



ARIZONA BOARD OF EXECUTIVE CLEMENCY
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NOTICE OF PUBLIC MEETING OF THE ARIZONA BOARD OF EXECUTIVE CLEMENCY

AGENDA

Pursuant to A.R.S. 38-431.02, notice is hereby given to the members of the Arizona Board of Executive Clemency and to the general public that the Arizona Board of Executive Clemency will hold a Business Meeting on Tuesday, February 25, 2025 beginning at 12:00 p.m. at the Arizona Board of Executive Clemency Office, 4000 N Central Ave, Suite 2300; Phoenix, AZ, 85012.

The Board may go into executive session for any of the purposes set for in A.R.S. 38-431.03(A) (1) through (7), as applicable to the agenda items listed, including for the purposes of receiving legal advice or the consideration of employment related issues.

- I. Call to Order and Roll Call

- II. New Policy #212, Alcohol and Drug-Free Workplace - Drug and Alcohol Testing for Employees
 - A. Overview of New Policy
 - B. Public Comment on New Policy
 - C. Board Vote

- III. Annual Conflict of Interest Training - presented by AZ Attorney General's Office

- IV. Adjournment

Pursuant to the Americans with Disabilities Act (ADA) the Arizona Board of Executive Clemency endeavors to ensure the accessibility of its meetings to all persons with disabilities. Persons with a disability may request reasonable accommodations, such as a sign language interpreter, by contacting the Board Office at (602) 542-5656. Requests should be made as early as possible to allow time to arrange the accommodation.

A handwritten signature in blue ink, appearing to read "Mina Mendez".

Mina Mendez Board Chair

POSTED: This 11th day of February , 2025

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION - STATE PERSONNEL SYSTEM

- engaged in outside employment, including consultant relationships, shall inform the supervisor of the nature of the employment and corresponding work hours. An employee shall also disclose actual or potential conflicts of interest related to outside employment activities as soon as the employee becomes aware of the conflict. The determination as to whether a conflict or potential conflict exists shall be made by the agency head.
- D.** Outside employment with another state agency. An employee who seeks outside employment with another state agency must request approval from both the employee's primary agency and prospective secondary agency before commencing employment with the secondary agency. The primary and secondary agencies must ensure that the request complies with state and federal guidelines. Such request, if approved shall be in writing and on file with both agencies. Employment records are to be maintained in accordance with the provisions of R2-5A-105.
- E.** Outside employment as a paid public official or in a political party or organization. All employees shall comply with A.R.S. § 41-752 pertaining to political activities.
- F.** Termination of outside employment. If an agency head determines that an employee's outside employment interferes with the employee's performance or creates a conflict of interest, the employee will be required to terminate the outside employment.
- G.** Consequences of non-compliance. An employee who fails to make required disclosures or to take action to resolve any conflict of interest may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.
- B.** Eligibility for leave. All state employees, except temporary employees, are eligible for any type of leave with pay from the date of appointment. Temporary employees are eligible only for holidays subject to the provisions of R2-5A-B601, administrative leave, civic duty leave for the purpose of voting, living donor leave and military leave.
- C.** Amount of leave. Leave amounts are based on full-time employment and shall be pro-rated for part-time employees, even if not specified in an individual rule.
- D.** Family and Medical Leave Act (FMLA) leave. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.800 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments. An employee who meets FMLA eligibility requirements and uses leave for any of the situations covered by the FMLA shall be subject to the following:
1. Counting FMLA leave. Periods of paid leave and periods of leave without pay shall count towards the employee's available FMLA leave.
 2. Use of accrued paid leave. An employee shall use available paid leave for all or part of the employee's FMLA leave under the conditions in:
 - a. R2-5A-D602 for an employee on industrial leave,
 - b. R2-5A-D601 for an employee on FMLA leave for any other reason.
- E.** Insurance benefits continuation. An employee remains eligible for continued participation in the employee insurance plans while on leave pursuant to this Article.
- F.** Requests for leave. Except in an emergency, an employee shall obtain approval in advance and in writing before taking any leave.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-504. Alcohol and Drug-free Workplace

- A.** General. State agencies shall prohibit the manufacture, distribution, dispensation, possession or use of alcohol, illegal drugs, unauthorized drugs, inhalants, or other unauthorized controlled substances during an employee's working hours or while on state premises or worksites, including state vehicles and property leased to the state. A state employee shall not be impaired by alcohol or drugs while on duty.
- B.** Written policy. Each agency head shall adopt a written policy to address testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees. The policy shall include all of the requirements listed in A.R.S. § 23-493.04. The agency head will submit its proposed alcohol and drug-free workplace policy and any subsequent changes to the Director for approval.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by final rulemaking at 30 A.A.R. 2765 (September 6, 2024) effective October 12, 2024 (Supp. 24-3).

ARTICLE 6. LEAVE**PART A. GENERAL****R2-5A-A601. Leave Administration**

- A.** Leave plans. The Director shall adopt leave plans. Agency heads are responsible for administering leave for agency employees in accordance with the leave plans in this Article.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

PART B. PAID LEAVE**R2-5A-B601. Holidays**

- A.** State holidays.
1. January 1, "New Year's Day."
 2. Third Monday in January, "Martin Luther King, Jr./Civil Rights Day."
 3. Third Monday in February, "Lincoln/Washington Presidents' Day."
 4. Last Monday in May, "Memorial Day."
 5. July 4, "Independence Day."
 6. First Monday in September, "Labor Day."
 7. Second Monday in October, "Columbus Day."
 8. November 11, "Veterans Day."
 9. Fourth Thursday in November, "Thanksgiving Day."
 10. December 25, "Christmas Day."
- B.** Employees scheduled to work. Unless required to work to maintain essential state services, an employee who is regularly scheduled to work on a day on which one of the holidays listed in subsection (A) is observed is entitled to be absent with pay for the number of hours regularly scheduled to work, not to exceed eight hours, provided the employee is not on leave without pay on the employee's work days immediately preceding or following the day on which the holiday is observed.
1. Part-time employees who work 1/4 time, 1/2 time, or 3/4 time are entitled to a proportional amount of holiday pay. Part-time employees who work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time are entitled to

Arizona Revised Statutes

23-493.04. Testing policy requirements

A. Testing or retesting for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy that has been distributed to every employee subject to testing or that has been made available to employees in the same manner as the employer informs its employees of other personnel practices, including inclusion in a personnel handbook or manual or posting in a place accessible to employees. The employer shall inform prospective employees that they must undergo drug testing. The written policy shall include at least the following:

1. A statement of the employer's policy respecting drug and alcohol use by employees.
2. A description of those employees or prospective employees who are subject to testing.
3. The circumstances under which testing may be required.
4. The substances as to which testing may be required.
5. A description of the testing methods and collection procedures to be used.
6. The consequences of a refusal to participate in the testing.
7. Any adverse personnel action that may be taken based on the testing procedure or results.
8. The right of an employee, on request, to obtain the written test results.
9. The right of an employee, on request, to explain in a confidential setting, a positive test result.
10. A statement of the employer's policy regarding the confidentiality of the test results.

B. Within the terms of the written policy, an employer may require the collection and testing of samples for any job-related purposes consistent with business necessity including:

1. Investigation of possible individual employee impairment.
2. Investigation of accidents in the workplace. Employees may be required to undergo drug testing or alcohol impairment testing for accidents if the test is taken as soon as practicable after an accident and the test is administered to employees who the employer reasonably believes may have contributed to the accident.
3. Maintenance of safety for employees, customers, clients or the public at large.
4. Maintenance of productivity, quality of products or services or security of property or information.
5. Reasonable suspicion that an employee may be affected by the use of drugs or alcohol and that the use may adversely affect the job performance or the work environment.

C. In addition to the provisions of subsection B, employees or groups of employees may be required to undergo drug testing on a random or chance basis.

D. If an employer institutes a policy of drug testing or alcohol impairment testing under this article, all compensated employees including officers, directors and supervisors shall be uniformly included in the testing policy.

E. Nothing in this article shall be construed to encourage, discourage, restrict, limit, prohibit or require on-site drug testing or alcohol impairment testing.

ARIZONA BOARD OF EXECUTIVE CLEMENCY

BOARD POLICY #212

Policy Title: ALCOHOL AND DRUG-FREE WORKPLACE – DRUG AND ALCOHOL TESTING OF EMPLOYEES	Effective Date: March 1, 2025	Policy #212
	Supersedes: NEW	Pages: 7

This policy does not create a contract for employment between any Arizona Board of Executive Clemency (Board) employee and the Board. Nothing in this policy changes the fact that all uncovered employees of the Board are at will employees and serve at the pleasure of the appointing authority.

Scope:

This policy applies to all Arizona Board of Executive Clemency employees.

Authority:

- A.R.S. Title 23, Chapter 2, Article 14, Drug Testing of Employees
- A.R.S. § 41-703, Duties of director
- A.R.S. § 41-743, Powers and duties of the director
- A.A.C. R2-5A-504, Alcohol and Drug-free Workplace

Definitions:

In this policy, unless the context otherwise requires:

“Shared Services CHRO” means the assigned ADOA Shared Services Chief Human Resources Officer, or designee, who is responsible for providing consultation on Board employee relations matters.

“Alcohol” is defined in A.R.S. § 23-493 and means ethanol, isopropanol or methanol.

“Contracted collection site or laboratory” means any location(s) used by the state provider or contractor including any mobile unit or contracted facility.

“Controlled substance” is defined in A.R.S. § 36-2501 and means a drug, substance or immediate precursor in schedules I through V of title 36, chapter 27, article 2.

“Cut-off level(s)” are recommended by the U.S. Department of Health and Human Services (HHS) and mean the minimum concentrations of drugs or metabolites used to determine whether a specimen is positive or negative for the drug or drug class.

Arizona Board of Executive Clemency Policies and Procedures

Subject: Alcohol and Drug-Free Workplace - Drug and Alcohol Testing of Employees

“Drugs” as defined in A.R.S. § 23-493, means any substance considered unlawful under the schedules of the controlled substances section of the comprehensive drug abuse prevention and control act of 1970, as amended, (P.L. 91-513; 84 Stat. 1247; 21 United States Code section 812) or pursuant to title 13, chapter 34 or the metabolite of the substance.

“Good faith” is defined in A.R.S. § 23-493 and means reasonable reliance on fact, or that which is held out to be factual, without the intent to deceive or be deceived and without reckless or malicious disregard for the truth. Good faith does not include a belief formed with gross negligence. A good faith belief may be based on any of the following:

- a. Observed conduct, behavior or appearance
- b. Information reported by a person believed to be reliable, including a report by a person who witnessed the use or possession of drugs or drug paraphernalia at work
- c. Written, electronic or verbal statements
- d. Lawful video surveillance
- e. Records of government agencies, law enforcement agencies or courts
- f. Results of a test for the use of alcohol or drugs
- g. Other information reasonably believed to be reliable or accurate

“Impairment” is defined in A.R.S. § 23-493 and means symptoms that a prospective employee or employee while working may be under the influence of drugs or alcohol that may decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior, negligence or carelessness in operating equipment, machinery or production or manufacturing processes, disregard for the safety of the employee or others, involvement in an accident that results in serious damage to equipment, machinery or property, disruption of a production or manufacturing process, any injury to the employee or others or other symptoms causing a reasonable suspicion of the use of drugs or alcohol.

“Negative test result” means test results which conclude that alcohol and/or the drug(s) or metabolite(s) tested for are either absent or below the cut-off level(s).

“Positive test result” means test results which conclude the initial and confirmation test for alcohol and/or drug(s) and metabolite(s) are at or above the cut-off level(s).

"Sample" is defined in A.R.S. § 23-493 and means urine, blood, breath, saliva, hair or other substances from the person being tested.

Policy:

The Board has established this policy to address testing or retesting for the presence of alcohol or drugs of its employees and if applicable, screening prospective employees. The policy is in accordance with the requirements listed in A.R.S. § 23-493.04(A).

Arizona Board of Executive Clemency Policies and Procedures

Subject: Alcohol and Drug-Free Workplace - Drug and Alcohol Testing of Employees

The Board maintains an alcohol and drug-free workplace. All Board employees and management share in the responsibility of ensuring the workplace is free from drugs and alcohol. Use of illegal drugs, abuse of prescription and over-the-counter medications, and alcohol use while on duty shall not be tolerated.

In accordance with Arizona Administrative Code (A.A.C.) R2-5A-504, the Board prohibits the manufacture, distribution, sale, dispensation, possession or use of alcohol, illegal drugs, unauthorized drugs, inhalants or other unauthorized controlled substances during working hours or while on state premises or worksites, including state vehicles and property leased to the state. A state employee shall not be impaired by drugs (whether legal or illegal) or alcohol while on duty.

Description of Employees Subject To Testing

All Board employees are subject to reasonable suspicion drug and alcohol testing. Testing shall be conducted in accordance with applicable state statutes and rules, and this policy. Costs incurred for reasonable suspicion drug or alcohol testing, including reasonable transportation costs if the test is conducted at a location other than the employee's normal worksite, shall be paid by the Board.

In accordance with the Arizona Medical Marijuana Act, the Board will not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either: the person's status as a Medical Marijuana Registry Identification card holder or a registered qualifying patient's positive drug test for marijuana unless the individual used, possessed or was impaired by marijuana on the Board premises or while on duty.

Procedures:

Circumstances Under Which Testing May be Required

Reasonable suspicion drug and/or alcohol testing may be initiated when there is a good faith belief an employee is under the influence, currently using, or has used drugs and/or alcohol, based on one or more of the following:

- Observed conduct, behavior or appearance including, but not limited to:
 - Physical appearance
 - Poor judgment
 - Carelessness and/or erratic behavior
 - Slurred, slow, indistinct or unusual speech
 - Any such behavior, in conjunction with an incident or accident
 - Smell or odor of marijuana or alcohol
- Information reported by a person believed to be reliable including a report by a person who witnessed the use or possession of drugs, drug paraphernalia or alcohol by an employee at work
- In an incident or accident in which law enforcement is involved, the agency may rely on law enforcement to determine whether a drug or alcohol test is warranted and is not required to test if

Arizona Board of Executive Clemency Policies and Procedures

Subject: Alcohol and Drug-Free Workplace - Drug and Alcohol Testing of Employees

law enforcement has determined that such tests were not needed. Refusal by an employee to consent to drug and/or alcohol testing during such an incident does not preclude the agency from requiring such testing under this policy.

Initiating Reasonable Suspicion Drug or Alcohol Testing

- Supervisors shall:
 - Obtain prior approval for reasonable suspicion drug and/or alcohol testing from the Executive Director and the Board Chair or designee, using the Arizona Board of Executive Clemency [Supervisor's Checklist for Making a Reasonable Suspicion Determination form](#)
 - Contact the Shared Services CHRO to:
 - Determine if there is sufficient evidence to support reasonable suspicion drug and/or alcohol testing (if reasonable suspicion drug and/or alcohol testing is conducted after business hours, on a weekend or a holiday, the CHRO shall be contacted the next business day during normal business hours)
 - Identify a contracted collection site or an on-site testing vendor meeting the Board's requirements
 - Provide the employee the Drug-free Workplace Program Employee Test Notification Order form and a copy of this policy in person, or electronically, as appropriate
 - Ensure the employee to be tested is immediately transported to the contracted collection site by a Board supervisor, manager, or designated Board official, or is available for on-site testing by a contracted vendor
- Reasonable suspicion testing normally shall occur immediately as practical on the day of the observed behavior(s), including before or after the employee's regular work hours. The employee's time spent taking the test is considered hours worked, and the employee must be paid for the time (including any applicable overtime).
 - If an alcohol test was not administered within eight hours, the supervisor shall cease attempts to administer the test and submit a written report giving the reasons the alcohol test was not administered
 - A screening test of a breath alcohol concentration:
 - Of less than .02% shall be considered negative and not require further testing
 - Of .02% or greater shall require a confirmation test to be performed
 - Drug testing shall include confirmation of any positive drug test result as defined in A.R.S. § 23-493.03
- An employee requiring reasonable suspicion drug and/or alcohol testing shall:
 - Receive and acknowledge Drug-Free Workplace Program Employee Test Notification Order form
 - Be immediately transported to the contracted collection site/laboratory by a Board supervisor, manager, or designated Board official, or be available for on-site testing by a contracted vendor
 - Provide positive identification and the Drug-Free Workplace Program Employee Test Notification Order form upon arriving at the contracted collection site, or for the on-site contracted testing vendor.

Arizona Board of Executive Clemency Policies and Procedures

Subject: Alcohol and Drug-Free Workplace - Drug and Alcohol Testing of Employees

Substances as to Which Testing May be Required

Employees may be tested for impairment by:

- Alcohol, and/or
- Controlled substances (schedule I through V) as defined in A.R.S. § 36-2501

Testing Methods and Collection Procedures

The contracted collection site or laboratory shall perform all sample collection and testing for drugs and/or alcohol impairment in accordance with the procedures outlined in A.R.S. § 23-493.03.

The employee must comply with the contracted collection site or laboratory and provide sufficient, timely, and usable sample(s) of urine, blood, breath, saliva, hair or other substances as deemed appropriate by the contracted collection site or laboratory for the substance(s) being tested in accordance with A.R.S. § 23-493.01.

Test Results and Records

The contracted collection site or laboratory shall transmit test results to the Shared Services CHRO in a timely and confidential manner.

Right of Employee to Request and Obtain Copy of Test Results

- An employee may obtain a copy of their test results by submitting a written request to the Shared Services CHRO
 - The request shall include the employee's name, EIN, method for receiving the test results, signature and date
 - The employee shall include a mailing address if the results are to be mailed

Right of an Employee, on Request, to Explain a Positive Test Result

- The employee has a right, upon request, to explain in a confidential setting, a positive test result. The CHRO shall provide an employee an opportunity to confidentially discuss test results and verify their statements, which may include contacting, with the employee's consent, the employee's treating medical professionals. Failure to provide consent may be considered non-compliance with this policy.
- An employee may wish to keep a list of medications taken within the last 30 days or other medical information in conjunction with a specimen collection should a positive result be reported. This information shall be retained by the employee.

Confidentiality of Test Results and Records

- All program files, records, testing information, results and reports relating to drug or alcohol testing, shall be confidential
- Test results shall be available to Board officials only on a need-to-know basis

Arizona Board of Executive Clemency Policies and Procedures

Subject: Alcohol and Drug-Free Workplace - Drug and Alcohol Testing of Employees

- All employee records, contracted laboratory reports, test results and electronic data related to drug and/or alcohol testing shall be treated as confidential medical records and maintained by the Shared Services CHRO, and shall not be placed in an employee's official personnel file
- Unauthorized dissemination of testing information/results is prohibited and may result in disciplinary action

Consequences of Refusal to Participate in the Testing; Adverse Action Based on Testing or Results

An employee may receive disciplinary action, up to and including dismissal, based upon the Board's good faith belief and/or evidence and documentation of drug and/or alcohol use in violation of this policy including, but not limited to:

- Direct observation of the employee's behavior
- Evidence obtained and verified following an arrest or criminal conviction
- A verified positive drug or alcohol test result
- An employee's voluntary admission to the unauthorized use of drugs and/or alcohol; an employee who admits to drug and/or alcohol use after being notified shall submit to the required testing
- Providing altered, adulterated, or substituted test specimen(s)
- Refusal to:
 - Submit to any required alcohol and/or drug testing
 - Allow the contracted collection site professional to measure body temperature when the temperature of the urine is outside the acceptable temperature range
- Failure to provide sufficient sample(s) for required drug or alcohol testing
- Tampering with any part of the drug testing process to include records or specimens

Related Forms/Attachments:

- [Supervisor's Checklist for Making a Reasonable Suspicion Determination](#)
- [Drug-Free Workplace Program Employee Test Notification Order form](#)

Corresponding Policies:

- None

Contact:

If you have any questions related to this policy, please contact the Shared Services Human Resources Office.

Policy History (supersedes):

- N/A

Arizona Board of Executive Clemency
DRUG-FREE WORKPLACE EMPLOYEE TEST NOTIFICATION ORDER FORM

You are ordered to immediately report or be available to the collection site indicated below to submit to a reasonable suspicion drug and/or alcohol test.

Failure to report for the test or failure to provide a urine, blood, saliva, or hair specimen or breath sample as ordered will be considered refusal to test and may result in disciplinary action.

Employee Name	<input type="text"/>	EIN	<input type="text"/>	Report Date	<input type="text"/>
Division	<input type="text"/>	Supervisor's Name	<input type="text"/>		
Collection Site Name	<input type="text"/>				
Collection Site Street Address	<input type="text"/>				
Collection Site City	<input type="text"/>	Collection Site Zip Code	<input type="text"/>		

Within 72 hours of notification of a positive test, you may submit a written request to the Chief Human Resources Officer to have the original, sealed, split urine specimen retested. You are responsible for all costs associated with the retest.

I understand that refusal to report for the drug and/or alcohol test or failure to provide a urine, blood, saliva, hair, or breath sample may subject me to disciplinary action, to include dismissal.

Employee Signature	<input type="text"/>	Date	<input type="text"/>
Assistant Director or Designee Signature	<input type="text"/>	Date	<input type="text"/>
Chief Human Resources Officer or Designee Signature	<input type="text"/>	Date	<input type="text"/>

Attention Collection Site Staff:
Please contact Human Resources at 602-542-5482 if additional information is needed.