

## UNIVERSITY REGULATION

### PART IV - HUMAN RESOURCES

#### Chapter 04.02 – General Personnel Regulations

##### **R04.02.010. Equal Employment Opportunity and Affirmative Action: Statement of Intent**

Persons have equal employment opportunities at the University of Alaska based solely upon their qualifications and demonstrated ability or demonstrated potential ability.

The University of Alaska affirms its commitment to principles of nondiscrimination in the hiring and employment of all persons of legal employment status regardless of race, color, religion, sex, national origin, citizenship, pregnancy, childbirth or related medical conditions, marital status, changes in marital status, disability, age, status as a disabled veteran or Vietnam era veteran.

Each major administrative unit will have a written Affirmative Action Plan which sets forth specific affirmative action responsibilities. Hiring authorities will make affirmative efforts to recruit and employ qualified people who are members of “protected classes” presently under-represented.

Methods of recruiting, screening and selection will be documented and be approved by the AAO or the regional personnel office, as determined by the president or chancellor as appropriate, prior to recruitment.

Employment at the university will be governed as follows:

#### A. Definition of Terms

1. “Affirmative Action Officer” (AAO) refers to the unit, regional Affirmative Action office, director or designated person, whichever reference is applicable.
2. "Affirmative Action Plan" (AAP) refers to a written document developed and maintained by each major administrative unit AAO which identifies those groups presently under-represented in the University of Alaska workforce. The AAP establishes recruitment strategies for each job group in order to increase the number of currently under-represented members of “protected classes” in the university labor force.
3. "Applicant" refers to an individual who applies for a specific position vacancy during a specified recruitment period.
4. "Applicant Pool" refers to applicants who meet the minimum qualifications of the position being recruited for based on application materials submitted and approved by the regional personnel or affirmative action office.
5. “Candidate” refers to an applicant selected for final stage screening.
6. "Hiring Authority" refers to the individual who is accountable for following recruiting and staffing policy and regulation and applicant selection decisions.
7. “Persons with disabilities” - as defined by the Americans with Disabilities Act, those persons who have a physical or mental impairment, a record of a physical or mental impairment, or are regarded as having a physical or mental impairment which substantially limits one or more major life activities.
8. “Protected class” refers to members of any one or more of the following groups:
  - a. Black (not of Hispanic origin) - a person having origins in any of the Black racial groups of Africa.
  - b. Hispanic - a person of Mexican, Puerto Rican, Cuban, South American, or other Spanish culture origin, regardless of race.

- c. Asian or Pacific Islander - a person with ancestry in the Indian subcontinent, the region referred to as the Far East, Southeast Asia, or the Pacific Islands, e.g., India, Pakistan, Thailand, China, Japan, Philippines (not the Middle East).
  - d. American Indian or Alaska Native - a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.
  - e. Women of all races and national origins who are applicants for positions that are not clerical in nature.
  - f. "Vietnam era veterans" - any veteran of the Vietnam era (August 15, 1964 - May 7, 1975).
  - g. "Disabled veterans" - persons entitled to disability compensation under laws administered by the Veterans Administration for disability rated at 30 percent or more or a person whose discharge from active duty was for a disability incurred or aggravated in the line of duty.
- 9. "Regional personnel office" refers to the regional personnel or statewide human resource office, director, or designated person, whichever reference is applicable.
  - 10. "Target recruitment" refers to recruitment efforts specifically made to recruit members of "protected classes" (target groups) which are presently under-represented in a particular EEO-6 job category in the university's work force.
  - 11. "Working environment" means any place where the business of the university is conducted in the name of the university or any unit thereof.

(04-21-95)

#### **R04.02.020. Discrimination**

##### **A. Prohibition Against Discrimination**

- 1. Discrimination is a form of misconduct which undermines the integrity of the working and learning environment and will not be tolerated on or at University of Alaska premises or functions.
- 2. Subject to the constraints of Regents' Policy, the broadest range of legally permissible speech and expression will be tolerated in the learning environment, student and scholarly publications, and at public forums open to public debate and the exchange of ideas.

##### **B. Definitions**

- 1. "Discrimination" refers to being adversely treated or affected, either intentionally or unintentionally, in a manner that unlawfully differentiates or makes distinctions on the basis of an individual's legally protected status or on some basis other than an individual's qualifications, abilities, and performance, as appropriate.
- 2. "Learning Environment" is defined as the premises of the University of Alaska system or any site where educational programs and activities are conducted in the name of the University of Alaska or any unit thereof.
- 3. "Affirmative Action Officer" refers to the regional affirmative action director or designee.
- 4. "Regional Personnel Officer" refers to the regional human resource or personnel director or manager or designee.
- 5. "Working Environment" is defined as any place where the business of the university is conducted in the name of the University of Alaska or any unit thereof.
- 6. "Investigator(s)" are defined as the person or persons who have the responsibility and authority to conduct an investigation of formal discrimination complaints.
- 7. "Advisors" are defined as individuals appointed from each MAU to advise individuals regarding discrimination, provide information on whom to contact to file a formal complaint, and outline alternatives for complaint resolution. The president and the chancellors or their designees will appoint and make available a list of university personnel to serve as discrimination prevention advisors for individuals with questions or complaints involving

discrimination. Advisors must have knowledge of applicable law and Regents' Policy and University Regulation.

C. Roles and Responsibilities

1. The university administration is responsible for promoting a positive working and learning environment where all persons are free to discuss any problems or questions they may have concerning discrimination at the university, without fear of intimidation or reprisal.
2. All university employees are responsible for maintaining a positive working and learning environment. Supervisors and faculty will promptly respond to complaints of discrimination to determine what, if any, remedial action may be warranted. In resolving these complaints, supervisors and faculty will seek advice and guidance from the affirmative action officer or advisors. University employees and students must cooperate fully with efforts to resolve complaints brought to their attention.

D. Informal Resolution Process

The purpose of informal resolution is to educate and inform individuals of their offensive behavior and to allow individuals the opportunity to voluntarily correct inappropriate behavior without disciplinary action. Informal resolution will not generally have as an outcome written reports or sanctions.

1. A complainant generally should try to inform the person directly that his or her behavior is unwelcome, harmful or offensive. The complainant is also encouraged to request assistance from other university employees, regional personnel officers, advisors or affirmative action officers in the informal resolution of a complaint. These assistants will promptly attempt to resolve the complaint through consultation and guidance of the complainant or, as appropriate, mediation between all concerned parties. Successful resolution efforts will be greatly facilitated by the timely reporting and handling of complaints.
2. Informal resolution may include informing the person about the behavior and/or writing a letter concerning the behavior and requesting that the behavior be stopped.
3. If informal resolution efforts fail to achieve satisfactory results, or if informal resolution is inappropriate in consideration of the circumstances or the egregious nature of the alleged behavior, the complainant may file a formal complaint with the affirmative action officer or the regional personnel officer as the initial action.

E. Formal Resolution Process

The formal resolution process is an administrative remedy which requires an investigation and written findings. One or two investigators will be designated to conduct a timely investigation to ensure an objective review of the allegations. The statements of the complainant, respondent and witnesses become part of a written record which will be used for administrative review and action as necessary.

1. Formal complaints alleging discrimination must be in writing and include the following information:
  - a. The names of the respondent and complainant.
  - b. Their affiliation to the university.
  - c. A description of the offensive behavior and circumstances.
2. A formal complaint should also include the following information:
  - a. A description of any attempts to resolve the problem informally.
  - b. An explanation of the impact on the complainant.
  - c. Specific remedies requested.
3. The investigator(s), in determining whether the alleged conduct constitutes discrimination, must give consideration, to the record as a whole, to the totality of the circumstances, and where applicable to regulatory guidelines.
4. A copy of the written findings will be distributed to the complainant, the respondent, the respondent's supervisor, the regional personnel officer, the office of General Counsel and the Statewide Office of Human Resources.

5. Any person who:
    - a. commits discrimination; or
    - b. fails to perform his or her investigatory or supervisory responsibilities; or
    - c. makes false claims or provides false testimony against anotherwill be subject to appropriate disciplinary action including, but not limited to, verbal and written reprimands, probation, suspension or termination.
  6. When a preponderance of the evidence is found to substantiate a complaint, disciplinary action may be taken. In determining what disciplinary action may be appropriate, the extent to which the respondent knew or reasonably should have known that his or her conduct was harmful or offensive will be considered. Sanctions for conduct will be based upon all facts and circumstances of each case.
  7. A complainant or respondent who disputes the written findings of the investigation report may request a formal review of the findings within 5 working days of the release of the findings.

Such formal review will be conducted by one or more trained individuals appointed by the chancellor or, in the case of statewide employees, the president. The purpose of this review is to provide an opportunity for the chancellor or president to obtain an objective review of the investigation findings when those findings are disputed by one of the involved parties. The review will be scheduled as soon as practicable and the written recommendation resulting from the review will be forwarded to the chancellor, or in the case of a statewide employee, to the president for a decision.
  8. If a party is dissatisfied with a chancellor's decision, that party may request a discretionary review by the president within 5 working days of the decision. If the president elects to review a chancellor's decision, the president's decision will be the final decision of the university. If the president does not elect to accept a review within 15 working days, the decision of the chancellor then becomes the final decision of the university. In the case of Statewide Administration employees, the decision of the president is the final decision of the university.

In either case, the final decision of the university is not grievable except as set forth in this regulation and is subject to appeal within 30 days pursuant to Alaska Appellate Rule 602(a)(2).
- F. Identity of Complainant
- The university will not accept complaints when the complainant cannot be identified to the investigative officer.
- Complaints by individuals who refuse to be identified to the respondent will not be accepted for investigation unless, in the discretion of the university, persistent and pervasive allegations of discrimination warrant formal investigation. Whenever formal disciplinary action may be contemplated, alleged offenders will be advised of the identity of their accusers, the nature of the charges being brought against them, and the circumstances of the alleged offense(s).
- G. Confidentiality
- Investigators will make reasonable efforts to preserve the confidentiality of their investigation and resolution efforts but cannot guarantee anonymity to complaining parties or witnesses. University employees and students will make a reasonable effort to protect the legitimate privacy interests of all concerned parties.
- H. Retaliation
1. All persons have the right to complain about any conduct which they reasonably believe constitutes discrimination. No university official may take disciplinary or other adverse action against a person who genuinely but mistakenly believes himself or herself to be discriminated against, even if the practices complained of do not, in fact, constitute discrimination.

2. Threats or other forms of intimidation or retaliation against complainants, respondents, witnesses or investigators will constitute a violation of this regulation and may be subject to separate administrative action, including termination for cause.
- I. Bargaining Unit Employees
1. If disciplinary action may result from an investigation of a bargaining unit employee alleged to have engaged in discrimination, the employee has a right to union representation during an investigatory interview with the employee.
  2. Bargaining unit employees who have been disciplined pursuant to this regulation must resolve their disputes through the dispute resolution processes provided in their collective bargaining agreement.
- J. Training programs on discrimination will be designed to:
1. provide employees with current information on federal and state law, Regents' Policy, University Regulation, and administrative procedures; and
  2. demonstrate appropriate techniques for the resolution of discrimination allegations.
- K. Dissemination
- The university administration will make reasonable efforts to inform members of the university community regarding the prohibition against discriminating conduct. In particular, this information will be communicated to new employees as an integral part of their orientation experience.
- (06-06-07)

#### **P04.02.022. Sexual Harassment.**

- A. University Prohibition Against Sexual Harassment
1. Sexual harassment is a form of employee or student misconduct which undermines the integrity of the working and learning environment and will not be tolerated on or at University of Alaska premises or functions.
  2. Subject to the constraints of Regents' Policy, the broadest range of legally permissible speech and expression will be tolerated in the learning environment, student and scholarly publications, and at public forums open to public debate and the exchange of ideas.
- B. Definitions
1. "Sexual Harassment" includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where:
    - a. submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or education; or
    - b. submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that individual; or
    - c. such conduct has the purpose or necessary effect of unreasonably interfering with an individual's work or creating a hostile, intimidating or offensive working or learning environment; and
      - (1) such conduct is known by the offender to be unwelcome, harmful or offensive; or
      - (2) a person of average sensibilities would clearly understand the behavior or conduct is unwelcome, harmful or offensive.
  2. "Learning Environment" is defined as the premises of the University of Alaska system or any site where educational programs and activities are conducted in the name of the University of Alaska or any unit thereof.
  3. "Affirmative Action Officer" refers to the regional affirmative action director or designee.
  4. "Regional Personnel Officer" refers to the regional human resource or personnel director or manager or designee.

5. "Working Environment" is defined as any place where the business of the university is conducted in the name of the University of Alaska or any unit thereof.
6. "Investigator(s)" are defined as the person or persons who have the responsibility and authority to conduct an investigation of formal sexual harassment complaints.
7. "Advisors" are defined as individuals appointed from each MAU to advise individuals regarding sexual harassment, provide information on whom to contact to file a formal complaint, and outline alternatives for complaint resolution.

The president and the chancellors or their designees will appoint and make available a list of university personnel to serve as harassment prevention advisors for individuals with questions or complaints involving sexual harassment. Advisors must have knowledge of sexual harassment law and Regents' Policy and University Regulation.

#### C. Roles and Responsibilities

1. The university administration is responsible for promoting a positive working and learning environment where all persons are free to discuss any problems or questions they may have concerning sexual harassment at the university, without fear of intimidation or reprisal.
2. All university employees are responsible for maintaining a positive working and learning environment. Supervisors and faculty will promptly respond to complaints of sexual harassment to determine what, if any, remedial action may be warranted. In resolving sexual harassment complaints, supervisors and faculty will seek advice and guidance from the affirmative action officer or harassment prevention advisors. University employees and students must cooperate fully with efforts to resolve complaints brought to their attention.

#### D. Informal Resolution Process

The purpose of informal resolution is to educate and inform individuals of their offensive behavior and to allow individuals the opportunity to voluntarily correct inappropriate behavior without disciplinary action. Informal resolution will not generally have as an outcome written reports or sanctions.

1. A complainant generally should try to inform the person directly that his or her behavior is unwelcome, harmful or offensive. The complainant is also encouraged to request assistance from other university employees, regional personnel officers, advisors or affirmative action officers in the informal resolution of a complaint.  
These assistants will promptly attempt to resolve the complaint through consultation and guidance of the complainant or, as appropriate, mediation between all concerned parties. Successful resolution efforts will be greatly facilitated by the timely reporting and handling of complaints.
2. Informal resolution may include informing the person about the behavior and/or writing a letter concerning the behavior and requesting that the behavior be stopped.
3. If informal resolution efforts fail to achieve satisfactory results, or if informal resolution is inappropriate in consideration of the circumstances or the egregious nature of the alleged behavior, the complainant may file a formal complaint with the affirmative action officer or the regional personnel officer as the initial action.

#### E. Formal Resolution Process

The formal resolution is an administrative remedy which requires an investigation and written findings. One or two investigators will be designated to conduct a timely investigation to insure an objective review of the allegations. The statements of the complainant, respondent and witnesses become part of a written record which will be used for administrative review and action as necessary.

1. Formal complaints alleging sexual harassment must be in writing and include the following information:
  - a. The names of the respondent and complainant.
  - b. Their affiliation to the university.
  - c. A description of the offensive behavior and circumstances.

2. A formal complaint should also include the following information:
  - a. A description of any attempts to resolve the problem informally.
  - b. An explanation of the impact on the complainant.
  - c. Specific remedies requested.
3. The investigator(s), in determining whether the alleged conduct constitutes sexual harassment, must give consideration to the record as a whole, to the totality of the circumstances, and to regulatory guidelines where applicable.
4. A copy of the written findings will be distributed to the complainant, the respondent, the respondent's supervisor, the regional personnel officer, the office of General Counsel and the Statewide Office of Human Resources.
5. Any person who:
  - a. commits sexual harassment; or
  - b. fails to perform his or her investigatory or supervisory responsibilities; or
  - c. makes false claims or provides false testimony against another will be subject to appropriate disciplinary action including, but not limited to, verbal and written reprimands, probation, suspension or termination.
6. When a preponderance of the evidence is found to substantiate a complaint of sexual harassment, disciplinary action may be taken. In determining what disciplinary action may be appropriate, the extent to which the respondent knew or reasonably should have known that his or her conduct was harmful or offensive will be considered. Sanctions for conduct will be based upon all facts and circumstances of each case. Coercive behavior, such as threats or promises that academic or employment reprisals or rewards will follow the refusal or granting of sexual favors, constitutes gross misconduct and provides just cause for immediate termination.
7. A complainant or respondent who disputes the written findings of the investigation report may request a formal review of the findings within 5 working days of the release of the findings. Such formal review will be conducted by one or more trained individuals appointed by the chancellor or, in the case of statewide employees, the president. The purpose of this review is to provide an opportunity for the chancellor or president to obtain an objective review of the investigation findings when those findings are disputed by one of the involved parties.

The review will be scheduled as soon as practicable and the written recommendation resulting from the review will be forwarded to the chancellor or president for a decision.
8. If a party is dissatisfied with a chancellor's decision, that party may request a discretionary review by the president within 5 working days of the decision. If the president elects to review a chancellor's decision, the president's decision will be the final decision of the university. If the president does not elect to accept a review within 15 working days, the decision of the chancellor then becomes the final decision of the university. In the case of Statewide Administration employees, the decision of the president is the final decision of the university.

In either case, the final decision of the university is not grievable except as set forth in this regulation and is subject to appeal within 30 days pursuant to Alaska Appellate Rule 602(a)(2).

F. Identity of Complainant

The university will not accept complaints when the complainant cannot be identified to the investigative officer. Complaints by individuals who refuse to be identified to the respondent will not be accepted for investigation unless, in the discretion of the university, persistent and pervasive allegations of sexual harassment warrant formal investigation. Whenever formal disciplinary action may be contemplated, alleged offenders will be advised of the identity of their accusers, the nature of the charges being brought against them, and the circumstances of the alleged offense(s).

G. Confidentiality

Investigators will make reasonable efforts to preserve the confidentiality of their investigation and resolution efforts but cannot guarantee anonymity to complaining parties or witnesses. University employees and students will make a reasonable effort to protect the legitimate privacy interests of all concerned parties consistent with their obligation to inform the accused.

H. Retaliation

1. All persons have the right to complain about any conduct which they reasonably believe constitutes sexual harassment. No university official may take disciplinary or other adverse action against a person who genuinely but mistakenly believes himself or herself to be harassed, even if the practices complained of do not, in fact, constitute sexual harassment.
2. Threats or other forms of intimidation or retaliation against complainants, respondents, witnesses or investigators will constitute a violation of this regulation and may be subject to separate administrative action, including termination for cause.

I. Bargaining Unit Employees

1. If disciplinary action may result from an investigation of a bargaining unit employee alleged to have engaged in sexual harassment, the employee has a right to union representation during an investigatory interview with the employee.
2. Bargaining unit employees who have been disciplined pursuant to this regulation must resolve their disputes through the dispute resolution processes provided in their collective bargaining agreement.

J. Training programs on sexual harassment will be designed to:

1. provide employees with current information on federal and state law, Regents' Policy, University Regulation, and administrative procedures; and
2. demonstrate appropriate techniques for the resolution of sexual harassment allegations.

K. Dissemination

The university administration will make reasonable efforts to inform members of the university community regarding the prohibition against sexually harassing conduct. In particular, this information will be communicated to new employees as an integral part of their orientation experience.

(06-06-07)

**R04.02.024. Consensual Sexual Relationships.**

A. Faculty-Student Relationships

1. Within the instructional context:  
It is considered a serious breach of professional ethics for a member of the faculty to initiate or acquiesce in a sexual relationship with a student who is enrolled in a course being taught by the faculty member or whose academic work, including work as a teaching assistant, is being supervised by the faculty member.
2. Outside the instructional context:  
Sexual relationships between faculty members and students occurring outside the instructional context may lead to difficulties, particularly when the faculty member and student are in the same academic unit or in units that are academically allied; relationships that the parties view as consensual may appear to others to be exploitative. Further, in such situations the faculty member may face serious conflicts of interest and should be careful to distance himself or herself from any decisions that may reward or penalize the student involved.

B. Supervisor-Employee Relationships

Consensual sexual relationships between supervisors and employees, including circumstances where a staff member has authority or control over a student's living or learning environment, are prohibited.

It is a violation of the ethical obligation to the employee or student, to other employees or students, to colleagues, and to the university for a staff member to fail to withdraw from participation in

activities or decisions that may reward or penalize an employee or student with whom the staff member has or has had a sexual relationship.

C. Complaint Procedure

Complaints alleging a violation of the Consensual Sexual Relationships regulation will be handled in accordance with the regulation regarding sexual harassment.

(08-15-97)

**R04.02.040. Drug-Free Workplace**

Policy 04.02.040 regarding drug-free workplace prohibits the unlawful manufacture, distribution, dispensing, possession, or use by an employee of a controlled substance in any workplace of the university. The following steps will be taken to provide a drug-free workplace.

- A. Each major administrative unit (MAU) will publish and distribute to all employees a statement notifying employees that the violation of such prohibition will subject them to appropriate disciplinary action.
- B. Each MAU will establish a drug-free awareness program to inform employees about:
  - 1. The dangers of drug abuse in the workplace;
  - 2. The university's policy of maintaining a drug-free work-place; and
  - 3. The availability of drug counseling, rehabilitation and employee assistance programs.
- C. Each employee will be responsible as a condition of employment to abide by the terms of this regulation and must notify the university of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- D. Within 30 days of the receipt of notice as prescribed in paragraph C. above or other notification of such conviction the university will take one of the following personnel actions:
  - 1. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved by the university.
  - 2. Place the employee on suspension as prescribed by Regents' Policy regarding corrective action.
  - 3. Dismiss the employee under the provision of Regents' Policy regarding termination for cause.

(06-20-97)

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

A. Definitions

For purposes of this regulation, the following definitions apply:

- 1. "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- 2. "Alcohol use (or use alcohol)" means any consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- 3. "Alcohol concentration" is the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
- 4. "Commerce" means 1) any trade, traffic or transportation within the jurisdiction of the United States between a place in a state and a place outside of such state, including a place outside of the United States and 2) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subsection 1) of this section.
- 5. "Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle
  - a. has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
  - b. has a gross vehicle weight rating of 26,001 or more pounds; or

- c. is designed to transport 16 or more passengers, including the driver; or
  - d. is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under federal hazardous materials regulations.
6. "Confirmation test," in Controlled Substance testing, is a second analytical procedure to identify the presence of specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. In alcohol testing, it is a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.
  7. "Controlled Substance" means marijuana, cocaine, opiates, amphetamines and phencyclidine.
  8. "Covered Employee" or "Employee" means any University of Alaska employee required to hold a CDL as a function of their employment. This includes for purposes of pre-employment testing only, applicants and current employees selected for employment in such a position. A Covered Employee may be off-duty, on-duty, pre-duty or "on call" status.
  9. "Driver" means any Covered Employee who operates a CMV. This includes, but is not limited to: full-time, regularly employed drivers, casual, intermittent, temporary, part-time, or occasional drivers.
  10. "Driving Time" means all time spent at the driving controls of a CMV in operation.
  11. "Medical Review Officer" is a licensed physician responsible for receiving laboratory results generated by the university's controlled substance testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a Covered Employee's confirmed positive test result together with his/her medical history and any other relevant biomedical information.
  12. "Observer" a trained supervisor or other trained university official.
  13. "Performing a Safety-Sensitive Function" a Covered Employee is considered to be performing a Safety-Sensitive Function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any Safety-Sensitive Functions.
  14. "Safety-Sensitive Function" means:
    - a. All time a Covered Employee is at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the Covered Employee has been relieved from duty by the Covered Employee's supervisor.
    - b. All time the Covered Employee is inspecting equipment as required by DOT regulations or otherwise inspecting, servicing, or conditioning any CMV at any time.
    - c. All driving time as defined in the term driving time in this regulation.
    - d. All time, other than driving time, in or upon any CMV except time spent resting in a sleeper berth as sleeper berth is defined by DOT regulations.
    - e. All time a Covered Employee is loading or unloading or supervising or assisting in the loading or unloading of a CMV, attending a CMV being loaded or unloaded, remaining in readiness to operate the CMV, or in giving or receiving receipts for shipments loaded or unloaded
    - f. All time spent by a Covered Employee performing the driver requirements of DOT regulations relating to accidents.
    - g. All time spent by a Covered Employee repairing, obtaining assistance, or remaining in attendance upon a disabled CMV.
  15. "Screening test (or initial test)", in controlled substance testing, is an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic

procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

16. "Substance Abuse Professional" means a licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

**B. Applicability**

This regulation applies to all University of Alaska employees who are required to hold a CDL as a function of their university employment ("Covered Employees").

**C. Prohibitions**

It is a violation of this regulation for a Covered Employee to:

1. report or return to work within four hours after using alcohol;
2. use alcohol on the job, including during breaks or meals;
3. possess alcohol on the job, including during breaks or meals;
4. have a confirmation test result indicating an alcohol concentration of 0.02 or greater;
5. use alcohol within eight hours following an accident or until the Covered Employee is tested, whichever occurs first;
6. report for duty or remain on duty when the Covered Employee is using or has used any controlled substance (except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely perform a Safety-Sensitive Function, including operating a Commercial Motor Vehicle (CMV);
7. test positive for a controlled substance;
8. refuse to submit to an alcohol or controlled substance test as required by federal laws or regulations or this regulation.

If a Covered Employee engages in the conduct described above, the employee is considered to have engaged in Prohibited Conduct, is immediately disqualified from performing a Safety-Sensitive Function, including operating a CMV, and is subject to disciplinary action as set forth in Section I of this regulation.

**D. Required Tests**

A Covered Employee is required to submit to alcohol and controlled substance testing under the circumstances set forth in this section. Before performing a test, the trained supervisor or other trained university official will notify the employee that the test is being performed pursuant to the United States Department of Transportation (DOT) regulations and at no cost to the employee.

**1. Pre-Employment Testing**

For the purposes of pre-employment testing only, "Covered Employee" includes applicants and current employees selected for employment in such a position. Prior to the first time a Covered Employee performs Safety-Sensitive Functions for the university, the employee will undergo testing for alcohol and controlled substances. No Covered Employee will be allowed to perform Safety-Sensitive Functions unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than 0.02 and has received a controlled substances test indicating a verified negative test result.

The applicable regional personnel office will obtain, pursuant to a Covered Employee's consent, information on the employee's alcohol tests with a concentration result of 0.04 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two years, which are maintained by the employee's previous employers. This information must be obtained and reviewed by the applicable regional personnel office no later than 14 calendar days after the first time a Covered Employee performs Safety-Sensitive Functions for the university, if it is not feasible to obtain the information prior to the employee performing Safety-Sensitive Functions. A Covered Employee will not be

allowed to perform Safety-Sensitive Functions more than 14 days without obtaining the information.

A Covered Employee will not be allowed to perform Safety-Sensitive Functions if the university obtains information showing an alcohol test with a concentration of 0.04 or greater, or a verified positive controlled substances test result, or refusal to be tested, unless the applicable regional personnel office obtains information on the employee's subsequent Substance Abuse Professional evaluation and associated successful return to duty testing.

2. Reasonable Suspicion Testing

A Covered Employee will submit to an alcohol and/or controlled substance test when a trained supervisor or other trained university official "Observer" has reasonable suspicion to believe that the employee has engaged in Prohibited Conduct, except for the conduct prohibited by section C.3. of this regulation.

A determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The observations must be made during, just preceding, or just after the period of the work day that the employee is performing a Safety-Sensitive Function. The observations may include indications of the chronic and withdrawal effects of controlled substances. The Observer must attempt to find another trained supervisor or other trained university official to corroborate the observations in writing. The Observer must then escort the employee to the designated collection or test site.

If an alcohol test required by this section is not administered within two hours following the reasonable suspicion determination, the Observer will prepare a report stating the reasons the alcohol test was not timely administered; if the alcohol test is not administered within eight hours following the reasonable suspicion determination, there will be no further attempts to administer the test and the Observer will prepare a report stating the reasons why the test was not timely administered. The report(s) will be forwarded to the applicable regional personnel office.

A written record of the observations leading to a controlled substance reasonable suspicion test will be made by the Observer within 24 hours of the observed behavior or before the results of the controlled substance tests are released, whichever is earlier.

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

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

3. Post-Accident Testing

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

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

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

If a controlled substance test is not administered within 32 hours following the accident, there will be no further attempts to administer the test and the Covered Employee's

supervisor will prepare a report stating the reasons why the test was not timely administered. The report(s) will be forwarded to the applicable regional personnel office. A Covered Employee who is subject to post-accident testing must remain readily available for the testing, or will be deemed to have refused to submit for testing.

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

4. Random Testing

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

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

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

5. Return-To-Duty Testing

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

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

6. Follow-Up Testing

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

E. University Notification Obligations

1. The applicable regional personnel office will:

- a. notify a Covered Employee of the results of a pre-employment controlled substance test if the employee requests such results within 60 calendar days of being notified of the disposition of the employment application;
  - b. notify a Covered Employee of the results of random, reasonable suspicion and post-accident tests for controlled substances;
  - c. inform the Covered Employee which controlled substance or substances were verified as positive;
  - d. make reasonable efforts to contact and request each person who submitted a specimen under the university's program, regardless of the person's employment status, to contact and discuss the results of the controlled substances test with a Medical Review Officer when the Medical Review Officer has been unable to contact the person and will immediately notify the Medical Review Officer that the person has been notified to contact the Medical Review Officer within twenty-four hours;
  - e. provide information on contacting alcohol and/or Substance Abuse Professionals, counseling and treatment programs; and
  - f. ensure that each Covered Employee receives educational materials that explain this Regulation, the meaning of alcohol and controlled substance misuse, treatment programs available and alcohol and controlled substance testing procedures. Covered Employees will acknowledge in writing receipt of such information.
2. Before performing an alcohol or controlled substance test, the trained supervisor or other trained university official will notify the Covered Employee that will be tested of the nature of the test and the reasons for the test. The notice can either be written or oral.

F. Testing Procedures

1. Alcohol
 

Tests will be conducted under the guidance of a Breath Alcohol Technician selected by the university and in accordance with DOT regulations at one or more designated testing sites. The site(s) will afford privacy to the individual being tested. If the result of an initial test is an alcohol concentration of less than 0.02, no further testing is required and the results are transmitted to the applicable regional personnel office in a confidential manner. If the result of an initial test is an alcohol concentration of 0.02 or greater, a confirmation test will be performed within twenty minutes. The results of an initial test and the confirmation test are printed on the breath alcohol test forms, signed by both the Breath Alcohol Technician and the Covered Employee, and transmitted to the applicable regional personnel office in a confidential manner. Should a breath test show an alcohol concentration of 0.02 or greater, a blood alcohol test may be offered to the Covered Employee as an option, although not required.
2. Controlled Substances
 

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

G. Employee Refusal to Submit to Testing

Any Covered Employee who refuses to submit to a required alcohol or controlled substance test will be immediately removed from duty and such refusal will be treated as a positive test. Failure to provide adequate breath for testing when required without a valid medical explanation, failure to

remain available for post-accident testing, failure to provide adequate urine for testing without a valid medical explanation, engaging in conduct that obstructs the testing process, or failure to sign the alcohol testing form constitutes a refusal to submit to testing.

H. If an Employee Tests Positive

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

I. Disciplinary Action

1. DOT regulations establish prohibited concentrations of alcohol and controlled substances that may be in a Covered Employee's system while the Covered Employee is performing a Safety-Sensitive Function and also establish other prohibited behavior for a Covered Employee. DOT regulations also establish certain minimum penalties for a Covered Employee who has a test result which exceeds the prohibited concentration amounts or who has engaged in prohibited behavior. In general, these penalties include i) prohibitions on driving a CMV for a period of time following the prohibited behavior (with the length of time increasing as the number of instances of prohibited behavior increase), ii) referral to a Substance Abuse Professional, and iii) return to duty and follow up testing. An employer may, however, adopt stricter penalties.
2. In addition to the minimum penalties established by DOT regulations, the following disciplinary action will be imposed:
  - a. Covered Employees who test positive for controlled substances, who refuse to take a test or whose confirmation test result shows an alcohol concentration of 0.04 or greater will be considered to have engaged in behavior constituting grounds for dismissal for cause.
  - b. Covered Employees who engaged in other forms of Prohibited Conduct the first time will be relieved of duty without pay for the remainder of the employee's work day and for all of the next scheduled work day. For the second instance of Prohibited Conduct, the employee will be suspended for forty duty hours without pay. The third instance of Prohibited Conduct will constitute grounds for dismissal for cause.
  - c. Other violations of this regulation not described in a) and b) above will be dealt with in accordance with applicable policy, regulation or procedures.
3. The disciplinary action imposed by this section on a Covered Employee will be in addition to any other penalties that may be imposed for violations of state or federal laws or regulations pertaining to drivers of CMV's or holders of CDL's.

J. Access to Test Results

Except as required by law, no information about specific alcohol and controlled substance testing will be released by the university to outside parties. A Covered Employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances, including any records pertaining to the employee's alcohol or controlled substances tests.

K. Records Retention

The applicable regional personnel office will maintain the following records in a secure location with controlled access:

1. Five Year Record Retention  
Records of any employee alcohol test results indicating an alcohol concentration of 0.02 or greater; documentation of refusals to take required alcohol or controlled substance tests; verified positive controlled substance test results; equipment calibration documentation;

documentation of Covered Employee evaluations and referrals; and a copy of the calendar year summary required by DOT regulations.

2. Two Year Record Retention

Records related to the collection process and training.

3. One Year Record Retention

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

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

L. Training

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

M. Self Reporting

A Covered Employee who self reports alcohol misuse or controlled substance use and requests university assistance will be immediately referred for treatment to a Substance Abuse Professional. Within 10 working days, the employee must provide proof to the employee's supervisor of having undergone assessment screening. The proof must contain the treatment recommendations of the Substance Abuse Professional.

At least monthly, the employee will furnish the supervisor with proof of their continuing participation in the recommended treatment program until completed. Reoccurrences of alcohol misuse or controlled substance use will be subject to disciplinary action.

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