**SECOND CHANCE POLICY**

|  |
| --- |
| COMPANY NAME recognizes that nearly 9% of all employed adults have current alcohol or illicit drug use disorders, and another 9% report that they are recovering or have recovered from a substance use problem (SAMHSA). Therefore, COMPANY NAME supports employees—as outlined in this policy—seeking professional treatment and actively participating in recovery programs and efforts. COMPANY NAME will strive to avoid penalizing employees with substance use or alcohol use disorders or a history of, and will instead endeavor to support these employees on their recovery journey.  COMPANY NAME encourages employees to voluntarily seek help with drug and alcohol problems before employer intervention, policy violation, or other extenuating circumstances.  COMPANY NAME provides employees (and candidates) a “second chance” after testing positive for drugs or alcohol or if they self-disclose the need for treatment and are recommended for treatment following evaluation by a treatment specialist. Through agreement, some employees (and candidates) that test positive may continue (or begin) employment if they agree to certain conditions. These conditions, set by COMPANY NAME and based on best practice, include but are not limited to completion of evaluation or assessment by a medical professional or treatment specialist, participation in a treatment program, counseling, future monitoring through drug and alcohol testing, and more.  This does not mean employees eligible for or participating in our Second Chance Program are not susceptible to discipline, up to and including termination. The existence of a Second Chance Agreement does not supersede, replace or interfere with the existing procedures for correcting poor performance, attendance, conduct issues, and maintaining a safe workplace. A Second Chance Agreement will not change the existing collective agreements between COMPANY NAME and the Union. At-will employees remain at-will. Second Chance Agreements will be offered consistently and under the same conditions, but only in some situations described herein.  COMPANY NAME believes that the health and wellness of our team members are of the utmost importance, and we are dedicated to building a culture that honors and celebrates personal recovery. As a recovery-friendly workplace, our team members are free to be successful without fear of stigma or discrimination. This policy was developed after research and review by HR practitioners, legal counsel, and medical professionals and is based on prevailing best practices at the state and national levels. |
| Scope |
| This policy applies to all current employees of COMPANY NAME—including but not limited to individuals in permanent full-time and part-time roles. This policy also applies to all prospective employees once they have received a written conditional offer of employment. |
| Policy Elements |
| **CONDITIONS UNDER WHICH ONE IS ELIGIBLE FOR PROGRAM PARTICIPATION:**   1. Existing and prospective employees may be offered a Second Chance Agreement when:    1. Existing employees test positive on a drug or alcohol test (first incident)    2. Prospective employees test positive on a pre-employment drug test (first incident)    3. Existing employees self-disclose the presence of a substance use issue and test positive or are recommended for treatment following the evaluation by a third-party qualified treatment provider. 2. Employees may be ineligible if XXXXXX 3. Employees must sign the Second Chance Agreement (SCA) presented by COMPANY NAME within X days of being given the agreement. 4. Managers, without employee disclosure or request, may not recommend the exploration of a Second Chance Agreement or make assumptions about substance use history.    1. When performance issues are present, managers may inform employees of general support services available by providing employees with a packet of information (prepared by HR). 5. In cases of policy violations, employee injury, property damage, or other events, employees will remain subject to discipline by COMPANY NAME, which could result in termination of employment regardless of participation in the Second Chance Program (SCP).   **PROGRAM TERMS:**   1. Upon confirmation of a positive substance test, eligible employees will be provided with the opportunity to participate in our Second Chance Program.    1. Employee must schedule an evaluation/assessment with a qualified treatment provider (QTP) within X days of contract signing. The evaluation/assessment must be complete within X days of the contract signing.       1. Clinical assessment is the diagnostic process to assess whether an individual who tests positive for alcohol or other drugs needs prevention/intervention services or treatment for a substance use disorder (SUD). The assessment often involves more than a single counseling session and may also include the application of a written assessment tool. The QTP will determine the level of the individual’s condition and what services are recommended.    2. Employee must sign the appropriate medical release authorization to allow COMPANY NAME to receive information from the QTP. Between the agreement between COMPANY NAME and the QTP, the QTP will proactively send status updates to COMPANY NAME. The QTP will share the following:       1. Employee attendance and progress report       2. Whether an employee complies with QTP recommendation       3. The amount of time off work required for the employee to comply with the treatment plan       4. A timeline of when the counselor projects the employee will be ready to resume duty       5. Announcement that the QTP authorizes the employee to resume duty       6. Any limitations, accommodations, or modifications that the employee may need       7. Employment-relevant information related to ongoing treatment plan components, such as follow-up substance testing       8. COMPANY NAME will not receive any personal information shared between the employee and the counselor, nor medical information or details, unless they are directly relevant and necessary and consented to by the employee.    3. Employees may not return to work until they are released by a QTP, as described below.    4. Employees will/will not receive pay during this time.    5. Employees will immediately be placed on leave for up to X consecutive work days to participate in a rehabilitation or treatment program. Leave typically ranges from X to X days depending on the recommendation of the QTP.    6. Prospective employees not recommended for further treatment will be re-tested and can resume the hiring process if negative.    7. Upon completion of treatment, QTP will authorize the employee’s return to work. 2. Employee must comply with the treatment plan developed by the QTP.    1. Should QTP determine that treatment is necessary, the employee will have X days to enter a substance addiction treatment program, receive inpatient care, outpatient care, etc.    2. The QTP will make either education or treatment recommendations for the employee. If the QTP determines that the employee does not have an SUD that requires treatment, education may be recommended, which often can be completed after the employee has returned to work. In other cases, a number of self-help meetings – such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or SMART Recovery – may be recommended.    3. Depending upon the individual’s condition, they may continue working while attending traditional outpatient treatment, including individual and group counseling, family therapy, educational groups, and other therapies.    4. Employees who need a higher level of assistance may be referred to a higher level of care, such as intensive outpatient treatment or partial hospitalization. In these situations, they can live at home (and possibly even keep working) while attending counseling sessions most days or evenings.    5. An employee with a severe SUD may be referred to residential or inpatient treatment. 3. If absence from work is necessary for the treatment or rehabilitation, COMPANY NAME may designate the absence as a Family and Medical Leave Act (FMLA) absence in accordance with our FML policy. Available accrued sick, vacation and personal leave may be used concurrently with the FMLA leave. 4. If absence from work results from a diagnosis of substance use disorder, alcoholism, or any other recognized related disability, short-term disability benefits may be awarded. Please see our policy **Short-Term Disability** for more information and contact HR with questions. 5. Employee must comply with all COMPANY NAME rules, policies, and practices and meet performance standards throughout the Second Chance Agreement and beyond. 6. All medical consultation and treatment costs will be the employee’s responsibility and the employee's insurance (as applicable). 7. COMPANY NAME agrees to hold employment/positions for employees participating in our SCP, similar to how we do for employees under FML. Please see our policy: **Family Medical Leave** for more information. However, employees are subject to a change in job duties and responsibilities. The same is true for prospective employees.   **RETURN TO WORK CONDITIONS:**   1. Once an employee or prospective employee completes the required steps of the treatment plan and is recommended to return to or start work by the QTP, the employee must:    1. Complete a substance test with a negative result.    2. Successfully complete COMPANY NAME’S Return-To-Work/Fitness for Duty assessment 2. Employee must sign a Return-To-Work Agreement. 3. Employees will resume work activities with any necessary accommodations as determined by the QTP in consultation with COMPANY NAME personnel. 4. Employee, HR, and their manager must hold a return-to-work meeting where all parties discuss concerns, appropriate support measures, transition plans, and post-return plans. 5. Return-to-Work may not mark the completion of the treatment plan. QTPs may recommend that employees continue to seek treatment and engage in counseling, group meetings, and other support measures as a condition of being eligible to return to work. 6. Employees will be tested for drug and/or alcohol use for up to X months after signing the Return-to-Work Agreement on an unannounced basis to determine if they comply with our Drug & Alcohol Use Policy.   . |
|  |

# Employee Support & Assistance

|  |
| --- |
| Employees that are eligible to participate in our Second Chance Program may receive:     * Continued ability to use their accrued paid time off for evaluation, treatment, or recovery. * Up to X hours of unpaid time off to undergo evaluation and assessment (unpaid leave of absence) * Up to X hours of unpaid time off to complete a treatment program (unpaid leave of absence). * Up to X hours of paid time off to undergo evaluation and assessment (paid leave of absence). * Up to X hours of paid time off to complete a treatment program (paid leave of absence). * Up to X hours of wellness leave to undergo evaluation and assessment (active employment). * Up to X hours of wellness leave to complete a treatment program (active employment). * Up to X hours of unpaid time off to participate in recovery activities (unpaid leave of absence), such as support groups, counseling sessions, or mental health time off. * Up to X hours of unpaid time off to participate in recovery activities (unpaid leave of absence), such as support groups, counseling sessions, or mental health time off. * Up to X hours of paid time off to participate in recovery activities (paid leave of absence), such as support groups, counseling sessions, or mental health time off. * Up to X hours of paid time off to participate in recovery activities (paid leave of absence), such as support groups, counseling sessions, or mental health time off. * Up to X hours of wellness leave to participate in recovery activities (active employment), such as support groups, counseling sessions, or mental health time off. * Up to X hours of wellness leave to participate in recovery activities (active employment), such as support groups, counseling sessions, or mental health time off. * Family Medical Leave.  See our FMLA policy for more information. * Financial assistance with the cost of assessment. * Financial assistance with the cost of treatment. * Support through our Employee Assistance Program (EAP)1 * Support through Worker Peer Support Programs2 * A list of local support groups such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). * A list of local treatment centers and specialists (Addiction Treatment Locator, Assessment & Standards Platform; or FindTreatment.gov). * Recovery coaching services (by phone). * A Return-to-Work Plan. * Flexible hours and work schedules. * Guarantee that a position remains available upon your return to work.  This may or may not be the exact position you were in previously. * Short-term disability insurance coverage that provides some salary replacement while out for treatment.     “Treatment” could include inpatient treatment, outpatient treatment, ongoing counseling, group participation, and more.    Participation in the SCP will not affect an employee’s career advancement or employment, nor will it guarantee or protect employment. The SCP is a process used in conjunction with discipline, not a substitute for discipline.  COMPANY NAME assumes no responsibility for the drug or alcohol rehabilitation of any employee. |

# Reasonable Accommodation

|  |
| --- |
| Upon return to work, eligible employees may require accommodation. This could include modified work duties, schedules, telecommuting, and more. There may be a temporary need to move an employee to light duty, non-hazardous, or non-safety-sensitive work as they continue their treatment and/or recovery.  See the Reasonable Accommodation section of our policy: **Drug & Alcohol Use**. |

# Disciplinary Action or Consequence

|  |
| --- |
| Any employee or prospective employee who fails to comply with this policy will be subject to disciplinary action, up to and including the termination of their employment with cause.  Managers or supervisors that fail to report incidents of suspicions of policy violation may be subject to disciplinary action. Employment will be terminated if the employee does not follow the treatment and recovery plan outlined by their QTP.  COMPANY NAME will investigate and deal with all complaints or incidents related to substance use at work fairly, respectfully, and timely. Information about an incident or complaint will not be disclosed except as necessary to protect workers, investigate, take corrective action, or as otherwise required by law.  The existence of a Second Chance Agreement does not supersede, replace or interfere with the existing procedures for correcting poor performance, attendance, conduct issues, and maintaining a safe workplace.  Employees that elect not to participate in the Second Chance Program following a positive drug or alcohol screen must be informed that by refusing, they are voluntarily ending their employment with COMPANY NAME.  Prospective employees that refuse to participate will not be eligible for employment, and their offer will be rescinded.  Employees that participate in the SCP but are unable to adhere to plan requirements will be provided with the below upon their exit:   * Continued access to EAP benefits, for themselves and their family, for three months after their employment ends. * A list of nearby treatment programs, providers, specialists, counselors, etc. * A list of local support groups. * Ability to access resume and interview coaching. * Local labor market facts and figures. * A list of local or online free or low-cost training and education programs. |

# Responsibility & Enforcement

|  |
| --- |
| * The human resource (HR) department is responsible for policy administration, interpretation, and enforcement. * Every employee is responsible for promptly reporting suspected violations of this policy to HR. * Every employee is responsible for ensuring third-party vendors, partners, contractors, and visitors know this policy and their individual responsibility to comply. * Managers are responsible for staying informed on the details of this policy, understanding how to apply this policy, fulfilling their relevant managerial responsibilities such as maintaining documentation, addressing potential policy violations, seeking information to make informed decisions, connecting employees to HR and other resources, keeping HR and other appropriate members of management informed, and more. * Managers have the right to initiate corrective actions and conversations when appropriate, and when a personal problem—including the possibility of substance misuse or illegal substance use—may be affecting performance, managers may use constructive confrontation. However, a manager’s responsibility for monitoring job performance and conduct does not extend to diagnosing or resolving substance use challenges or involving oneself in employees’ personal lives. * Managers are responsible for being able to:   + Develop, document, and communicate objective job performance standards;   + Observe and document incidents and examples of unsatisfactory work performance or behavior;   + Recognize symptoms of drug or alcohol addiction or misuse;   + Discuss work-related problems with employees;   + Determine whether equipment, lack of training, or working condition are affecting performance;   + Set appropriate time limits for improvement of performance;   + Appropriately inform employees of the consequences of continued poor performance;   + Inform the employee of the availability of assistance for personal problems and encourage the use of the resources;   + Help individuals re-enter the workplace after treatment and rehabilitation. * COMPANY NAME may bring violations of this policy to the attention of appropriate law enforcement authorities. |

# Confidentiality

Information and records related to substance use disorder, drug and alcohol use and dependency, risk assessment, reasonable accommodation requests, reasonable suspicion checklists, post-accident reports, and fitness for duty examination will be maintained in secure files separate from regular personnel files and kept confidential to the extent required by law. Such records and information may be disclosed among managers and supervisors on a need-to-know basis. They may also be disclosed when relevant to a grievance, charge, claim, or other legal proceeding initiated by or on behalf of an employee or applicant.  In addition, information may be shared within the applicable chain of authority or chain of communication to the extent they need it to perform their responsibilities in support of the employee. Nothing in this policy may be construed as a promise or guarantee of confidentiality.

Title 42 of the Code of Federal Regulations (CFR), Part 2, prohibits disclosing any information identifying an individual as having a substance use disorder unless the patient provides written consent. For this reason, employees must sign a Content to Release Information form that permits the sharing of information related to treatment, by one’s QTP, to COMPANY NAME. In addition, QTPs should also follow all HIPPA requirements regarding information with COMPANY NAME.

See our policy: **Privacy & Confidentiality** for more information.

# Related Policies

|  |
| --- |
| * Return-to-Work/Fitness for Duty * Drug & Alcohol Policy * Drug & Alcohol Testing Policy * Privacy & Confidentiality Policy * Family Medical Leave Policy * Short-term Disability Policy * Americans with Disabilities Act * Drug-Free Workplace Act |

# Related Laws

|  |
| --- |
| * Drugfree Workplace Act of 1988 * Family Medical Leave Act * Americans with Disabilities Act * HIPPA * 42 CFR Part 2     **IMPORTANT INFORMATION**  This policy should not substitute for independent legal review of local, State and Federal laws applicable to your agency. Consult an attorney prior to the implementation of any new policy.  HCPC recognizes that every employer has a different history of dealing with issues of substance use disorder as it affects the workplace, especially where those issues concern recovery from substance use disorders. HCPC further recognizes that each employer’s unique history warrants consideration when confronted by similarly situated individual cases. Accordingly, this toolkit is meant as a bridge from past practices and as a guide and resource to assist employers in implementing recovery-aligned workplace policies.  Before implementing practices recommended by the toolkit or as issues are encountered that implicate those practices, HCPC recommends consulting legal counsel, as nothing in the toolkit is intended to provide legal advice or counsel either generally or in individual circumstances. By furnishing this resource, HCPC does not assume any liability for any claims made by any individuals or entities, including the recipient of the toolkit, for consequences that may relate to the toolkit, its implementation, or specific handling of employee matters guided by the toolkit or policies recommended thereby. As a condition of HCPC’s agreement to furnish the toolkit to a participating employer, any employer that has requested and received the toolkit thereby releases and agrees to defend and indemnify HCPC, its officers, directors, employees, agents, and insurers, as the case may be, from any and all claims, costs, damages, or liability that may arise from policies implemented after receipt of, on the basis of, or otherwise influenced by, the toolkit.  Employee acknowledges and agrees that Employee is voluntarily choosing to explore treatment as part of a Second Chance Agreement in lieu of other potential employment consequences, and Employee assumes any and all risks associated with the receipt of such treatment, which will be provided by a third-party not connected to or affiliated with Employer as an agent or representative, but through a referral arrangement. |