

Memorandum of Agreement
on
Air Force Civilian Drug Testing Program
Implementing Procedures
and
Change 1, AFR 40-750, 22 December 1989

This agreement applies only to employees/positions in the AFLC/AFGE consolidated bargaining unit.

1. The employer agrees that, in the implementation and administration of the Air Force Civilian Drug Testing Plan (ATCDTP), it will comply with applicable laws, rules, regulations and this agreement. For purposes of this agreement, the term "rules or regulations" shall mean those rules or regulations of the Air Force and of authorities outside the Air Force; such as, the Office of Personnel Management, the Department of Health and Human Services (HHS), and other such agencies. It is understood that the Air Force Civilian Drug Testing Plan ("the Plan") is the document which implements the Air Force Civilian Drug Testing Program ("the Program").

2. The parties agree that the testing referred to in the Program by the term "drug test" means "urinalysis". The employer agrees that it is not referring to blood analysis or any other alternative form of testing at this time.

3. The Drug Testing program includes the following types of drug testing as further described in the Air Force Plan as provided to the union on 7 February 1990:

- (a) applicant testing for applicants for testing designated positions;
- (b) random testing of employees in sensitive positions identified as "testing designated positions;"
- (c) reasonable suspicion testing;
- (d) accident or safety mishap testing as described in paragraph 55a of the Air Force Plan;
- (e) voluntary testing; or,
- (f) testing as part of, or as a follow-up to, counseling or rehabilitation.

4. The employer agrees that designations of employees in "sensitive" positions identified pursuant to E.O. 12564 shall be done in accordance with applicable laws, rules, regulations, and this agreement. It is agreed that the term "employee in a sensitive position" is defined in Section 7(d) of E.O. 12561.

5. Random testing will be conducted in accordance with the Plan. Once the Employer identifies a group of positions as "sensitive", employees occupying such positions will be subject to random testing. Random testing is defined as a system of drug testing imposed without individualized suspicion that a particular individual is using illegal

drugs. Employees will be identified for random testing through a statistically random sampling based on neutral criteria. The pool from which employees will be selected for random testing will be base-wide.

6. Employees identified for drug testing will receive written notification approximately two hours in advance of the drug test. They will be notified of the following:

- (a) The reason(s) for ordering the drug test; such as random, reasonable suspicion, accident investigation, etc;
- (b) The consequences of a refusal to take the drug-test, when required;
- (c) The opportunity to justify a positive result by submitting evidence, such as a valid prescription to the Medical Review Officer;
- (d) The right to receive copies of all records and documentation related to the drug test if requested in writing.

7. The Employer agrees to use a laboratory certified by HHS and notify AFGE Council 214 in a timely manner in the event the laboratory fails to maintain its certification.

8. When an employee has been identified for a drug test, the following procedures will apply:

- (a) Upon direction of management, the employee will report to the designated location to provide a urine specimen. A handicapped employee requiring assistance will be provided such assistance.
- (b) Specimens will be provided in a sanitary area which provides the employee with reasonable privacy, (such as an enclosed restroom stall) unless direct observation is required in accordance with the Executive Order and the Plan.
- (c) Urine specimens will be analyzed and positive results verified in accordance with HHS guidelines. Verification will include providing the employee the opportunity to submit evidence to justify the "positive" test determination, such as submittal of personal physician's statements, prescriptions, etc, or reasonable evidence of indirect or accidental ingestion of the suspected illegal drug.
- (d) A confirmed positive drug test may result in a number of Employer decisions or options. These may include leaving the affected employee in the assigned position (unless the position is a testing designated Position), temporarily assigning the employee to other duties, placing the employee on approved leave or leave without pay, or placing the employee in some other appropriate status. Employees who are assigned to other positions or granted leave may return to their original position if it is determined by the local Commander that they can satisfactorily perform the duties of the position, would not pose a danger to public health or safety or national security, and would not have a detrimental effect on the mission.

9. All drug testing information specifically relating to an individual is confidential and will be treated as such:

- (a) All samples (urine specimens) will be subject to strict chain of custody procedures in accordance with the Plan.
- (b) Within the requirements of law and regulation employees will be assured confidentiality in all matters relating to drug testing. Information will be released only to those officials of the Employer who have a need to know.
- (c) A drug test, which has not been confirmed as positive in accordance with HHS guidelines, will not be used as a basis to propose any disciplinary action.
- (d) Employee records pertaining to drug testing will be maintained and destroyed in accordance with the Plan.

10. An employee whose test has been confirmed positive may be referred to the installation substance abuse control counselor for a substance abuse evaluation, and:

- (a) The employee will be provided referral information on counseling and rehabilitation services in the local community. Employees will be informed of the consequences should they refuse counseling or rehabilitation. Employees will be encouraged to review their health benefits plans to determine whether drug treatment, counseling, and rehabilitation are covered.
- (b) Referral information on counseling and rehabilitation services in the local community will be provided to family members upon request.
- (c) Employees may be returned to duty after successful completion of rehabilitation in accordance with paragraph 8 (d) of this Agreement. Such employees will be subject to follow-up testing for one year.
- (d) Any costs associated with the employee's rehabilitation will be borne by the employee.

11. No employee will be required to sign any document associated with the drug testing program stating that he or she agrees with the Program when, in fact, he or she does not agree with it. This does not preclude employees being required to sign documents agreeing to comply with the Program: and which inform the employee of the consequences of refusing to cooperate in the Program.

12. The employee will be on official time during urine sample (specimen) collection at the installation collection site and during any discussion with the Medical Review Officer (MRO) referred to in the Plan.

13. The Employer will not coerce or require employees to participate in voluntary programs established under Section 3 (b) of E.O. 12564. Participation or non-participation in these programs will be neither an advantage nor a disadvantage to employees.

14. Disciplinary action will not be initiated against an employee who, during the "Safe Harbor" period:

- (a) voluntarily identifies himself/herself as a user of illegal drugs prior to being identified through Other means,
- (b) completes counseling or rehabilitation,
- (c) agrees to and signs a "Last Chance" agreement, and
- (d) thereafter refrains from using illegal drugs.

Such employees will be subject to follow-up drug testing for a period of one year following their return to duty.

15. An employee considering whether to self-identify during the 30-day notice period is entitled to discuss this issue with a representative prior to making such a decision. The representative and the employee will be entitled to a reasonable amount of official time during their discussions, and in any discussions with management relative to this issue during the 30-day notice period.

16. As they are used in the Program, the following terms are defined as follows:

- (a) other appropriate administrative determination; Any administrative procedure where the preponderance of evidence gathered indicates the employee uses illegal drugs; such as, Office of Special Investigations (OSI) reports, court testimony, court convictions, etc;
- (b) examination authorized by the Air Force regarding an accident or unsafe practice: An investigation authorized by the Air Force regarding an accident or mishap which is classified as a Class A, B, C or nuclear mishap as defined in AFR 127-4. These classifications are based on total dollar cost of damage or the degree of injury or occupational illness;
- (c) follow-up to counseling or rehabilitation for illegal drug use: Follow-up testing conducted for an employee counseled by Social Actions (Employee Assistance Program) and returned to an Air Force position (due to administrative determination that the employee's usage was less serious or threatening; e.g., possibly not yet addicted) and employees who have undergone rehabilitation (following an administrative determination that the employee's usage of an illegal drug was more serious and that addiction was probably present) and who have been returned to an Air Force position;
- (d) special testing categories: Testing designated positions (TDP);
- (e) detailed explanation: The information contained in the 30-day notice to employees;
- (f) random selection: Defined in paragraph 5 of this agreement;

(g) approved contract facility using "state-of-the-art" procedures: A laboratory approved by the Department of Health and Human Services (HHS).

17. The Parties agree that the procedures and cutoff values for the initial test (immunoassay) and the confirmatory test (gas chromatography/mass spectrometry) will conform to the HHS guidelines.

18. When direct observation is required, an observer of the same sex will observe the employee urinate into the specimen bottle. Direct observation will be required under the circumstances outlined in paragraph 57 of the Plan.

19. Confidentiality of test results will be maintained as described in paragraph 62 of the Plan.

20. Air Force officials responsible for providing counseling or rehabilitation referral information are located in the Social Actions Office. A "management official" is described as any supervisor or manager whose duties necessitate review of the test results in order to process an action involving the employee.

21. Management will not force any employee to enter into a "last chance agreement", but may offer one where appropriate.

22. Management will not refuse counseling or referral for rehabilitation to any employee requesting it.

23. All specimens which have been verified as "positive" will be stored and maintained at the laboratory in accordance with the HHS guidelines.

24. After the specimen is obtained, the container will be sealed, positively identified, and properly packaged for shipment. The employee will participate as a witness to these procedures.

25. Positive test results, verified by the Medical Review Officer (MRO), will be disclosed to the employee. Copies of all records and documentation related to the drug test will be provided upon written request.

26. All releasable medical and rehabilitation records related to drug testing under the control of the Air Force will be disclosed to the employee. Copies of these records will be provided upon written request.

27. The "Safe Harbor" provision of the Plan will be administered in accordance with paragraph 14 of this Agreement.

28. Employees will have an opportunity to provide documentation to the Medical Review Officer supporting legitimate drug usage upon a positive test result. The Medical Review Officer will not reject an employee's documentation without providing some written justification or explanation for doing so on the reverse side of the chain of custody document.

29. AFGE Council 214 will be notified of any changes (additions or deletions) to the Testing Designated Positions in the bargaining unit identified in Appendix A of the Plan provided to the Union on 7 February 1990.

30. AFGE Council 214 will be informed in writing on a quarterly basis of the number of employee appeals, and their disposition, of any Testing Designated Positions believed to be "wrongly" designated.

31. Last chance agreements as utilized during the Safe Harbor period will concern only drug related offenses. When entering into a last chance agreement under the Safe Harbor provision, the employee waives no rights granted under the MLA.

32. Reasonable accommodation to the known physical or mental limitations of a "qualified handicapped" employee must be made unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the Employer's programs. Short-term counseling, referral, or offers of such, satisfies the obligation to provide prevention, treatment and rehabilitation programs and services for employees with alcohol and drug problems.

33. Any evidence of alcohol or drug addiction submitted by an appellant to show that he or she suffers from a handicapping condition of substance abuse will be shown only to personnel with a need to know.

34. The Employer agrees to publish an article informing employees of the implementation of the Air Force Civilian Drug Testing Program. This article will discuss possible penalties for drug abuse and will recognize the agreement reached with AFGE Council 214 in accordance with the Labor Relations Statute. The article written by HQ AFLC will be provided to AFGE Council 214 for prepublication review.

35. AFGE Council 214 will be given a copy of the statistical data referenced in Paragraph 67 of the Plan, semi-annually.

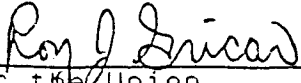
36. Testing under the Program will be limited to identification of cannabis (marijuana), cocaine, amphetamines, opiates, and phencyclidine (PCP), and any other drugs approved by the Department of Health and Human Services for testing on an agency-wide basis if requested on the chain of custody document with prior approval of the Program Coordinator. Under no circumstances will the testing be conducted to identify pregnancy, asthma, or whether an employee is being treated for heart disease, manic-depression, epilepsy, diabetes, or other physical and mental conditions not considered within the concept of illegal drug use.

37. Employees will be notified in writing of negative test results as soon as practicable after receipt of the negative result from the lab by the Employer.

38. The Employer agrees to administer the drug testing program in a fair, equitable, and consistent manner.

39. No rights of the employees, the Union, or the Employer, including but not limited to Constitutional and Statutory, are waived by this agreement.

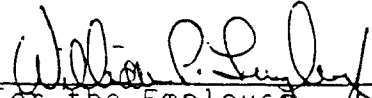
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For the Union
Roy J. Gricar
Executive Assistant to the
Council President

3 JUL 1990

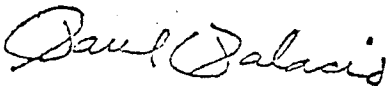
DATE



For the Employer
William P. Langley
Labor Relations Specialist
HQ AFLC/DPCE

3 JUL 1990


DATE



Paul D. Palacio
President
AFGE Council 214

3 JUL 1990

DATE



Paul S. Foerner
Program Coordinator
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