

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-3

Urgent Routine

AGENDA DATE June 2, 2015

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the Revised Drug Free Workplace Policy

STAFF RECOMMENDATIONS:

Approve the revised Drug Free Workplace Policy

FISCAL IMPACT:

There is no fiscal impact associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2015-237

On motion of Supervisor Monteith, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, De Martini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Stanislaus County's Drug Free Workplace policy was first adopted by the Board of Supervisors on October 23, 1990 in order to assure compliance with the Drug Free Work Place Act of 1990. At the time of adoption Federal regulations had recently been enacted that required employers who receive financial assistance (grants) from the Federal government to take specific actions to maintain a Drug Free Work Place and to eliminate substance abuse and its effects in the work place. The County's Drug Free Work Place policy provides guidelines for the detection and deterrence of alcohol and drug abuse and outlines the responsibilities of County Managers and employees.

While the policy continues to meet the standards of the Federal Government's Drug Free Work Place Act, the County recognized a need to revise and update this policy to assure it was compliant with the American with Disabilities Act (ADA). The ADA, which was implemented in 1991 and revised in 2010 and 2011, restricts what medical information can be requested from an employee and language has been added to the County policy to assure medical information is not improperly requested from employees by managers or supervisors.

The revised policy clarifies expectations for employees taking prescribed or over-the-counter medications to consult with the prescribing physician and/or pharmacist and/or the medication label to ascertain whether the medication may interfere with the ability to safely and effectively perform his or her job. If the use of a medication could compromise the safety of the employee, fellow employees, or the public, it is the employee's responsibility to notify the supervisor or manager (e.g., call in sick, use leave, request change of duty) to avoid any unsafe workplace practices.

The policy also reaffirms the County's commitment to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as disabled under Federal and/or State law. The County is also committed to providing reasonable accommodation to employees who use lawfully prescribed medication(s) to treat or control a disability and who may need an accommodation because of the side effects of the medication(s).

The County policy still allows for an employee to be sent for alcohol and/or drug testing if the County has probable cause an employee is intoxicated or impaired by drugs or alcohol while on the job or receiving compensation for on-call and is not physically and/or mentally able to perform the duties of his/her position.

The County continues to maintain a voluntary Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems.

As part of the revision process, County staff met and conferred with all County labor groups over the proposed changes to the Drug Free Workplace policy. During this process labor groups provided input that provided further clarification of employees and manager's responsibilities. All County labor groups have agreed to the revised policy being recommended today.

POLICY ISSUES:

The revised Drug Free Work Place policy continues to support the Board's priority of Efficient Delivery of Public Services.

STAFFING IMPACT:

Existing staff will continue to administer the Drug Free Workplace Policy.

CONTACT: Nancy Bronstein, Chief Executive Office, 209-525-6333



**STANISLAUS COUNTY
BOARD OF SUPERVISOR'S RESOLUTION
DRUG FREE WORKPLACE POLICY**

I. PURPOSE

It is the intention of this policy to eliminate substance abuse and its effects in the workplace. While Stanislaus County does not intend to intrude into the private lives of its employees, involvement with drugs and alcohol off the job can take its toll on job performance and employee safety. Our concern is that employees are in a condition to perform their duties safely and efficiently, in the interests of their fellow workers and the public as well as themselves. The presence and influence of drugs and alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective.

Employees who think they may have an alcohol or drug usage problem are urged to voluntarily seek confidential assistance from the Employee Assistance Program. The County acknowledges that significant psychological and physical alcohol and drug dependency is an illness and pursuit of treatment by the employee is the preferable resolution to associated performance problems caused by such dependency. While the County will be supportive of those who seek help voluntarily, the County will be firm in identifying and disciplining those employees who do not seek help and are found to be impaired by drugs or alcohol during working hours.

This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of County managers and employees. To that end, the County will act to prevent the use of alcohol or drugs which impair an employee's ability to safely and effectively perform the functions of the particular job. All persons covered by this policy should be aware that violation of the policy may result in discipline up to and including termination.

In recognition of the public service responsibilities entrusted to County employees, and that drug and alcohol usage can impair an employee's ability both mentally and physically to perform the duties and functions safely and effectively, the following policy against drug and alcohol impairment is hereby adopted by the County.

II. POLICY

Definition – The term “drug” or “drugs” whenever used in this policy means any controlled substance that is not legally obtainable under State or Federal law, a prescription drug obtained or used without benefit of a valid prescription by a medical provider licensed to prescribe medications, and marijuana even if prescribed by a medical provider licensed to prescribe medications.

- Employees shall not be impaired by alcohol or drugs, nor possess alcohol or drugs at the assigned worksite. This policy also applies to employees working on-call duty.

- The illegal or unauthorized use of prescription drugs is prohibited. It is a violation of this policy to intentionally misuse and/or abuse prescription medications.
- Employees shall not sell or provide drugs or alcohol to any other employee while such employee is on duty.
- No alcoholic beverages are permitted at the assigned worksite or in County Vehicles other than at special events authorized by the Chief Executive Officer. County employees who reside on premises provided by the County shall be exempt from the restriction of this policy from possessing alcohol where they reside.
- "Probable cause" is such a state of facts as would lead a supervisor of ordinary care and prudence to believe, or to entertain an honest and strong suspicion that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee is not able to physically and/or mentally perform the duties of his or her position in a proper manner.

III. PROCESS

The County reserves the right to search without employee consent all areas and property in which the County maintains control, or joint control, with the employee. Controlled and jointly controlled areas include County vehicles, offices, desks, file cabinets, etc. Notwithstanding the above, no employee shall have his or her locker or other space for storage that is owned or leased by the County that may be assigned to him or her, searched except under one of the following conditions: in his or her presence; with his/her consent; if a valid search warrant has been obtained; or, where he/she has been notified that a search will be conducted. Employee requests to be present during the search shall be honored if the employee is able to return to the worksite within one hour of notification of the search. All such searches shall be based upon probable cause to search. Probable cause forming the basis of the search shall be provided to the employee in writing. The written document shall be given to the employee prior to the search or, if that is not possible, within twenty-four hours after the search.

Any applicable privileges or confidentiality of files or documents will be honored by the County. If the County desires to search such documents or records, or the area where such documents are located, the appropriate process for searches and seizures as defined by California law will be followed. The County may notify the appropriate law enforcement agency that an employee may have drugs in his or her possession or in an area not jointly or fully controlled by the County.

Refusal to submit immediately for drug and/or alcohol testing, based upon probable cause of drug or alcohol impairment while on duty when ordered by the Department Head or his/her designee in accordance with County Code Section 3.08.050 may constitute insubordination and may be grounds for discipline. For the purpose of this policy,

designee shall be defined as the assistant department head or other County manager who is assigned the authority to act for the Department Head during his or her absence.

Employees reasonably believed to be impaired by alcohol and/or drugs shall be prevented from engaging in further work and shall be detained for a reasonable time until they can be safely transported from the work site.

The County is committed to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as disabled under Federal and/or State law. The County is also committed to providing reasonable accommodation to employees who use lawfully prescribed medication(s) to treat or control a disability and who may need an accommodation because of the side effects of the medication(s).

The County has established a voluntary Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisors, Human Resources, or the EAP Counselor for additional information. Information about the County's EAP is also available on the County's website at <http://www.stancounty.com/riskmgmt/risk-eb-eap-sub-main.shtm>

The provisions of this policy do not act to limit or restrict in any manner a law enforcement officer's ability to enforce all appropriate state and federal laws. No department shall have any rule or policy which contravenes or which is in conflict with this Drug Free Work Place Policy.

IV. APPLICATION

This policy applies to all County employees. This policy applies to alcohol and drugs which could impair an employee's ability physically and/or mentally to effectively and safely perform the functions and duties of the employee's position.

V. EMPLOYEE RESPONSIBILITIES

- A. An employee must not report to work or be subject to duty while his/her physical and/or mental ability to perform job duties is impaired due to on or off duty alcohol or drug use.
- B. An employee must not possess drugs or alcohol as defined by this policy during working hours or while subject to duty, on breaks, or at any time while at the assigned worksite. An exception exists for those employees whose duties require possession of drugs and/or alcohol in the course and scope of job duties (i.e., undercover, narcotics investigators).
- C. An employee must not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either employee or both employees are on duty.

- D. Prescription and over-the-counter medications are not prohibited when taken in standard dosage and/or according to a physician's prescription. However, an employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist and/or the medication label to ascertain whether the medication may interfere with the ability to safely and effectively perform his or her job. If the use of a medication could compromise the safety of the employee, fellow employees, or the public, it is the employee's responsibility to notify the supervisor or manager (e.g., call in sick, use leave, request change of duty) to avoid any unsafe workplace practices. Unless the employee is working in a position affecting public safety, the employee, is not required to reveal the existence of a disability or disclose the medications the employee is taking if the employee can manage the medications through the use of leave or benefits available to all employees without formally requesting a reasonable accommodation.
- E. An employee must submit immediately to an alcohol or drug test when ordered, in writing, by a Department Head or his/her designee when probable cause exists that the employee is impaired by drugs and/or alcohol.
- F. An employee may be required to submit to a fitness for duty examination where there is a reasonable and objective belief that an employee may be impaired while on duty by prescription or over-the-counter medications that the employee is taking to treat or control a disability. The purpose of the fitness for duty examination will be limited to determining whether the employee can safely perform the essential functions of the job with or without accommodation. Such fitness for duty examinations will be conducted in compliance with the limitations set forth under State and Federal law.
- G. An employee must provide within two (2) working days of request bona fide verification of a current valid prescription in the employee's name for any potentially impairing medication identified when a drug screening/test is positive. Extensions of time beyond the two working days may be granted upon the showing of good cause. An employee must abide by the regulations of the Federal Drug-Free Workplace Act of 1988. Thus, such employees who are convicted after March 18, 1989 of any criminal drug statute for a violation occurring in the workplace must notify the Chief Executive Officer no later than five (5) days after the conviction. Once the County is notified of the conviction, the County must then notify the appropriate Federal agency of the conviction. With respect to any employee so convicted, the County will take appropriate personnel action up to and including termination. As a condition of continued employment, the County may require the convicted employee to satisfactorily participate in an approved drug abuse rehabilitation program.

VI. MANAGEMENT RESPONSIBILITIES AND GUIDELINES

- A. Department Heads or their designees are responsible for reasonable enforcement of this policy.

- B. Department Head or his/her designee may order an employee in writing to submit to an alcohol or drug test following the County's Ordered for Cause Alcohol and Drug Testing procedure including notifying the employee of their right to representation in accordance with this policy when a Department Head or his/her designee has probable cause that an employee is intoxicated or impaired by drugs or alcohol while on the job or receiving compensation for on-call duty and thereby subject to being called, and is not physically and/or mentally able to perform the duties of his/her position. Should employee be a Department of Transportation (DOT) driver acting in the course and scope of employment, the Department Head or designee should refer to DOT policy for additional information.
- C. Prior to the request for the alcohol or drug test, a Department Head or his/her designee ordering an employee to undergo an alcohol or drug test shall document in writing the facts constituting probable cause that the employee in question is intoxicated or impaired by alcohol or drugs,.
- D. Any Department Head or his/her designee encountering an employee who refuses an order to submit to an alcohol or drug test shall remind the employee of the requirements and disciplinary consequences of this policy. Where there is probable cause that the employee is then impaired by alcohol or drugs, the Department Head or his/her designee should detain the employee for a reasonable time until the employee can be safely transported home or removed to another appropriate location.
- E. Any Department Head or his/her designee shall not physically search the person of employees; nor shall they search the personal possession of employees without the freely given written consent by the employee, unless such search is authorized by County Ordinance or policy.
- F. Managers and supervisors shall notify their Department Head or designee when there is probable cause to believe that an employee may have drugs or alcohol in his or her possession or in an area not jointly or fully controlled by the County. If the Department Head or designee concurs that there is probable cause of alcohol or drug possession, the Department Head shall notify the appropriate parties, including Human Resources and County Counsel.
- G. The Department Head or his/her designee shall give due consideration to the employee's completion of any generally recognized treatment plan, including that treatment as may be recommended by the Employee's Assistance Program when determining whether disciplinary action shall be taken and/or the appropriate level of discipline.

VII. RESULTS OF DRUG AND ALCOHOL TESTING

- A. A positive result from a drug and/or alcohol test may result in disciplinary action, up to and including termination.

- B. If the alcohol or drug test is positive, the County shall conduct an investigation to gather all relevant facts. The decision to discipline or discharge will be carried out in conformance with the County's discipline procedures and policies.
- C. Testing and reporting of test results will follow the guidelines and all subsequent amendments as established by the Department of Health and Human Services as promulgated in Volume 53, No. 69 of the Federal Register and as incorporated herein and made a part of this policy by reference.

VIII. CONFIDENTIALITY

Medical or laboratory reports or test results shall not appear in an employee's general personnel file unless they result in discipline. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Chief Executive Officer/Director of Personnel or designee. The reports or test results may be disclosed to County management on a strictly need-to-know basis and to the employee upon request. Disclosures without employee consent may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and employee; (3) the information is needed by medical personnel for the diagnosis or treatment of the employee who is unable to authorize disclosure; (4) when requested by DOT or any state or local officials with regulatory authority over the County or any of its safety-sensitive employees.