

**PART IV HUMAN RESOURCES**  
**Chapter 04.02 - General Personnel Policies**

**P04.02.010. Equal Employment Opportunity and Affirmative Action: Statement of Intent.**

The board recognizes that discrimination in employment practices has in the past foreclosed economic opportunity to a substantial number of persons in the United States. The board is committed to oppose illegal employment discrimination and to prohibit it within the university. In addition to prohibiting illegal employment discrimination, as a part of its commitment to equal employment opportunity, the board is committed through an affirmative action program, to under-represented in the workforce. (06-06-07)

**P04.02.012. Equal Employment Opportunity Program.**

The program of equal employment opportunity consists of two parts: nondiscrimination and a program of affirmative action.

A. Nondiscrimination

1. In accordance with federal and state laws and regulations, the university will not engage in impermissible discrimination. In accordance with federal and state law and regulation, the university makes its programs and activities available without discrimination on the basis of race, religion, color, national origin, citizenship, age, sex,

2. Individual merit will be considered by the university. University hiring decisions will be based on the individual's qualifications, demonstrated abilities, and performance, as appropriate.

**B. Affirmative Action**

The university seeks to hire, train and promote individuals based on qualifications and demonstrated ability to perform the job. In its commitment to affirmative action, the university is committed to recruit and retain women and minorities in positions of employment where they have been traditionally under-represented. The concept of affirmative action requires that practices that adversely impact protected classes should be eliminated unless the university can demonstrate a legally permissible basis. To accomplish the goals of its affirmative action program, the university encourages employment applications from and makes special efforts to recruit protected classes.

(06-01-17)

**P04.02.014. Implementation.**

The president and the chancellors are responsible for planning, implementing, and monitoring an effective program of equal employment opportunity. The president and each chancellor will provide an annual report to the board with regard to the effectiveness of their respective equal employment opportunity program.

(06-20-97)

**P04.02.024. Consensual Sexual Relations.**

- A. Faculty members or staff who engage in sexual relations with students enrolled in their classes or subject to their supervision, even when both parties have consented to the relationship, will be engaging in unprofessional behavior.
- B. Supervisors who have authority or control over employees and engage in sexual relations with those employees, abuse their power, even when both parties have consented to the relationship.

(06-06-07)

**P04.02.026.. Limitation of Liability.**

Nothing in P04.02.020 - 04.02.026 will be construed or applied to create a right to an award of damages or other monetary compensation against the university or university employees beyond any existing under state or federal law.

**P04.02.040. Drug-Free Workplace.**

- A. The unlawful manufacture, distribution, dispensing, possession, or use by an employee of a controlled substance as defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 USC 812), and as further defined by regulation at 21 C.F.R. 1308.11 - 1308.15 is prohibited in any workplace of the university.
- B. All employees will abide by the terms of this policy as a condition of their employment and will notify the university of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 working days after the conviction. Within 30 days of receiving the notice of conviction, the university will take appropriate personnel action against the employee as prescribed by University Regulation, up to and including termination, or require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
- C. The University Regulation implementing this section must provide for publishing a statement to notify employees of this policy and to establish a drug-free awareness program to inform employees about: the dangers of drug abuse in the workplace; the university's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- D. Each employee will be provided a copy of this policy and accompanying University Regulation.

(06-20-97)

**P04.02.050. Employee Alcohol and Controlled Substances Testing.**

- A. The University Regulation implementing P04.02.040 and this section will at a minimum provide for the establishment of alcohol and controlled substances testing programs as required by law; the imposition of penalties on employees when tests exceed allowable levels; compliance with reporting and record keeping requirements; dissemination to affected employees of educational materials explaining the legal requirements, this policy and University Regulation; and provide for appropriate staff training and employee assistance programs. Collective bargaining units representing affected university employees will be given written notice concerning the availability of this information.
- B. All employees subject to laws mandating alcohol and controlled substances testing will olicy and University Regulation as a condition of



2. Outside the instructional context:

Sexual relationships between faculty members and students occurring outside the instructional context may lead to difficulties, particularly when the faculty member and student are in the same academic unit or in units that are academically allied; relationships that the parties view as consensual may appear to others to be exploitative. Further, in such situations the faculty member may face serious conflicts of interest and should be careful to distance himself or herself from any decisions that may reward or penalize the student involved.

B. Supervisor-Employee Relationships

Consensual sexual relationships between a supervisor and his or her employees, including





13. Requests for reasonable accommodation and related documentation, such as requests for additional information and decisions regarding accommodation requests, and any medical or disability-related information provided to the ADA Coordinator, will be treated as confidential medical records and maintained in a separate medical file, except that:
  - a. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;
  - b. First aid and safety personnel may be informed, when

D. The university will take one or more of the following personnel actions against an employee who violates P04.02.040 or this regulation:

1. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved by the university;
2. Impose a sanction up to and including termination for cause.

Violations of policy or regulation which are also violations of federal or state law may be referred to the appropriate agencies. In such situations, cases may proceed concurrently at the university and in the criminal justice system.

E. As a condition of employment, each employee shall notify the regional human resources office in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

1. Within ten calendar days after the university learns of a conviction of an employee who is engaged in the performance of an award of federal financial assistance, the university shall give written notice to every federal agency on whose award the convicted employee was working.
2. Within 30 calendar days after the university learns of a conviction, the university shall take personnel action as prescribed in paragraph D. above.

(08-07-14)

#### **R04.02.050. Employee Alcohol and Controlled Substances Testing.**

A. Definitions

For purposes of this regulation, the following definitions apply:

1. "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
2. "Alcohol use (or use alcohol)" means any consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
3. "Alcohol concentration" is the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
4. "Commerce" means 1) any trade, traffic or transportation within the jurisdiction of the United States between a place in a state and a place outside of such state, including a place outside of the United States and 2) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subsection 1) of this section.

5. "Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle
  - a. has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
  - b. has a gross vehicle weight rating of 26,001 or more pounds; or
  - c. is designed to transport 16 or more passengers, including the driver; or
  - d. is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under federal hazardous materials regulations.
  
6. "Confirmation test," in Controlled Substance testing, is a second analytical procedure to identify the presence of specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. In alcohol testing, it is a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.
  
7. "Controlled Substance" means marijuana, cocaine, opiates, amphetamines and phencyclidine.
  
8. "Covered Employee" or "Employee" means any University of Alaska employee required to hold a CDL as a function of their employment. This includes for purposes of pre-employment testing only, applicants and current employees selected for employment in such a position. A Covered Employee may be off-duty, on-duty, pre-duty or "on call" status.
  
- 9.

actually performing, ready to perform, or immediately available to perform any Safety-Sensitive Functions.

14. "Safety-Sensitive Function" means:
  - a. All time a Covered Employee is at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the Covered Employee has been relieved from duty by the Covered Employee's supervisor.
  - b. All time the Covered Employee is inspecting equipment as required by DOT regulations or otherwise inspecting, servicing, or conditioning any CMV at any time.
  - c.

2. use alcohol on the job, including during breaks or meals;
3. possess alcohol on the job, including during breaks or meals;
4. have a confirmation test result indicating an alcohol concentration of 0.02 or greater;
5. use alcohol within eight hours following an accident or until the Covered Employee is tested, whichever occurs first;
6. report for duty or remain on duty when the Covered Employee is using or has used any controlled substance (except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely perform a Safety-Sensitive



If an Observer is unable to obtain a reasonable suspicion alcohol test the Covered Employee may not remain on or return to duty if the employee appears to be under the influence or impaired by alcohol as indicated by specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. In this situation, the employee will only be permitted to return to work when:

- a. an alcohol test shows a concentration of less than 0.02; or
- b. 24 hours have elapsed since the reasonable suspicion observations.

### 3. Post-Accident Testing

As soon as practicable following an accident involving a CMV, a Covered Employee whom was performing a Safety-Sensitive Function with respect to the CMV must be tested for alcohol and controlled substances if:

- a. there was a death involved; or
- b. the employee received a citation for a moving traffic violation arising from the accident.

If an alcohol test is not administered within two hours following the accident, the Covered Employee's supervisor will prepare a report stating the reasons why the test was not timely administered. If an alcohol test is not administered within eight hours following the accident, there will be no further attempts to administer the test and the Covered Employee's supervisor will prepare a report stating the reasons why the test was not timely administered.

If a controlled substance test is not administered within 32 hours following the accident, there will be no further attempts to administer the test and the Covered Employee's supervisor will prepare a report stating the reasons why the test was not timely administered. The report(s) will be forwarded to the applicable regional personnel office. A Covered Employee who is subject to post-accident testing must remain readily available for the testing, or will be deemed to have refused to submit for testing.

The applicable regional personnel office will ensure that each Covered Employee receives necessary information, procedures and instructions prior to performing a Safety-Sensitive Function, including operating a CMV, so that the employee is able to comply with the requirements of this Section.

### 4. Random Testing

The random testing of Covered Employees will be unannounced, spread reasonably throughout the year, and will be conducted to assure that all Covered Employees have an equal chance of being tested. The Covered Employees to be tested will be randomly selected using a scientifically valid method.

The minimum annual percentage rate for random alcohol testing is 25 percent of the average number of Covered Employees or such other rate as may be set annually by the Federal Highway Administration. The minimum annual percentage rate for random controlled substances testing is 50 percent of the average number of Covered Employees or such other rate as may be set annually by the Federal Highway Administration.

Upon request by a supervisor, a Covered Employee must immediately proceed to the designated collection or test site. A Covered Employee may only be tested for alcohol while the employee is performing a Safety-Sensitive Function, just before the employee is to perform a Safety-Sensitive Function, or just after the employee has ceased performing such function.

#### 5. Return-To-Duty Testing

When a Covered Employee has engaged in Prohibited Conduct, the employee will be permitted to return to work in accordance with the following procedures:

- a. The employee will receive a mandatory referral to the university's Employee Assistance Program for an evaluation by a Substance Abuse Professional who will determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use; and
- b. If the employee is identified as needing assistance and a rehabilitation program has been prescribed, the employee must be evaluated by the Substance Abuse Professional to determine that the employee has properly followed the recommended rehabilitation program; and
- c. The employee must undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 or, if the Prohibited Conduct involved a controlled substance, a return-to-duty controlled substance test with a result indicating a verified negative result for controlled substance use.

#### 6. Follow-Up Testing

Following a determination by a Substance Abuse Professional that a Covered Employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the Covered Employee is subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency of the tests will be determined by the Substance Abuse Professional, but will consist of at least six tests in the first twelve months following the employee's return to duty and may continue for up to five years. Follow up testing for alcohol may only be conducted while the employee is performing a safety-sensitive function, just before the employee is to perform a safety-sensitive function, or just after the employee has ceased performing such function.



transmitted to the applicable regional personnel office in a confidential manner. Should a breath test show an alcohol concentration of 0.02 or greater, a blood alcohol test may be offered to the Covered Employee as an option, although not required.

## 2. Controlled Substances

DOT regulations require testing for marijuana, cocaine, opiates, amphetamines and phencyclidine. Tests for these substances will be conducted under the guidance of the Medical Review Officer selected by the university and in accordance with DOT regulations at one or more designated collection sites. Collection of urine samples will allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen. It is a violation of federal law and these regulations to adulterate or dilute a specimen during the collection procedure.

Test results are given to the Medical Review Officer for analyzing and reporting to the applicable regional personnel office.

## G. Employee Refusal to Submit to Testing

Any Covered Employee who refuses to submit to a required alcohol or controlled substance test will be immediately removed from duty and such refusal will be treated as a positive test. Failure to provide adequate breath for testing when required without a valid medical explanation, failure to remain available for post-accident testing, failure to provide adequate urine for testing without a valid medical explanation, engaging in conduct that obstructs the testing process, or failure to sign the alcohol testing form constitutes a refusal to submit to testing.

## H. If an Employee Tests Positive

If a Covered Employee has an alcohol concentration of 0.02 or greater in a confirmation test or tests positive for a controlled substance the employee is immediately disqualified from performing Safety-Sensitive Functions, including operating a CMV. The employee will also be subject to return-to-duty testing and disciplinary action as outlined in these regulations, and may be subject to follow-up testing.

## I. Disciplinary Action

1. DOT regulations establish prohibited concentrations of alcohol and controlled substances that may be in a Covered Employee's system while the Covered Employee is performing a Safety-Sensitive Function and also establish other prohibited behavior for a Covered Employee. DOT regulations also establish certain minimum penalties for a Covered Employee who has a test result which exceeds the prohibited concentration amounts or who has engaged in prohibited behavior. In general, these penalties include i) prohibitions on driving a CMV for a period of time following the prohibited behavior (with the length of time increasing as the number of instances of prohibited behavior increase), ii) referral



### 3. One Year Record Retention

Records of any negative and canceled controlled substance test results and alcohol tests results with a concentration of less than 0.02.

The Statewide Office of Human Resources will provide the regional personnel offices with a summary of additional records required to be maintained by DOT regulations. The regional personnel offices will be responsible for maintaining the additional records.

#### L. Training

All supervisors of Covered Employees and other university officials designated by the applicable chancellor to make reasonable suspicion observations will receive at least 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substance use to assist them in determining whether reasonable suspicion exists to require an employee to undergo testing. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. It will also cover available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to the Employee Assistance Program and/or referral to a higher management authority.

#### M. Self-Reporting

A Covered Employee who self reports alcohol misuse or controlled substance use and requests university assistance will be immediately referred for treatment to a Substance Abuse Professional.

3. Foreign nationals in an information technology (IT) position.
4. Foreign nationals from Canada or Mexico in a position listed on the NAFTA Professional Job Series List produced by the Department of Homeland Security (DHS).
5. Exceptions to the above authorized by the president/chancellors or a designee after consultation with the MAU or SW office with expertise in employer sponsored nonimmigrant visa.

Sponsorship of an employer sponsored visa petition includes gathering required information and documents, working with departments on processes and procedures, and facilitating the filing of Labor Condition Application if required. Sponsorship of an employer sponsored visa petition does not obligate UA to finance any costs associated with the petition, except as provided by federal or University Regulation. Sponsorship of an employer sponsored nonimmigrant visa petition by the university may be withdrawn or terminated at any time.

**B. Permanent Resident Petitions**

The University of Alaska may choose to sponsor permanent resident petitions based on employment upon the recommendation of the director or dean in the following cases:

1. Foreign nationals who are currently employed at UA in a teaching or research position that requires a Ph.D. or terminal degree within their profession.
2. Foreign nationals who ~~6860.0000091d1912 0 612 2ETQ.001 0 0 1 md00000912 0 60 1 r 12~~