**RECOVERY-READY WORKPLACE TOOLKIT**

**Guidance and Resources for Private and Public Sector Employers**

**FEDERAL RECOVERY-READY WORKPLACE INTERAGENCY WORKGROUP**

**NOVEMBER 2023**

**Appendix 7 – Sample Fair Chance Employment Policy**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Protocol** | **New Candidate** | | **Existing Employee** | |
| **Fair chance offer:** Candidate or employee is offered screening, assessment, and contingent or continued employment following a positive toxicology test or reasonable suspicion of substance misuse. This offer is contingent upon agreement by the candidate or employee to follow clinical recommendations and to abide by the terms of a contingent employment or return-to-work agreement. | Contingent offer of employment subject to: 1) screening and/or assessment by designated substance use professional or organization; 2) completion of indicated services (e.g., education, specialty SUD care, recovery support services, etc.) and 3) acceptance of contingent employment offer that *may* include requirements such as toxicology testing, participation in outpatient treatment, receipt of recovery support services, etc. | | Continued employment subject to: 1) screening and/or assessment by designated substance use professional or organization; 2) completion of indicated services (e.g., education, specialty SUD care, recovery support services, etc.) and 3) follow through on return-to-work plan that *may* include requirements such as toxicology testing, participation in outpatient treatment, receipt of recovery support services, etc. | |
| **Employment or return-to-work recommendation (by assessing SUD professional following completion of recommended services)** | Once the candidate has satisfactorily completed the recommendations of the designated substance use professional or agency, the candidate will be recommended as ready for employment by the provider and may be subject to an additional per-employment toxicology test. | | Once the employee has satisfactorily completed the required steps and is recommended for return to duty by the designated substance use professional or agency, the employee will have a return-to-duty toxicology test and can resume work activities. | |
| **Contingent employment or return-to-work plan** | Such a plan could include an agreement to receive clinically recommended outpatient services, receive recovery support services, and be subject to periodic or random drug testing beyond normal requirements for a specified period of time. The supervisor should be engaged as a partner and supporter in the effort. | | Such a plan could include an agreement to receive clinically recommended outpatient services, receive recovery support services, and be subject to periodic or random drug testing beyond normal requirements for a specified period of time. The supervisor should be engaged as a partner and supporter in the effort. | |
| **Immediate contingent employment or continued employment with plan** | | In cases where the designated SUD professional or agency found that a candidate testing positive did not need/meet criteria for treatment, the employer can move to a contingent employment agreement immediately following screening and assessment. This could include a written agreement and periodic and/or random toxicology testing. | | In cases where the designated SUD professional or agency found that an employee testing positive did not need/meet criteria for treatment, the employer can move to a contingent employment agreement immediately following screening and assessment. This could include a written agreement and periodic and/or random toxicology testing. | |
| **Employment/return-to-work toxicology test** | | Once the candidate has been reported as being ready for work by the designated SUD professional or agency, the candidate must undergo and pass a new pre-employment toxicology test. | | Once the employee has satisfactorily completed the required steps and is recommended for return to duty by designated SUD professional or agency, the employee must undergo and pass a return-to-work toxicology test. | |
| **Follow-up Testing (When recommended by SUD professional)** | | Depending upon the recommendation of the substance use professional, the individual may be required to undergo periodic, unannounced drug testing for a specified period of time (“follow-up” testing) to support them in the avoiding substance misuse. | | Depending upon the recommendation of the substance use professional, the individual may be required to undergo periodic, unannounced drug testing for a specified period of time (“follow-up” testing) to support them in avoiding substance misuse. | |
| **Disciplinary action** | | Not applicable | | RRW employers do not discipline employees for having a health condition (SUD). Nonetheless, employees who happen to have SUD remain accountable for their actions or, in certain circumstances, for a failure to act. Accordingly, there may be circumstances where disciplinary action is warranted. For example, if an employee’s actions or inaction while intoxicated result in financial or reputational harm to the employer, discipline may be warranted—especially when the employee in question was given prior notice about substance use and/or was participating in a return-to-work or continued work agreement/plan. In workplaces where employees are represented, of course, disciplinary actions must comport with applicable collective bargaining agreements.\* | |

\*Adapted from Indiana Substance Use Treatment Law HEA 1007 Employer Guidelines. Note that this table provides a broad template for developing policies. Employers will need to take into account the legal and regulatory requirements specific to their industry and the jurisdictions in which they operate and other factors in developing fair chance policies.

Federal Recovery-Ready Workplace Interagency Workgroup. Recovery-Ready Workplace Toolkit: Guidance and Resources for Private and Public Sector Employers. 2023. [www.dol.gov/agencies/eta/RRW-hub/Toolkit](http://www.dol.gov/agencies/eta/RRW-hub/Toolkit)

Published through the Recovery Ready Workplace Resource Hub with support from the United States Department of Labor’s Employment and Training Administration.

Inquiries: [MBX.ONDCP.RRWToolkit@ondcp.eop.gov](mailto:MBX.ONDCP.RRWToolkit@ondcp.eop.gov)