

State of Ohio Drug Free Workplace Policy (HR-39)

Frequently Asked Questions about the Updated Policy

This document is meant to provide general information and facts; therefore, it may not address every situation. Always refer to relevant agency policies, State Human Resources policies, and any applicable collective bargaining agreement for specific information. If you are a state employee and have questions about this document, please contact your agency's Human Resources Office. State human resources and labor relations representatives, please reach out to your assigned Department of Administrative Services (DAS) Office of Collective Bargaining (OCB) Labor Relations and Human Resources Policy Analyst with questions.

Section 1 – General Questions and Policy Components

1. When did the updated State of Ohio Drug Free Workplace Policy (HR-39) become effective?

The updated policy went into effect December 8, 2023.

2. What changed in the most recent update to the State of Ohio Drug Free Workplace Policy (HR-39)?

The policy was updated to address non-medical cannabis as a restricted substance. In December of 2023, Ohio legalized non-medical cannabis for adult use. However, the policy maintains the current testing and disciplinary procedures for employees who test positive for marijuana. Employees who test positive for marijuana are subject to disciplinary provisions in the policy and applicable collective bargaining agreements unless the employee meets current policy exceptions for valid medical marijuana recommendations (for certain positions).

3. What is the purpose of the State of Ohio Drug Free Workplace Policy (HR-39)?

The purpose of this policy is to ensure the State of Ohio maintains a drug-free workplace for agencies, boards, and commissions under the authority of the Governor. Under the State's Drug Free Workplace Policy (HR-39), an employee must be fit-for-duty and cannot be impaired while in an active work status or otherwise in the workplace. To be fit-for-duty, an employee must be able to perform the essential functions of the employee's job and not currently abuse a restricted substance (as defined in the policy).

4. What is "active work status" under HR-39?

Active work status means the conditions under which an employee is actually in a work status and is eligible to receive pay. Active work status includes stand-by status or any other circumstances where the employee is notified by the employing agency to be available during off-duty hours for a possible call to report to work and the employee receives compensation for all such hours. Active work status does not include vacation pay, sick leave, bereavement leave, compensatory time, holidays, personal leave, and disability leave.

5. What is considered “the workplace” under the State’s Drug Free Workplace Policy (HR-39)?

The workplace is any state owned or utilized premises (including rented space) for official state business, or any place where official state business is being conducted, including but not limited to, grounds, buildings, state owned or leased parking lots, vehicles, and any other equipment and any other site where an employee performs work, including an approved alternative work location for an employee who is authorized to telework.

6. What does “restricted substance” mean?

Restricted substance refers to any substance that is regulated by the policy (e.g., alcohol, illegal drugs, prescription medications, non-medical cannabis, medical marijuana, etc.)

7. Who does the policy apply to?

The policy applies to all state employees and any applicant for hire at any state agency, board, or commission under the authority of the Governor. This policy does not apply to other elected officials, local government employers, or public university employers in the state of Ohio.

8. Does the State’s Drug Free Workplace Policy (HR-39) apply to contractors or vendors working on state property?

Under the State’s Drug Free Workplace Policy (HR-39), agencies shall require contractors and vendors to comply with applicable state and federal laws regarding a drug-free workplace. Contractors and vendors shall be required to make a good faith effort to ensure that their employees, while working on state property, do not manufacture, distribute, dispense, purchase, transfer, use, or possess a restricted substance in violation of this policy. Agencies should consult with their legal counsel to develop appropriate language to include in contractor or vendor contracts.

9. How is this policy enforced?

It is a violation of this policy for any employee who is in active work status or in the workplace to have a prohibited level of a restricted substance present in their bodily fluids. This provision is enforced through drug and/or alcohol testing (“test” or “testing”). Testing is used to determine whether a prohibited level of a restricted substance is present in the employee’s bodily fluids.

10. What types of testing does the policy allow for?

The State conducts the following types of tests:

- Applicant testing applies to a final applicant for a designated “safety sensitive” position in state service that has tentatively met all relevant employment criteria but has not been officially offered employment with the State or any final applicant for a designated

unclassified position, but whose employment is contingent upon the results of a background check and negative results from testing.

- Under the State’s Drug Free Workplace Policy (HR-39) and applicable collective bargaining agreements, certain positions within state agencies, board, and commissions have been designated as “safety sensitive” based on their job duties. Any employee who occupies a designated “safety sensitive” position is subject to random testing according to the requirements of any applicable collective bargaining agreement or as determined by the Director of DAS.
- Testing conducted pursuant to the Ohio Revised Code § 4123.54 when an employee suffers a work-related injury (sometimes referred to as rebuttable presumption testing).
- Reasonable suspicion testing applies to an employee who demonstrates signs of impairment, based on a for-cause determination by management. An employee involved in a significant incident in which the health or safety of the employee or other individuals is involved, or in which extensive property damage has occurred, will be subject to reasonable suspicion testing in accordance with the requirements of any applicable collective bargaining agreement or the Director of DAS.
- Follow-up testing applies to any employee referred through administrative channels to a counseling or rehabilitation program as a result of that employee’s positive test. Such an employee may be subject to follow-up testing according to specifications or provisions of an applicable collective bargaining agreement or, for employees exempt from collective bargaining, the policy of the Director of DAS.
- Federal DOT testing applies to employees whose duties require them to have a commercial driver’s license (CDL) for their position with the state and are subject to federal drug and alcohol testing regulations.
- Federal ATF testing applies to employees whose duties require them to carry a firearm for their position with the state, and to employees whose duties are otherwise addressed within the ATF regulations.

11. How should agencies determine which positions fall under federal DOT testing regulations and/or ATF federal regulations?

Agencies should work with their agency legal counsel to conduct a position-by-position analysis to determine which positions fall under DOT testing regulations or ATF federal regulations. This should include an evaluation of the position description and applicable regulations. The DAS Office of Talent Management and the DAS Office of Legal Services are available to answer questions if needed.

12. Are positions subject to federal DOT drug testing laws and ATF federal regulations the same as a “safety sensitive” designation?

No. Under the State’s Drug Free Workplace Policy (HR-39) and applicable collective bargaining agreements, certain positions within state agencies, boards, and commissions have been

designated as “safety sensitive” based on their job duties and are therefore subject to random testing. Being in a safety sensitive position does NOT necessarily mean that the position is subject to federal DOT testing or ATF federal regulations. Although there may be some safety sensitive positions that also fall into the DOT and/or ATF categories, the safety sensitive designation alone does not mean that the employee holding that position is within one of these categories. Employees with questions should contact their agency human resources representatives.

Section 2 – Non-Medical Cannabis

1. Does the State’s Drug Free Workplace Policy (HR-39) prohibit employees from using non-medical cannabis in accordance with Ohio law?

The State’s policy prohibits an employee from manufacturing, distributing, dispensing, purchasing, transferring, using, or possessing non-medical cannabis while in an active work status or otherwise in the workplace. Employees who are subject to testing and test positive for marijuana under this policy will be in violation of the policy and may be subject to disciplinary action. The legalization of non-medical cannabis is **NOT** an exception for a positive test.

2. How does the legalization of non-medical cannabis impact testing under the State’s Drug Free Workplace Policy (HR39)?

Legalization of non-medical cannabis does NOT impact the State’s testing procedures for enforcing the Drug-Free Workplace Policy (HR-39). Non-medical cannabis is a restricted substance under the policy which means employees cannot have a prohibited level of tetrahydrocannabinol (THC) in their bodily fluids when in an active work status or otherwise in the workplace.

3. What happens under the State’s Drug Free Workplace Policy (HR-39) if an applicant or employee’s test results shows the presence of THC?

The employee will have a positive test result for THC and be in violation of the policy. The legalization of non-medical cannabis (see below) is NOT an exception for a positive THC test.

There exceptions for medical marijuana use under the State’s Drug Free Workplace Policy (HR-39). See Section 3, question 4 below.

4. Can an employee who has obtained non-medical cannabis legally under Ohio law bring non-medical cannabis into the workplace and/or keep non-medical cannabis in their personal vehicle that is parked at the worksite? Can an employee be disciplined for possessing and/or using non-medical cannabis while in active work status or otherwise in the workplace?

No. The policy prohibits an employee from possessing a restricted substance at the workplace and/or while in an active work status. Non-medical cannabis is a restricted substance under the policy even if the employee has obtained it legally under Ohio law.

A personal vehicle that is parked at any location defined as the “workplace” (see above) under the State’s Drug Free Workplace Policy (HR-39) would fall under the prohibition for possession under the policy. An employee parking their personal vehicle within those defined locations cannot have non-medical cannabis in their car, even if they obtained it legally under Ohio law.

The State’s Drug Free Workplace Policy (HR-39) does not prohibit an employee who is authorized to telework from their home from keeping legal substances in their home (e.g., alcohol, medical marijuana, non-medical cannabis obtained legally under Ohio law), but the employee must be fit-for-duty and free from impairment while in an active work status.

Possession and/or use of non-medical cannabis in the workplace or while in active work status, will result in discipline, up to and including removal, in accordance with Ohio law, statewide policy, agency policy, and applicable collective bargaining agreements. This is the same for any other restricted substance under HR-39 (e.g. alcohol). The prohibition on the possession and use of restricted substances while in active work status or otherwise in the workplace has been and continues to be prohibited under the State’s Drug Free Workplace Policy (HR-39).

Section 3 – Medical Marijuana

1. Are applicants or employees prohibited from using medical marijuana under the State’s Drug Free Workplace Policy (HR39)?

Most applicants or employees who are subject to testing are not prohibited from using medical marijuana, provided the employee’s use complies with Ohio law and the limitations established in the policy. Due to legal restrictions, certain groups of employees (see below) will continue to be prohibited from using medical marijuana even if the employee has a valid recommendation for medical marijuana.

2. What positions are prohibited from using medical marijuana in accordance with Ohio law?

There are two types of positions that are prohibited from using medical marijuana under the State’s Drug Free Workplace Policy (HR-39). The policy prohibits marijuana use, including medical marijuana, for employees or applicants in positions subject to the Federal Omnibus Transportation Test Act of 1991 and applicable United States Department of Transportation regulations (collectively, “DOT drug testing laws”), and employees or applicants in positions that require them to carry, transport, or otherwise possess firearm(s) or ammunition (“ATF

federal regulations”). State employees with questions about whether these exceptions apply to them should contact their agency human resources representative. For example, employees who are required to maintain a commercial driver’s license (CDL) are subject to the federal DOT testing laws, and employees who are required to carry a firearm for their job are subject to the ATF federal regulations.

3. If an employee has a valid recommendation for medical marijuana, can the employee bring their medical marijuana into the workplace or keep medical marijuana in their personal vehicle that is parked at a worksite? Can an employee be discipline for possessing and/or using medical marijuana in the workplace?

No. Under both the State’s Drug Free Workplace Policy (HR-39) and the federal Drug Free Workplace Act of 1988, employees are prohibited from having (possessing) medical marijuana in any form while in an active work status or otherwise in the workplace. This also includes a prohibition on unlawfully manufacturing, distributing, dispensing, purchasing, or transferring medical marijuana while in active work status or otherwise in the workplace. This includes times that an employee is on paid or unpaid breaks.

A personal vehicle that is parked at any location defined as the “workplace” (see above) under the State’s Drug Free Workplace Policy (HR-39) would fall under the prohibition for possession under the policy. An employee parking their personal vehicle within those defined locations cannot have medical marijuana in their car, even if they have a valid recommendation.

Possession and/or use of medical marijuana in the workplace or while in active work status, even if the employee has a valid recommendation for medical marijuana, will result in discipline, up to and including removal, in accordance with Ohio law, statewide policy, agency policy, and applicable collective bargaining agreements. This is the same for any other restricted substance under HR-39 (e.g. alcohol). The prohibition on the possession and use of restricted substances while in active work status or otherwise in the workplace has been and continues to be prohibited under the State’s Drug Free Workplace Policy (HR-39).

4. If an applicant or employee’s test results show the presence of THC, are there exceptions for medical marijuana use under the State’s Drug Free Workplace Policy (HR-39)?

Yes. Most employees or applicants can offer an explanation to the Medical Review Officer (MRO) which may explain a positive test result. A valid Ohio Medical Marijuana Registry card must be disclosed to the MRO in determining the validity of a positive test and shall be released to the employer only to explain a test result.

5. What is the process for validating the Ohio Medical Marijuana Registry card?

If the applicant or employee is not in a position prohibited from the use of medical marijuana and the applicant or employee has disclosed to the MRO that they have a valid Ohio Medical Marijuana Registry card, the MRO will report the positive result to the employer noting the State’s policy and state laws regarding medical marijuana that may be applicable. The Drug Free

Workplace staff will contact the employee or applicant to provide them with the Authorization for Use or Disclosure of Confidential Information form to be completed, notarized and returned within 3 business days so that the form can be sent to the MMCP Patient Registry. Once the card is received from Patient Registry, it will be reviewed to validate it is active and covers the collection date of the positive result. Once verified, the test will be entered into OAKS as an Administrative Negative. Applicants or employees who do not have a valid Ohio Medical Marijuana Registry card will have a positive test and applicable policy and/or collective bargaining agreement provisions shall apply.

Due to legal restrictions, certain groups of employees (see below) are prohibited from using medical marijuana even if the employee has a valid recommendation for medical marijuana. For positions subject to federal DOT & ATF testing regulations, the MRO will report a positive test.

6. What happens under the State's Drug Free Workplace Policy (HR-39) if an applicant or employee who is subject to federal DOT drug testing laws or ATF federal regulations has a test result showing the presence of THC due to use of medical marijuana?

The MRO will report the positive drug test results for these positions. The employee will be in violation of the Drug Free Workplace Policy (HR-39) and may be subject to discipline up to and including termination, even if the employee or applicant has a valid Ohio Medical Marijuana Registry card. Any disciplinary procedures are subject to provisions in both the policy and any applicable collective bargaining agreement. For applicants in positions that the MRO reports as positive, any agency, board, or commission covered by the State's policy shall decline to extend a final offer of employment to an applicant with a verified positive test result and such applicant will not be reconsidered for state employment for a period of one year, pursuant to Ohio law.

7. What if an employee refuses to submit to a drug test because they have a valid Ohio Medical Marijuana Registry card?

Any refusal to submit to a drug test, regardless of the reason, will be treated as a positive test. Employees who have a valid Ohio Medical Marijuana Registry card are not exempted from submitting to a test given in accordance with HR-39 or applicable collective bargaining agreements.

8. How is medical marijuana different from prescription medications under the State's Drug Free Workplace Policy (HR-39)?

For most employees, the treatment of medical marijuana is very similar to the treatment of prescription medications. Medical marijuana is not a prescription medication and a recommendation for medical marijuana is not a prescription. A prescription is a written or oral order for a controlled substance for use by an individual given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the director of the

United States Drug Enforcement Administration pursuant to federal drug abuse control laws. For example, Vicodin is considered a controlled substance under the Controlled Substance Act which means that while it can be addictive, it is recognized as a prescription drug by the FDA. Marijuana is a Schedule I controlled substance and is not recognized as a prescription drug by the Federal Drug Administration (FDA).

Although an employee is prohibited from abusing a prescription medication while in an active work status or otherwise in the workplace (see below for definitions), an employee is generally permitted to possess and/or use their prescription medication in the workplace, pursuant to their agency-specific policies regarding such medications. However, medical marijuana cannot be used, consumed, or possessed in the workplace or while in active work status.

In relation to testing, for most employees the two are treated the same. The presence of marijuana will be shown in a drug test the same way as certain prescription medications. Employees can work with the MRO to present a valid prescription for the medication or disclose a valid Ohio Medical Marijuana Registry card. This is NOT the same for employees subject to federal DOT testing or ATF federal regulations as discussed above. For employees under these exceptions, the presence of THC, due to medical marijuana, will not be a valid reason for a positive test.

Section 4 – Hemp and Hemp-Derived CBD Products

1. What is the difference between hemp and hemp-derived CBD products, and medical marijuana and marijuana-derived CBD products?

Hemp and marijuana are both derived from the cannabis plant and contain hundreds of chemicals or natural compounds known as cannabinoids. The growth of industrial hemp and the sales of hemp and hemp derived cannabidiol oil (CBD) products in the State of Ohio is legal. The most common cannabinoid in marijuana is tetrahydrocannabinol (THC). THC is the chemical cannabinoid associated with the plant's psychoactive effect and is responsible for the “high” that can be obtained from using marijuana. A second common chemical is cannabidiol (CBD). CBD is a non-psychoactive cannabinoid. Hemp is defined as a Cannabis plant that contains a THC level of 0.3% or less. Any cannabis plant containing THC levels higher than 0.3% is considered to be marijuana. Both THC and CBD can be found in hemp and marijuana.

Hemp and hemp-derived CBD products are those goods derived from the hemp plant that contain less than 0.3% THC. These products can include cosmetics, personal care products, dietary supplements, food, cloth, cordage, fiber, fuel, paint, particleboard, and any other product containing one or more cannabinoids derived from hemp. Hemp and hemp-derived CBD products can be purchased over-the-counter and do not require a recommendation or prescription.

2. Are hemp and hemp-derived CBD products accepted as a valid explanation for a positive THC drug test?

No. The use of hemp and hemp-derived CBD products will not be accepted as a valid explanation for a positive THC drug test. The MRO will report the test as positive. Under the State's Drug Free Workplace Policy, the only possible exception to a positive THC drug test is if an employee or applicant discloses to the MRO of a valid Ohio Medical Marijuana Registry card or valid prescription drug by FDA.

3. Can an employee bring their hemp or hemp-derived CBD products into the workplace?

It is recommended that agencies prohibit employees from bringing hemp or hemp-derived CBD products into the workplace. Hemp and hemp-derived CBD products are not currently regulated by the FDA and, as a result, there is no existing regulatory method to verify, limit, or control the level of THC contained in these products. It is also recommended that agencies prohibit employees from using, possessing, or transporting hemp and hemp-derived CBD products in state vehicles. This may also apply to personal vehicles that are parked or located on state property.

Section 5 – Fitness for Duty Requirements

There are no changes to the requirement that employees must be fit-for duty at the time they report for work and any time they are in active work status or otherwise in the workplace. The legalization of medical marijuana does not allow an employee to be impaired while in active work status or otherwise in the workplace.

1. What is “fit-for-duty” under the State’s Drug Free Workplace Policy (HR-39)?

To be fit-for-duty an employee must be able to perform the essential functions of his/her job and not currently abuse a restricted substance (as defined in the policy).

2. Is an employee who has a valid Ohio Medical Marijuana Registry card considered to be fit-for-duty?

Under the State's Drug Free Workplace Policy (HR-39), an employee cannot be impaired while in an active work status or otherwise in the workplace. To be fit-for-duty an employee must be able to perform the essential functions of his/her job free from impairment. Like some validly prescribed prescription medications, employees who are using medical marijuana in accordance with Ohio law and the State's Drug Free Workplace Policy (HR-39) may become impaired and may not be considered fit-for-duty. There is no change to the fit-for-duty requirement under the State's Drug Free Workplace Policy (HR-39); it has only clarified that the same requirements apply to employees who have valid Ohio Medical Marijuana Registry card. Agencies, boards, or commissions, who have reason to believe an employee may not be fit-for-duty should follow their normal processes and procedures for making this determination.

3. How does the policy determine impairment?

The determination of impairment is case specific and depends on the situation and the employee. If an employee is determined by management to be exhibiting signs of impairment, the employee should be sent for a reasonable suspicion test. Management should also take any necessary precautions for ensuring the safety of the employee, coworkers, and members of the public (e.g., prohibit the employee from driving).

4. Can an agency, board, or commission send an employee for a reasonable suspicion test based on signs of impairment?

Yes. The reasonable suspicion testing procedure remains unchanged in the updated version of the State's Drug Free Workplace Policy (HR-39). Agencies, boards, and commission should continue to follow the procedures set forth in the policy and any applicable collective bargaining agreement based on the specific set of facts before them.

5. Is there a certain "level" of THC that would indicate an individual is "impaired" for purposes of the State's Drug Free Workplace Policy (HR-39)?

No. Currently there is no particular level of testing for THC that can discern a level of impairment. However, this does not mean that an agency, board, or commission is prohibited from acting upon visible signs of impairment. As stated above, an employee exhibiting signs of impairment should be sent for a reasonable suspicion test under policy and applicable collective bargaining agreement procedures. Employees sent for a reasonable suspicion test that indicates the presence of marijuana (THC) will have an administrative negative result if they have a valid Ohio Medical Marijuana Registry card (except for employees subject to federal DOT testing and ATF regulations). Even though an employee with a valid card will have an administrative negative test result, the agency, board, or commission, may still take necessary steps to ensure an employee is not impaired in the workplace. This may include, but is not limited to, an independent medical exam, updated evaluation from the employee's physician, or modification of duties (although not necessarily required).

6. What happens if an employee subject to testing under this policy presents a valid Ohio Medical Marijuana Registry card following a drug test but is not "fit-for-duty" in accordance with the State's Drug Free Workplace Policy (HR-39)?

Agency human resources personnel should continue to follow their standard procedures for determining if an employee is fit-for-duty. The process is the same as someone who shows signs of impairment while appropriately taking a valid prescription. Based on the agency's procedures, this may include, but is not limited to, an independent medical exam, updated evaluation from the employee's physician, or modification of duties (although not necessarily required).

7. Is an employee required to notify their agency, board, or commission that they have a valid Ohio Medical Marijuana Registry card?

Ohio law does not require an employee to notify their employer that they have a valid Ohio Medical Marijuana registry card; however, an agency, board, or commission may have a specific policy that requires notification. Employees should continue to follow their agency's specific policy regarding any type of notification that is required for use of a controlled substance. Employees with questions on whether any type of notification is required should contact their agency's human resources representative.

Section 6 – Policy Administration

1. Are there any changes to the responsibilities of agencies, boards, and commissions (management) under the State's Drug Free Workplace Policy (HR-39)?

No. The management responsibilities under the State's Drug Free Workplace Policy (HR-39) have not changed. All state agencies, boards, and commissions under the authority of the Governor are responsible for implementing and enforcing the terms of this policy and ensuring that this policy is administered consistently and fairly. Any agency, board, or commission with their own policy must update their policy in accordance with the updates contained in HR-39.

2. Are the training requirements still the same under the State's Drug Free Workplace Policy (HR-39)?

Yes. The training requirements have not changed under the State's Drug Free Workplace Policy (HR-39). All State of Ohio employees will continue to receive periodic training on HR-39. For agencies, boards, and commissions, it is highly recommended that employees be educated on the updates to the State's Drug Free Workplace Policy (HR-39). Agencies can use this FAQ document to help educate employees about the policy changes and how those changes apply to them.

3. When should agencies with specific policies have their policies modified?

Agency policies should be in compliance with the 2023 changes to the State's Drug Free Workplace Policy (HR-39) as soon as possible. Agencies, boards, and commissions should consider having agency-specific policies updated to provide both the updated version of the statewide policy and the agency-specific policy to their employees and to provide education.

4. What are the policy distribution requirements under the State's Drug Free Workplace Policy (HR-39)?

The distribution requirements under the State's Drug Free Workplace Policy (HR-39) have not changed. All current state employees under the authority of the Governor must receive a copy of the policy and need to complete an acknowledgement that they have read and understood the policy. This should be accomplished through an agency's usual and customary means of

policy distribution. Agencies must ensure there is a record of receipt and acknowledgement. Any updated agency specific policy should also be distributed to current employees. Agencies are encouraged to distribute HR-39 (and any agency specific policy) to new employees as soon as possible.

All new employees must be provided with a copy of the State's Drug Free Workplace Policy (HR-39) (and agency specific policy if applicable) within 30 calendar days of initial employment. New employees are typically provided this information during the orientation/onboarding process. Agencies should make any necessary updates to their orientation/onboarding material consistent with HR-39.

5. Should new hires and/or employees be notified that they hold a position that falls within one of the exceptions under the State's Drug Free Workplace Policy (HR-39) (federal DOT testing or ATF regulations)?

Yes. Agencies should notify new employees in a DOT or ATF position at the time of hire, making them aware they hold a position which constitutes an exception under the State's Drug Free Workplace Policy (HR-39). Current employees should have already been notified of their status at the time of hire. Agencies may re-notify current employees of their status if they feel it is necessary.