

**NEW JERSEY INSTITUTE OF TECHNOLOGY
DRUG SCREENING POLICY AND PROCEDURE
FOR
SAFETY SENSITIVE EMPLOYEES**

I. Introduction

New Jersey Institute of Technology has a legal responsibility and managerial obligation to maintain a safe work environment for its employees, as well as a duty to protect the community. The professional responsibilities, legal prerogative and the integrity of any agency demands that its employees, particularly its Safety Sensitive employees refrain, without excuse or exception, from the use and possession of illegal or medically unauthorized controlled dangerous substances (herein “drugs”), and formally register prescribed medication, which may include drugs as the term is defined herein. No person can function well while abusing drugs according to the New Jersey Department of Law and Public Safety Division of Criminal Justice. There is conclusive proof that the use and/or abuse of many types of drugs, including prescribed medication, can and does produce negative effects on an individual’s cognitive, emotional and physical health and conduct. Safety Sensitive employees may not operate outside of the law. The possession and use of drugs in itself is a crime in this jurisdiction, and grounds for arrest, prosecution, incarceration and dismissal. A condition of employment for persons in a Safety Sensitive position must and shall be free from drug possession, use and/or dependence, and clearance for employment for those taking prescribed medication. A condition of employment for all employees must be a complete absence of adverse effect on performance caused by drugs. It is, therefore, the policy of NJIT that no Safety Sensitive employee shall possess or use any drugs, whether on or off duty, unless the drug has been legally prescribed for the Safety Sensitive employee by a physician licensed to practice medicine and used in the manner prescribed.

II. Purpose

The purpose of this policy is to protect the integrity, credibility and effectiveness of the operations of the university; and to further ensure a drug free workplace for all employees. Testing Safety Sensitive employees for substance and/or prescribed medication abuse, and/or unregistered but medically prescribed use, in accordance with legally authorized parameters, will help ensure that these objectives are accomplished, while balancing the need to safeguard the rights of the individual employees tested against unreasonable intrusions into their person. It is acknowledged that legal requirements pertaining to drug testing may change and evolve; the policy may be amended from time to time to reflect changes in legal requirements and parameters, as well as the negotiated pacts of the university and its unionized employees, including Safety Sensitive employees.

III. Definition of Terms

- A. **Safety Sensitive Employees:** any employee who, in the regular or foreseeable discharge of responsibilities, engages in conduct creating a reasonable risk of injury to self or others such that even a momentary lapse of attention could reasonably result in consequences of harm, loss or injury elevated by use, prescribed or otherwise, of drugs.
- B. **Supervisors:** Administrative, supervisory personnel assigned to positions having day-to-day responsibilities for supervision of Safety Sensitive employees.
- C. **Urinalysis:** A urine test administered under approved conditions and procedure for detecting illegal drug usage.
- D. **Reasonable Individualized Suspicion:** An apparent state of facts and/or circumstances found to exist upon inquiry by the appropriate supervisor, as determined by the Associate Vice President, Facilities Management, which would induce a reasonably intelligent and prudent person to believe that a reasonable, objective basis exists to suspect that a urinalysis will produce evidence of a drug as defined by this policy.
- E. **Random Drug Testing:** A standardized random selection methodology of testing individual Safety Sensitive employees for drugs that does not depend upon reasonable individualized suspicion and does not predetermine who will be tested.
- F. **Drugs:** Controlled substances, prescribed or otherwise or illegal drugs, as follows: amphetamine/methamphetamine; barbiturates; benzodiazepene; cannabinoids; cocaine; methadone; phencyclidine; opiates and illegal steroids.

IV. Drug Testing Parameters

- A. **Pre-Employment or Probationary Period Screening** – Drug screening shall occur as part of the pre-employment medical examination administered to persons applying for any Safety Sensitive employee positions with NJIT. Additionally, screening at the discretion of NJIT may take place at any time during a Safety Sensitive employee’s probationary period.
- B. **Employment Screening** – In balancing the NJIT community’s right and obligation to have a drug-free work environment against the Safety Sensitive employee’s right to privacy, urinalysis will be the chosen method of screening. Screening will be administered as follows: (1) screening of any Safety Sensitive employee in the absence of “reasonable individualized suspicion” may be conducted at NJIT’s discretion at any time following random selection or (2) individual screening will be administered when there is a “reasonable individualized suspicion” to believe that an individual Safety Sensitive employee is using drugs in violation of this policy. Testing on the basis of “reasonable

individualized suspicion” will be required based on the objective facts and on rational inferences, drawn by a supervisor, to indicate that the usage of any drug may be the cause of an unfit condition where the Safety Sensitive employee is:

1. Impaired in, or incapable of performing their assigned duties; and/or;
2. The subject of investigation where sufficient evidence and facts are present to constitute a “reasonable/individualized suspicion” that they are involved in the use, possession or sale of drugs; and/or
3. Experiencing (without plausible, legitimate explanation proffered and fully validated) excessive absenteeism and significantly reduced productivity; and/or
4. Found to have excessive or otherwise suspicious on-duty injuries or motor vehicle accidents indicating negligence in relation to assigned duties; and/or
5. Exhibiting unusual and/or bizarre behavior patterns, reasonably deemed inconsistent with regular and appropriate behavior patterns.

V. Testing Procedures

- A. Any Safety Sensitive employee who is consuming a prescribed medication which may not otherwise be defined as a drug under this policy, shall, upon being ordered to submit to drug testing, inform his or her immediate supervisor of the nature of the illness or injury, along with the name and type of medication being taken and the physician prescribing same.
 1. Safety Sensitive employees have an affirmative obligation to disclose and register with the university through formally identified procedures as well as with their immediate supervisor each and every prescription medication taken. A prescribed drug shall be identified and registered with the university and through the employee’s immediate supervisor prior to the start of duty during which the prescribed medication is issued and to be taken. The registration form to be utilized is set forth on Attachment A. Absent extraordinary circumstances, a Safety Sensitive employee’s failure to register any and all prescribed medication may be cause for termination. The presence of any prescription drugs not registered and found in the employee’s system after random or reasonable individualized suspicion testing will be cause for termination.

B. **Reasonable Individual Suspicion:** Supervisors shall prepare a written report requesting urinalysis, where there is a credibility to the sources of information, e.g., by tip, informant, personal knowledge, observations, other documentation or reliable information that a member is a user of drugs. The report, which shall be confidential, shall be forwarded to the Associate vice President, Facilities Management, documenting the specific reasons for the request with all circumstances and/or corroborating evidence supporting individualized, reasonable suspicion (e.g., relevant facts exhibited by the Safety Sensitive employee).

1. The decision to test a Safety Sensitive employee for drugs based upon satisfaction of the standards for reasonable individualized suspicion shall be made by the Associate Vice President, Facilities Management. Under emergent circumstances, the Associate Vice President, Facilities Management may order drug testing based upon an oral report. If the Associate Vice President, Facilities Management cannot be contacted within a reasonable period of time, an NJIT designee may (acting in his absence) order such test.

C. **Random Drug Testing:** In the case of random drug testing, a published standardized, selection procedure shall be utilized to select no more than twenty-five percent (25%) of the pool of Safety Sensitive employees for drug testing at any one time. This procedure must conform with the following guidelines:

1. The selection of any Safety Sensitive employee must be based purely upon chance which may only include mathematical probability as a likelihood of selection.
2. Any of the following members of NJIT administration (or their successors in position responsibility) may be present to witness the selection process:
 - a. President,
 - b. Senior Vice President for Administration and Treasurer,
 - c. Associate Vice President for Facilities Management,
 - d. General Counsel or his designee within the Office of Legal and Employment Affairs.
3. Any unionized employee has the right, as his/her request, to have a duly authorized union representative present as a witness to the selection process.
4. To reach the maximum allowable number of Safety Sensitive employees tested at any one time, you would round to the number of Safety Sensitive employees nearest twenty-five percent (25%) at the time of selection. For example, if there are six Safety Sensitive employees in the testing pool, twenty-two (22) Safety Sensitive employees equals twenty-four and 4/10

percent (24.4%) of the pool and twenty-three (23) Safety Sensitive employees equals twenty-five and 6/10 (25.6%) of the pool. The maximum number of Safety Sensitive employees, under this example, that may be selected is twenty-two (22).

5. As the selection is truly random, there is no limit on the number of times one may be randomly selected nor will there be any alteration in the selection procedure regardless of comparable differences among Safety Sensitive employees in times selected.
6. There will be no more than five (5) random tests per year to be scheduled at NJIT's discretion.
7. As the procedure is publishable, it will be available to all Safety Sensitive employees for validity testing as a random process.
8. Confidentiality: The identification of Safety Sensitive employees selected from random testing as well as the fact that a random selection and testing procedure has been determined and scheduled to occur, prior to the collection of specimens, shall remain confidential to the extent practicable. Any employee who without authorization from NJIT, discloses either the identity of selected Safety Sensitive employees or the planning of a random selection and testing, shall be subject to severe discipline. This, without mitigation of an extraordinary nature, is a terminable offense.
9. The only matter grievable under this Policy is whether the testing procedure reasonably leads to truly random selection. The only available remedy to a grievance hereunder is directed reform of the testing procedure to provide for a truly random selection process.

D. Notification of Drug Screening

1. A Safety Sensitive employee tested on the grounds of "reasonable individualized suspicion", discretionary testing during his/her probationary period, or random testing, need receive no minimum notification that drug screening, through urinalysis, will be conducted prior to reporting to the testing location, other than that notification time that is necessary for transportation purposes. Whenever practicable, Safety Sensitive employees shall be notified during their scheduled shift on the date of the test, and testing itself will be conducted during such scheduled shift.
2. Any Safety Sensitive employee who refuses to appear for testing at the time and place designated by the Department after being notified to do so, shall be subjected to the same penalties and consequences as those Safety Sensitive employees who test positive for the presence of illegal drugs

including, but not limited to, the termination of employment from NJIT, following provision of applicable due process of law.

E. **Responsibility** – A supervisor designated by the Associate Vice President, Facilities Management shall be directly responsible for scheduling and supervising the conducting of all drug screening for Safety Sensitive employees.

F. **Processing of Urine Specimen**

1. **Designated Laboratory and Test** – The Center for Occupational Health will be the facility for testing procedures for Safety Sensitive employees. NJIT reserves the right to utilize any alternate facility that is licensed as a clinical laboratory by the New Jersey Department of Health under the New Jersey Clinical Laboratory Improvement Act for testing procedures for Safety Sensitive employees.

The following two (2) step testing process will be followed:

- a. The Enzyme Multiplied Immunoassay Test (EMIT) and Thin Layer Chromatography (TLC) will be used as initial drug screening procedures.
- b. Gas Chromatography/Mass Spectrometry (GCMS) technique is used to confirm all positive results of initial drug screening.

2. **Preliminary Acquisition Procedures**

Before a Safety Sensitive employee is ordered to submit to a drug test on the basis of “reasonable individualized suspicion”, the Associate Vice President, Facilities Management shall prepare a confidential report which documents the basis thereof. The Associate Vice President, Facilities Management (or such individual designated by this policy to render approval of testing) shall base his/her decision on the contents of this confidential report. No such report shall be required in the event of either emergent circumstances mandating immediate testing, or allowable random testing.

Prior to the submission of a urine sample for any type of testing, the Safety Sensitive employee shall complete a medical questionnaire which clearly describes all medications which he or she ingested during the prior thirty (30) days.

The Associate Vice President, Facilities Management shall designate an official monitor responsible for urine sample acquisitions. The monitor shall, whenever practicable, be of the same gender as the Safety Sensitive employee(s) producing the required samples. As the official monitor, he/she shall be responsible for ensuring that all relevant disclosure forms have been thoroughly completed by the

Safety Sensitive employee, and that the specimen containers used during the sample acquisition process have been approved by the Center for Occupational Health.

The official monitor shall also take all reasonable steps to ensure to the extent practicable that the invasion of the Safety Sensitive employee's privacy is minimized during the sample acquisition process. Prior to submitting the urine sample to the laboratory for testing, both the official monitor and the Safety Sensitive employee shall inspect the specimen bottle packet for indications of pre-void tampering. The official monitor may also choose to designate another witness to the sample acquisitions.

3. **Specimen Acquisition Procedure**

- a. After the official monitor has reviewed the appropriate forms for accuracy and inspected the empty specimen collection container for signs of tampering, the Safety Sensitive employee shall void into the container. The Safety Sensitive employee shall seal the specimen container and deliver it to the official monitor.
- b. At the time the urine sample is provided, the Safety Sensitive employee will have the option to submit two (2) samples. Both samples will be acquired according to the procedures outlined herein. One will be forwarded to the Center for Occupational Health for testing. The official monitor will store the remaining sample in a frozen state within, or accessible to, the Associate Vice President, Facilities Management according to University procedures regarding chain of custody and evidence storage, not inconsistent with Attorney General Guidelines. The samples will remain in storage for sixty (60) days or until notification by the Center for Occupational Health that the first specimen tested negative. This sample will be made available upon request through the appropriate channels to the Safety Sensitive employee or at the Safety Sensitive employee's election, his/her authorized employment representative (which for this process only may include retained counsel).
- c. To the maximum extent possible, privacy will be maintained during the specimen production process, however, should the Associate Vice President, Facilities Management have documented reason to believe the Safety Sensitive employee will adulterate the specimen or otherwise compromise the integrity of the test process, the official monitor or his/her designee (of the same gender as the Safety Sensitive employee) may directly observe the Safety Sensitive employee while he/she produces the specimen.

- d. In the event a Safety Sensitive employee is unable to produce a urine specimen, the Safety Sensitive employee may remain under the supervision of the official monitor until he/she is satisfied that the Safety Sensitive employee cannot produce a specimen. At such time, the official monitor may allow the Safety Sensitive employee to drink fluids in an attempt to induce production of a specimen. A Safety Sensitive employee's continued inability to produce a specimen may result in the Safety Sensitive employee being examined by a physician of NJIT's choice and at NJIT's expense to determine if the inability to produce the sample is the result of a medical/physical infirmity or a refusal to cooperate with the drug testing process. A determination by the examining physician, that the inability to produce a urine specimen is based upon a refusal to cooperate with the drug testing process shall be cause for termination of the Safety Sensitive employee.
- e. Upon successful production and delivery of a required urine sample to the official monitor, he/she shall maintain the chain of custody by submitting the sealed specimen container(s) to the Center for Occupational Health within one (1) working day of collection. In the event the specimen cannot be submitted within one (1) working day, it shall be stored in a controlled access refrigerated storage area until submission to the Center for Occupational Health.
- f. Throughout the testing process, the identities of the tested Safety Sensitive employee shall remain confidential to the extent practicable. Individual specimens shall be identified by social security numbers only. Safety Sensitive employees' names shall not appear on specimen containers or forms submitted to the Center for Occupational Health.

G. **Drug Test Results**

1. **Notification**

It is the procedure of the Center for Occupational Health to notify the Associate Vice President, Facilities Management, as to the result of the urinalysis, immediately upon completion of the test. The laboratory will retain only those samples which have been confirmed to be positive for the presence of drugs. All oral notifications will be confirmed by written reports within fifteen (15) working days of submission of the specimen.

2. **Positive Results**

All Safety Sensitive employees who are tested, and are confirmed to be positive for the presence of drugs, shall:

- a. Be notified of this fact by the Associate Vice President, Facilities Management as soon as practicable after oral notification is received from the laboratory.

- b. Be provided with a copy of the laboratory report, as soon as practicable after receipt of same.
- c. Be suspended from duty immediately without pay, pursuant to university policy and any applicable and controlling collective bargaining agreement pending a due process hearing for dismissal from employment.
- d. Be terminated from employment, in accordance with University policy and any applicable and controlling collective bargaining agreement provisions.
- e. Be given the opportunity to challenge a termination from employment based upon a confirmed positive result in the same manner as provided in university policy or applicable and controlling collective bargaining agreement for challenging disciplinary impositions involving potential termination of employment. The only grievable issues with regard to discipline resulting from a positive drug test are as follows:
 - (i) a challenge to the testing results or procedure; or
 - (ii) in the case of drug testing based upon “reasonable individualized suspicion”, a claim that reasonable grounds for testing did not exist.
- f. Safety Sensitive employees who have produced two (2) simultaneous samples may, upon notification of a positive test result, request that the Associate Vice President, Facilities Management release the second (2nd) sample for the sole purpose of having the same independently tested. Under such circumstances, the Safety Sensitive employee must designate as the independent testing facility a laboratory licensed to conduct such tests by the New Jersey Department of Health under the New Jersey Criminal Laboratory Improvement Act. If an authorized representative of the designated laboratory does not take possession of the second (2nd) sample maintaining an appropriate chain of custody, within sixty (60) days of production, the Associate Vice President, Facilities Management will destroy the sample.

3. **Negative Results**

- a. If the test result as determined at any stage of the process is negative, the allegation of drug abuse against the Safety Sensitive employee shall be classified as “unfounded”.

- b. Any Safety Sensitive employee whose specimen is found to be negative, or who has a verified, lawfully issued, medically valid prescription explaining a positive result, shall receive a letter from the Associate Vice President, Facilities Management stating that no illegal substances were found and no negative inferences may be drawn from the testing itself. A copy of the letter will be provided to the Safety Sensitive employee, and at the Safety Sensitive employee's election placed in the Safety Sensitive employee's personnel file. Records and documents relating to a test based upon asserted reasonable individualized suspicion will be made available to the Safety Sensitive employee in accordance with legal mandate, or the terms of their Collective Bargaining Agreement.
- c. Negative specimens shall be destroyed immediately upon completion of urinalysis by the Center for Occupational Health.

VI. Record Keeping

- A. The Office of General Counsel shall maintain the following records of random and individualized reasonable suspicion testing:
 1. the identities of all Safety Sensitive employees ordered to submit urine samples;
 2. the reason for the order;
 3. the date the urine sample was collected;
 4. the identity of the official monitor of the collection process;
 5. the chain of custody of the urine sample(s) from the time of collection to the time of submission to the Center for Occupational Health (or the licensed alternative testing facility set out under provision V.F above).
 6. the results of the testing;
 7. copies of notifications to Safety Sensitive employees selected or order to undergo testing; and
 8. documentation of disciplinary action taken against any Safety Sensitive employee who tests positive or refuses to submit to testing.

- B. The Office of General Counsel shall also maintain the following records for all random testing:
1. a description of the process used to randomly select Safety Sensitive employees for drug testing;
 2. the date selection was made;
 3. a copy of the document listing the identities of those selected for drug testing;
 4. a list of those who were actually tested; and
 5. a roster of NJIT personnel with knowledge of the specific testing process and those identified for testing. (To the extent practicable, this roster will be confined to those with a need to know in accordance within legal parameters, managerial prerogative and public policy.)

VII. Responsibilities To Report

- A. **Employees' Responsibilities** – All employees have an affirmative responsibility not to aid and abet the violation of this policy by other employees or in any way hinder the aggressive enforcement of this policy. Such conduct is itself significant misconduct and will be disciplined up to and including termination.
- B. **Supervisor's Responsibilities** – Upon personally observing or receiving information from a supervisor or any other employee having information that a Safety Sensitive employee is involved in drug related activities or is unable to perform his/her assigned function because of the possible use or abuse of drugs, Supervisors shall:
1. Notify the Associate Vice President, Facilities Management and comply with instructions received.
 2. Conduct an investigation to determine whether there are sufficient facts to constitute a reasonable individualized suspicion that a department member is using drugs.
 3. Make necessary notifications and scheduling for testing pursuant to this policy.
 4. Transport or meet the department member and his/her supervisor at the Center for Occupational Health, Newark, New Jersey, or the alternative laboratory.

5. Immediately forward a preliminary report of the drug-related incident to the Associate Vice President, Facilities Management.
6. Forward a final report to the Associate Vice President, Facilities Management with findings, recommendations and conclusions.

IX. **Responsibility For Compliance**

All employees are responsible for both the understanding of and compliance with this policy and procedure. Undermining the enforcement of this policy will not be tolerated and will be dealt with swiftly and severely.

APPENDIX B
CERTIFICATION

In accordance with controlling university policy and any applicable controlling collective agreement, I, _____ (Safety Sensitive Employee's Name), hereby
(Please Print)

certify as follows:

(COMPLETE APPLICABLE SECTION)

1. I am currently employed in active status with NJIT;
AND
2. I am currently being treated by a licensed health care practitioner with the following duly prescribed, medications:

Medication:	Prescribed by:	Starting date:	End Date:

3. I hereby authorize the Associate Vice President, Facilities Management or his/her designee to contact my health care practitioner(s) specified herein solely for the purpose of confirming that the prescribed medication and/or substances to which I have certified herein was duly prescribed by said health care practitioner(s).

Signed to and Certified by:

(Signature)
on this _____ day of _____.