

**THE DISTRICT OF COLUMBIA AND  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCALS  
1000, 2725, 2741, 2978, 3444, AND 3721  
ENTER INTO THIS MEMORANDUM OF UNDERSTANDING  
CONCERNING  
CHAPTER 4 OF THE DPM**

The District of Columbia ("District") hereby agrees that it will adhere to this Memorandum of Understanding, applicable collective bargaining agreements, and law with respect to implementation and application of Chapter 4 of the District Personnel Manual ("DPM") to bargaining unit employees represented by the above AFGE Locals.

**Section I – General**

- A. The suitability screenings under Chapter 4 of the DPM (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.
- B. This MOU does not waive or otherwise impact the rights of the Union or the District to negotiate consistent with applicable collective bargaining agreements and law.
  - 1. The provisions of the MOU between AFGE and the District concerning the predecessor Drug and Alcohol Testing Program under the repealed Chapter 39 will apply to the corresponding Drug and Alcohol components of Chapter 4.
- C. DCHR is the Program Administrator for implementing the provisions of Chapter 4 for agencies under the personnel authority of the Director of DCHR and those independent personnel authorities that elect to have DCHR act as their Program Administrator. To the extent that any substantive changes are made to Chapter 4 or its administration, the District will provide notice to, and bargain with, the Union, upon request, consistent with applicable collective bargaining agreements and law.
- D. The Agencies will notify bargaining unit employees that they are subject to drug and alcohol testing when hired or at the time of position designation.
- E. The Agencies 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.

- F. All position descriptions (PDs) shall state whether the position is subject to drug and alcohol testing. Positions may be updated to reflect changes in the position descriptions consistent with the law and any applicable collective bargaining agreement.
- G. The District will notify the Union when it adds to the list of covered positions, and bargain with the Union, if requested, to the extent permitted by law.

## Section 2 – Employee Testing

### A. Reasonable Suspicion Testing

- 1. DCHR will provide each AFGE Local with a list of managers who have received reasonable suspicion training in their respective agencies, upon request by the Union. Such requests should be sent to [DCHR.policy@dc.gov](mailto:DCHR.policy@dc.gov).
- 2. Supervisors shall be provided with comprehensive reasonable suspicion training. DCHR will allow union representatives to receive the same training, if requested. Such requests would be sent to [DCHR.policy@dc.gov](mailto:DCHR.policy@dc.gov).
- 3. In the event there is a reasonable suspicion to believe that an employee is under the influence of drugs and alcohol at work that has impaired the employee's ability to perform his or her assigned duties, the supervisor will prepare a written explanation concerning all of his or her observations. There will be a second confirmation, only if a second supervisor is available. The Agency agrees to make reasonable efforts to find a second supervisor. If no supervisor is available, then the first observation will stand.

### B. Random Testing

- 1. The District will utilize a scientifically valid random selection procedure.
- 2. DCHR 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. The Union will be provided with an additional briefing if the District changes the company providing the random selection procedure or the method utilized for random selection changes.
- 3. If the Union becomes aware of an issue with the random selection procedure, the Union will promptly raise the issue with DCHR. Thereafter, the District will meet with the Union to discuss the issue and resolve the issue moving forward.

### C. Controlled Substances Subject to Testing

- A. To the extent permitted by law, the drug and alcohol testing program will not cover medications that employees are prescribed by a licensed medical professional. Employees must notify the Agency in advance of any prescribed medications, and provide appropriate documentation in advance of being tested. Accordingly, the

existence of such substances in an employee's system will not constitute a failure to pass a drug or alcohol test, subject to applicable laws, rules or regulations.

- B. District employees enrolled in a medical marijuana program, and who occupy safety-sensitive positions, remain subject to random drug and alcohol screening and must comply with the testing order.
- C. Pursuant to District Personnel Manual Instruction No. 4-34, district employees will have three (3) options to make known their participation in the medical marijuana program, and must comply with the requirements or supplemental instructions mentioned in Section 2 (a)(b)(c) in DPM Instruction No. 4-34.

### Section 3 – Counseling and Rehabilitation

- A. Employees may self-report drug and alcohol abuse problems within 30 days of notice that they are in a covered position. Employees who self-report consistent with this Agreement and District Regulations will not be subject to discipline as a result of their self-reporting.
- B. The District will provide services and referrals through the employee assistance program. The completion of the treatment program will be a condition of employment moving forward. An employee so referred shall pass a drug test following completion of the treatment program; a positive test result shall be grounds for removal.
- C. This section shall not apply once a drug or alcohol testing procedure has been initiated. The drug and alcohol testing procedure is initiated once the employee is on notice of his or her requirement to undergo testing. The testing procedure includes the collection, analysis, and verification of the sample, and, if applicable, any disciplinary procedures that result from a positive test result.

### Section 3 – Discipline

- A. In the event an employee refuses to submit to testing, the supervisor must notify the employee that such refusal is grounds for termination. Failure to notify the employee does not restrict the Agency from taking disciplinary action against an employee. When an employee refuses or fails to take the test, that failure or refusal will be deemed a positive test result.

### Section 4 - Application

- A. The suitability screenings under Chapter 4 will apply to newly hired candidates for employment where applicable. There must be a nexus between the duties and responsibilities of a position and the suitability screening.
- B. Initial suitability screenings applied to candidates at the time of hire shall not be applied to, or utilized for, individuals who are employed by the District as of the date of execution of this MOU, specifically present incumbents. However, except as to those individuals who are members of Local 3721, incumbents designated as safety, protection

or security sensitive will be subject to those checks required for employees under Chapter 4, including criminal checks every two years and safety sensitive positions being subject to random drug and alcohol screenings. Incumbent members of Local 3721 will be subject to those criminal checks and drug and alcohol screening on an annual basis, as well as random drug and alcohol screenings. All District employees will be subject to reasonable suspicion and post-accident drug and alcohol screening, when required by Chapter 4. Existing employees who apply for new positions may be subject to pre-appointment suitability screenings if such screening is required for the new position for which the employee applies.

- C. 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.

#### Section 5 – Position Screening Process

- A. The District shall advise the Union of any proposed suitability designation changes. The Union may submit a written appeal to the personnel authority (typically to DCHR via e-mail to [dchr.policy@dc.gov](mailto:dchr.policy@dc.gov)) concerning the proposed designation within (fifteen) 15 calendar days of receipt of the notification regarding the changes. For those positions that are not appealed, the District may move forward with application of the screenings and updating of any position descriptions. For purposes of this paragraph, notification shall be deemed received by e-mail as of the date of transmission if e-mailed to the address for the applicable union representative provided in the Directory of Agency Directors, Labor Liaisons and Union Presidents.
- B. Upon request, the District will meet with the Union and provide a written explanation of its decision concerning the disputed positions within fifteen (15) calendar days of submission of the appeal. Thereafter, the District may move forward with application of all suitability screenings for all disputed positions.
- C. Suitability screening will not be conducted until after a conditional employment offer has been provided to the candidate.
- D. A current employee's refusal to agree to the content of any screening report is not an appropriate basis for disciplinary action.
- E. Current employees shall be considered on-duty for pay purposes for time spent to be screened for suitability.

## Section 6 – Employee Rights

- A. The District shall pay the cost of testing consistent with the drug and alcohol testing program, including, but not limited to the costs required for employees to travel to and from the testing facility. The cost for testing split samples shall be paid by the employee.
- B. Time spent by employees traveling to and from the testing facility as well as the time at the testing facility is considered regular duty time for each employee.
- C. Employees may request Union representations at the time of testing, except for random selection testing. The District may proceed with testing in the absence of a union representative to protect the integrity of the testing program and the test results, after 1 hour of notice to the employee.
- D. 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.

## Section 7 – Work Assignments

- A. The Agency may determine that the employee can no longer perform his or her assigned duties and responsibilities, because of self-reporting within 30 days of designation or a failure to pass a drug and alcohol screening. In such cases, The Agency may at its sole discretion reassign the employee to a vacant and funded position that does not require drug and alcohol testing, if a position is available.
- B. The Agency will return each employee to his or her permanent position of record as soon as practical after making a determination that the employee is cleared to return to work.

## Section 8 - Records

- A. If a suitability screening reveals derogatory information the Program Administrator shall: notify the individual as to the source, nature, and potential impact of the derogatory information; and allow the individual ten (10) business days to provide a written response regarding the derogatory information and the completeness of the screening information. Upon request, the District will provide a copy of the screening results to the impacted employee when there is no derogatory information revealed.
- B. 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.
- C. The Program Administrator will maintain suitability screening information in a confidential manner, separate and apart from the employee's personnel records.

Section 9 – Training

- A. The District will provide a training program to educate supervisors on the process for suitability screening as well as drug and alcohol testing.
- B. 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.

Section 10 – Criminal Background Checks

- A. 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.
- B. Except as otherwise required by law, suitability determinations shall not be used on convictions which occurred ten (10) or more years prior to the initial appointment date.

Section 11 – Credit Screening


- A. Credit Screenings will only be utilized for new appointments to security sensitive positions.

Section 12 – Traffic Screening


- A. Traffic screenings will be utilized for those employees whose duties and responsibilities require them to operate a motor vehicle. Parking citations and similar isolated minor infractions shall not be considered. Instead, traffic screenings will concern serious traffic offenses within the last ten (10) years including, but not limited to reckless driving and other circumstances that impact the employee's driver's license.

**FOR THE UNION:**

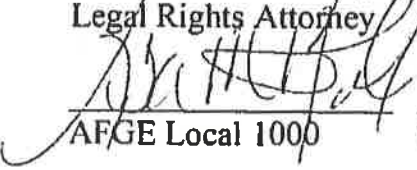
**FOR THE AGENCIES:**

  
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Keisha Williams, Esq.  
Legal Rights Attorney

11/6/17  
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Date

  
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Herman R. Brown, Jr., Esq.  
Chief Negotiator, OLRCB

11/6/17  
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AFGE Local 1000

11/6/17  
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Date

Wanda D. Jones 11-28-17

AFGE Local 2725      Date

Wanda D. Jones      11-6-17  
AFGE Local 2741      Date

Carroll Wood      11-6-17  
AFGE Local 2978      Date

[Signature]      11/6/17  
AFGE Local 3444      Date

Aretha Lyles      11/10/2017  
AFGE Local 3721      Date