

**MEMORANDUM OF UNDERSTANDING**

**Between**

**AFSCME, DISTRICT COUNCIL 20**

**and**

**THE DISTRICT OF COLUMBIA**

**IMPLEMENTATION OF REVISED SUITABILITY REGULATIONS AS SET FORTH  
IN CHAPTER 4 OF THE DISTRICT PERSONNEL MANUAL  
AND RELATED ISSUANCES**

WHEREAS, AFSCME, District Council 20 (“Union”) and the District of Columbia, acting through its Department of Human Resources (“DCHR” or “District”) (collectively, “the Parties”) have engaged in impact and effects bargaining regarding the implementation of new suitability screening requirements set forth in Chapter 4 of the District Personnel Manual, 6B DCMR §§ 400.1, *et seq.* (“Chapter 4”); and

WHEREAS, DCHR intends to implement its new regulations and related issuances on or about October 1, 2016; and

WHEREAS, the Parties wish to conclude impact and effects bargaining over the matter; AFSCME, District Council 20 and DCHR have agreed to a memorandum of understanding as follows:

(1) The Parties mutually agree that the suitability screenings under Chapter 4 are designed to assess the suitability of each applicant, appointee, volunteer, and employee to ensure he or she possesses the character and background necessary to enhance the integrity and efficiency of the District government. The screenings are not designed to and shall not be used for any other purpose.

(2) In the event an existing employee applies for a new position that requires suitability screenings, the failure of the employee to pass the screening for the new position will have no impact on the employee’s ability to maintain their current position unless that position is subject to the same screening.

(3) Suitability screening will not be conducted until after a conditional employment offer has been provided to the candidate.

(4) A current employee’s refusal to agree to the content of any screening report is not an appropriate basis for disciplinary action.

(5) Current employees shall be considered on-duty for pay purposes for time spent to be screened for suitability.

(6) The District shall pay the cost of suitability screenings including, but not limited to the costs required for employees to travel to and from the screening facility. The cost for testing split samples shall be paid by the employee.

(7) Prior to assigning an employee to a position that is subject to drug and alcohol testing, the District will advise the employee that such position is subject to testing.

(8) The District will maintain employee confidentiality and safeguard information consistent with law, rule, regulations and applicable collective bargaining agreements. Further, the District may not distribute employee screening results to any individual or company without the express written consent from the employee, or unless required by law or regulation or necessary to carryout related personnel actions.

(9) The Program Administrator will maintain suitability screening information in a confidential manner, separate and apart from the employee's personnel records.

(10) The District will provide a training program to educate supervisors on the process for suitability screening as well as drug and alcohol testing. DCHR will provide AFSCME, District Council 20 with a list of managers who have received reasonable suspicion training in the agencies represented by AFSCME locals, upon request by the Union. Such requests should be sent to [DCHR.policy@dc.gov](mailto:DCHR.policy@dc.gov).

(11) The Agency will make a reasonable effort to ensure that employees are fully informed about the process of drug and alcohol screenings and suitability screenings.

(12) An employee arrest or charge is not enough to deem an employee unsuitable for a position unless otherwise provided under law. Instead, a conviction is required to deem an employee unsuitable for employment.

(13) The District will conduct a briefing with all employees who are subject to drug and alcohol testing. The briefing will include information about the testing program, changes to the program based on implementation of this Agreement and an explanation of the consequences associated with the drug and alcohol testing program.

(14) With respect to random drug and alcohol testing, the Program Administrator will use a scientifically valid random selection procedure to identify employees subject to random testing. The Program Administrator will provide the Union with the opportunity to be briefed on the random selection procedure utilized for testing. The Union may request an opportunity to speak with the vendor, which will be facilitated by the Program Administrator. The Union will be provided with an additional briefing if the District changes the company providing the random selection procedure or the method used for random selection changes. If the Union becomes aware of an issue with the random selection procedure, the Union will promptly raise the issue with the Program Administrator . Thereafter, the District will meet with the Union to discuss the issue and resolve the issue moving forward.

(15) The District agrees that no employee represented by AFSCME, District Council 20 or any of its affiliated local unions, who has successfully completed his or her probationary period in a position now or subsequently designated as "security sensitive" will be subject to an initial or future consumer credit check as a condition of continued employment. AFSCME, District Council 20 agrees that an exception may be made to this prohibition in the event there is reasonable suspicion of work-related or on-duty wrongdoing that relates to the employee's consumer credit history, and the employee consents to such screening in writing.

(16) The District agrees that no employee who was separated, but who is subsequently restored to duty because of a decision by an arbitrator, court, or administrative body will be subjected to renewed or additional suitability screening of any kind as a condition of return to duty if the employee would not otherwise be regularly scheduled for screening had his or her employment not been terminated.

(17) AFSCME, District Council 20 specifically reserves the right to challenge the designation of any position as "safety sensitive", "protection sensitive", or "security sensitive", pursuant to the collective bargaining agreement. The Parties fully and clearly understand that AFSCME, District Council 20 has not agreed that any current or future designation of any particular position or group of positions as safety, protection, or security sensitive is appropriate or correct.

(18) The Union shall receive at least 15 work days advanced written notice prior to the official designation of a position as being covered under the enhanced suitability procedures set forth in Chapter 4.

(19) The Parties agree that applicants, volunteers and employees who suffer adverse employment action as a result of a suitability assessment, upon request, shall be provided a copy of all relevant reports obtained by the District, a statement of rights, and an opportunity to dispute the accuracy or completeness of any information contained in all reports used for suitability determinations.

(20) Except as otherwise provided by law, the Parties agree that a suitability determination shall not be based solely on convictions for which the imposed sentence ended more than (10) ten years prior to the date of the initial appointment. Present incumbents who have completed an initial suitability determination and accepted the job offer shall not be subjected to another initial suitability determination for the same job. Any conviction not considered for the initial suitability determination shall not be considered in subsequent suitability re-determinations, except as otherwise required by law.

(21) The Parties agree that covered employees shall report any criminal arrest or criminal charges within 7 (seven) days consistent with 6B DCMR § 416.4. However, an arrest alone shall not deem an employee unsuitable.


(22) On the day of a drug or alcohol test, the employee to be tested shall receive in writing the following: the reasons for ordering the test; how the employee was selected for

the test; what drugs or class of drugs they are being tested for; and the consequences should they refuse to fully cooperate with the drug testing process. An employee's refusal to sign forms will not be a basis for adverse action. If an employee receives a positive test result, he or she shall be advised of the right to request a secondary laboratory test of the split sample.

(23) This Memorandum of Understanding is binding upon all agencies and personnel authorities of the District of Columbia that fall within the personnel authority of the Mayor of the District of Columbia or that have voluntarily delegated the administration or regulation of suitability screening, as set forth in Chapter 4 of the District Personnel Manual and related issuances, to DCHR.

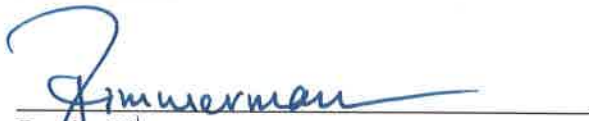
(24) Nothing in this Memorandum of Understanding shall be construed to waive either party's right to engage in collective bargaining or to infringe upon or limit any right already agreed upon in an existing written agreement or collective bargaining agreement.

For AFSCME, District Council 20:

  
Andrew Washington, Executive Director


9/26/16  
Date

For DCHR:

  
Justin Zimmerman  
Associate Director  
Policy and Compliance Administration

Sept. 26, 2016  
Date

For the Office of Labor Relations and Collective Bargaining:

  
Repunzelle Bullock  
Attorney Advisor, OLRCB

9/26/2016  
Date