal counsel, the agency's appointing authority, the secretary of administration or a designee, the department of administration's legal counsel, and the director or a designee. Further access to these records shall not be authorized without the express consent of the director.

(l) This regulation shall be effective on and after June 5, 2005.

(Authorized by K.S.A. 75-3706, K.S.A. 2004 Supp. 75-3747, and K.S.A. 2004 Supp. 75-4362; implementing K.S.A. 2004 Supp. 75-2949, K.S.A. 75-2949f, 75-3707, and K.S.A. 2004 Supp. 75-4362; effective, T-1-10-28-88, Oct. 28, 1988; effective Dec. 19, 1988; amended Feb. 19, 1990; amended April 13, 1992; amended May 31, 1996; amended Oct. 1, 1999; amended June 5, 2005.)

***** Authenticated Kansas Administrative Regulation *****