

TO: AGENCY SECRETARIES AND
DEPARTMENT DIRECTORS

PERSONNEL MANAGEMENT LIAISONS

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EFFECTIVE DATE: March 24, 1989
EXPIRATION DATE: Indefinite
DATE OF ISSUE: March 24, 1989

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Employee Relations Officers and Personnel Officers

From: Department of Personnel Administration
Office of the Director

Subject: Drug-Free Workplace Act of 1988

As part of the Federal omnibus drug legislation enacted on November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (the "Act"). This statute, effective as of March 18, 1989, requires contractors (for contracts of \$25,000 or more) and grantees of federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition for receiving a contract or grant from a federal agency. This certification requirement does not apply to subgrantees or subcontractors who receive federal pass-through funds from a state agency. Each federal agency will inform grantees and contractors on the specific certification process to be used by the recipient of federal funds.

The Department of Personnel Administration (DPA) believes that existing State policies already meet the requirements of the Act and that compliance with the Act will not create major changes to any State practices. In two weeks DPA plans to distribute to you an employee information package which includes the attached Drug-Free Workplace Statement and Executive Order D-58-86. We believe that with the distribution of the materials, departments will be in compliance with the Act. Prior to issuing these materials, however, DPA is notifying employee organizations on how the State intends to respond to the federal requirements and is offering to meet with the employee organizations on this issue.

Please do not distribute any materials to your employees until you receive further instructions from DPA staff.

The information below summarizes the major provisions of the Act.

SPECIFIC REQUIREMENTS

To meet the law's requirements, state agencies who contract with or receive a grant from the federal government must do the following:

1. Establish a drug-free awareness program to inform employees about:
 - o The dangers of drug abuse in the workplace;
 - o the contractor's or grantee's policy of maintaining a drug-free workplace;
 - o available drug counseling, rehabilitation, and employee assistance programs; and
 - o the penalties that may be imposed upon employees for drug abuse violations.
2. Provide each employee with a copy of the drug-free workplace statement. This statement shall:
 - (a) notify employees that the unlawful manufacturing, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and
 - (b) specify the actions that will be taken against employees for violations of these prohibitions.
3. Notify each employee, in the drug-free workplace statement, that as a condition of employment on the contract or the grant, the employee must abide by the terms of the drug-free workplace statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace within five (5) days after the conviction.
4. Notify the contracting or granting agency within ten (10) days after learning of the drug conviction.
5. Within thirty (30) days after receiving notice of the drug conviction, take appropriate personnel

To comply with the federal Drug-Free Workplace Act of 1988 and continue receiving federal grants and contracts, State agencies must certify that they provide drug-free workplaces and have issued drug-free workplace statements with these provisions to their employees. You are being issued this statement to meet this requirement.

It is the policy of the State of California (Refer to Title 2, Article 29, Rule 599.960 of the California Code of Regulations) that the State workplace be free from the effects of drug and alcohol abuse. This is to avoid the dangers arising from substance abuse in the workplace. These dangers include death and injury to the employee, co-workers, or the public resulting from accidents, dereliction of duty, poor judgment and carelessness. Substance abuse also results in lost productivity, reduced efficiency, and increased absenteeism by the substance abuser and interferes with the job performance of employees who do not use illegal or unauthorized substances.

This policy, which is consistent with Government Code section 19572 and Governor's Executive Order D-58-86 (attached), states that no State employee who is on duty or on standby for duty shall (1) use, possess, or be under the influence of illegal or unauthorized drugs or other illegal mind-altering substances; or (2) use or be under the influence of alcohol to any extent that would impede the employee's ability to perform his or her duties safely and effectively. Furthermore, no employee shall perform duties which, because of drugs taken under a legal prescription, the employee cannot perform without posing a threat to the health or safety of the employee or others.

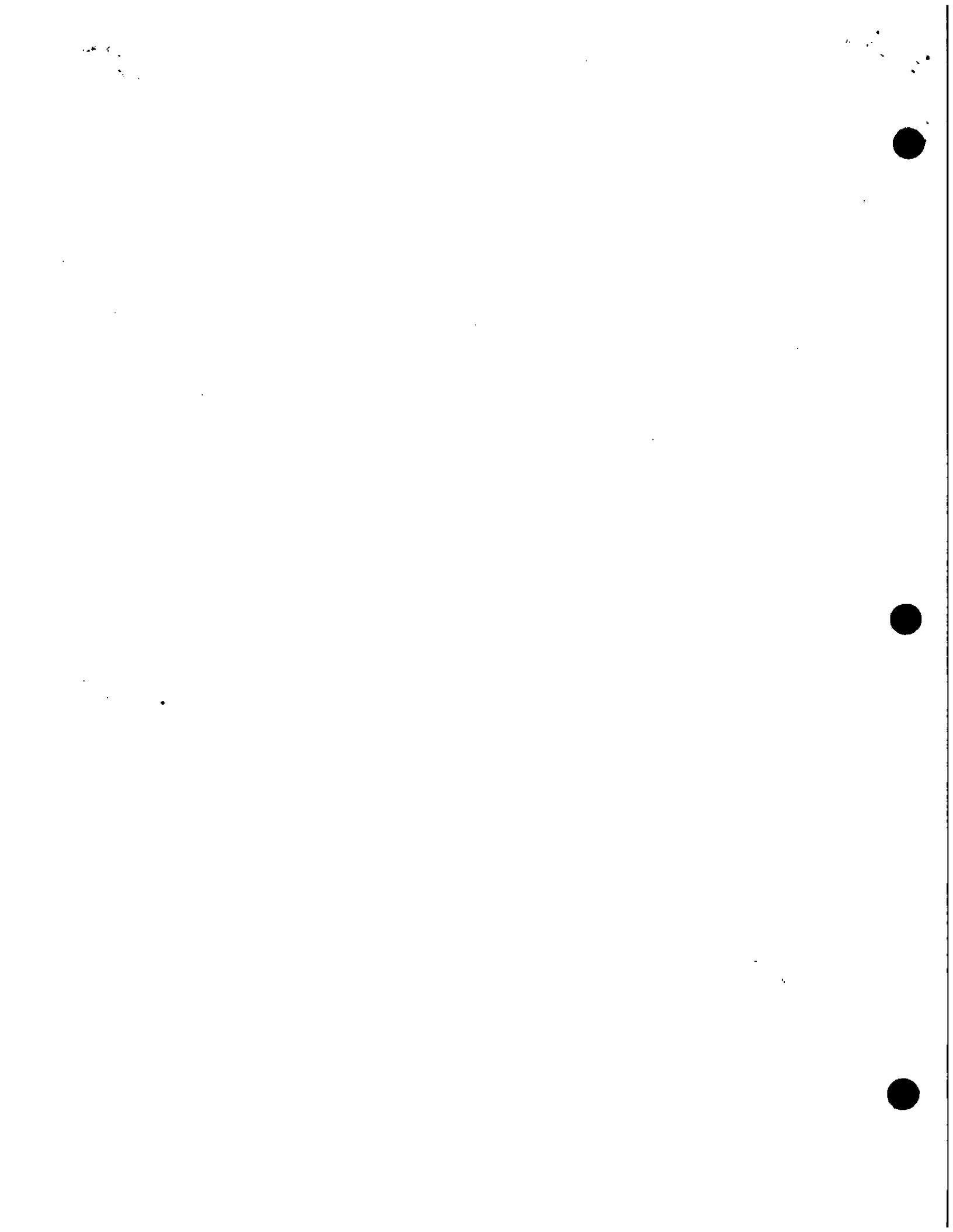
California law also prohibits the unlawful manufacture, dispensation, possession, or illegal use of a controlled substance. That prohibition extends to all places and includes the worksite of California state employees.

Employees convicted of a violation of a criminal drug statute when the violation occurred at a State employee's worksite shall report the conviction to the State agency within five (5) days of the conviction.

In the event of the unlawful manufacture, distribution, dispensation, possession or illegal use of a controlled substance at a State worksite the State may take disciplinary action pursuant to applicable Government Code sections and/or require the satisfactory completion of a drug abuse assistance or rehabilitation program.

The State Employee Assistance Program (EAP) provides drug problem assessment and referral to appropriate counseling and rehabilitation services. The EAP is available to all State employees. Procedures exist to ensure the confidentiality of EAP records. Contact your personnel office for further information.

It is the intent of the State that each State employee abide by the terms of this drug-free workplace statement.



action (up to and including termination) against the employee or require the convicted employee to satisfactorily participate in a drug abuse assistance or rehabilitation program.

6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of the above requirements.

GROUND FOR POSSIBLE SANCTIONS

Each grantee or contractor may be sanctioned for certain violations of the Act. These sanctions could include suspension, termination or debarment of the contract or grant. Grantees and contractors may be sanctioned if they: (1) Make a false certification; (2) violate the certification by failing to comply with its requirements; and (3) have a number of employees convicted of criminal drug violations occurring in the workplace.

Should you have any questions on the Drug-Free Workplace Act and the certification requirements, please contact Karen Neuwald at (916) 324-0526 or ATSS 454-0526.


DAVID J. PIRAPELLE
DIRECTOR

Attachments

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA



EXECUTIVE ORDER D-58-86

WHEREAS, the use of illicit drugs has substantially increased in recent years, and has serious adverse effects upon both the drug user and those who rely on the drug user for support and services; and

WHEREAS, employees who use illegal drugs, whether on or off duty, are generally less productive, less reliable, and prone to greater absenteeism than employees who do not use illegal drugs; and

WHEREAS, the use of illegal drugs has resulted in billions of dollars of lost productivity each year, occasioned by the reduced efficiency and increased absenteeism of employees who abuse drugs; and

WHEREAS, the impact of illegal drug use is felt in both the public and private sectors; and

WHEREAS, the use of illegal drugs by State employees generally is inconsistent with the law-abiding behavior expected of all citizens, and with the special trust placed in such employees as servants of the public; and

WHEREAS, the use of illegal drugs, whether on or off duty, by State employees impairs the efficiency of State departments and agencies, undermines public confidence in them, and interferes with the job performance of employees who do not use illegal drugs, and thereby increased the cost of government to the taxpayers of California; and

WHEREAS, the use of illegal drugs by State employees in certain positions of sensitivity and trust poses a special risk to public safety and the effective enforcement of the law; and

WHEREAS, the State of California, as an employer, has a responsibility to taxpayers to insure that state functions are performed efficiently, and without undue risk to the people of the state; and

WHEREAS, the State of California, as an employer, is also concerned with the well being of its employees and should encourage the identification and rehabilitation of employees with drug problems; and

WHEREAS, the President of the United States, in recognition of the serious problem of illegal drug use by federal employees, on September 15, 1986 issued an executive order establishing standards and procedures designed to achieve a drug free Federal work place; and

WHEREAS, a need also exists to establish standards and procedures to achieve a drug free State work place;

NOW, THEREFORE, I, GEORGE DEUKMEJIAN, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. The Department of Personnel Administration, in Consultation with the State Personnel Board, shall develop policies and guidelines designed to achieve a drug-free State work place, while protecting the privacy and with due regard for the constitutional rights of State employees.
2. Such policies and guidelines shall include the following:
 - a. Provision for identifying illegal drug users, including a program to test for the use of illegal drugs by employees in "sensitive" positions. The positions included in the drug testing program shall be determined by the Department based on the degree of risk created by the unauthorized use of drugs, with due consideration to the nature of the agency's mission, the employee's duties, and the danger to the public health and safety that could result from the drug related impairment of the employee.
 - b. Provision for suspension or removal of employees from "sensitive" positions based upon drug use.
 - c. Provision for treatment of employees with drug problems, including counseling and rehabilitation programs, with procedures to protect the confidentiality of treatment records.
 - d. Provision for confidentiality of test results.
3. All State agencies responsible to the Governor are directed, and all other public entities are requested, to assist the Department of Personnel Administration in discharging its responsibilities under this order.
4. Nothing in this order shall be deemed to abrogate any existing policy or directive relating to drug use by state employees, or to affect any existing or future state employee disciplinary proceeding.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 24th day of September 1986.

George Deukmejian
Governor of California

ATTEST:

March Fryer
Secretary of State

