

**Model Drug-Free
Public Work Force Act**

Table of Contents

	P-269	Policy Statement
	P-271	Highlights
<i>Section One</i>	P-273	Short Title
<i>Section Two</i>	P-273	Legislative Findings
<i>Section Three</i>	P-273	Purpose
<i>Section Four</i>	P-273	Definitions
<i>Section Five</i>	P-274	Probationary Employment or Termination of Public Employees or Elected Officials Convicted of an Alcohol or Other Drug Offense
<i>Section Six</i>	P-275	Ineligibility for Public Employment of Person Convicted of Drug Offense
<i>Section Seven</i>	P-275	Additional or More Stringent Sanctions Authorized
<i>Section Eight</i>	P-276	Requirements and Procedures for Continuance of Employment for Drug User
<i>Section Nine</i>	P-276	Administrative Procedures
<i>Section Ten</i>	P-276	Application of Act
<i>Section Eleven</i>	P-276	Severability
<i>Section Twelve</i>	P-276	Effective Date

Model Drug-Free Public Work Force Act

Policy Statement

Given the trust and responsibility placed upon the public sector, alcohol and other drug abuse should not be tolerated among those employed in the public work force. Public employees, including elected officials, must hold themselves and be held to high professional standards during the course of their employment in the public sector. Unlawful substance abuse does not meet such standards of employment.

The purpose of this Act is to allow public employees who abuse alcohol and other drugs an opportunity to identify their problems and be referred to treatment without the loss of employment. However, those who fail to do so and are subsequently convicted of a criminal offense involving drugs or unlawful driving while under the influence of alcohol or other drugs shall be placed on probationary employment, pending successful completion of a treatment program. A second conviction on any criminal offense involving drugs or unlawful driving while under the influence will result in the immediate termination of employment.

The Commission intends that all employees with alcohol or other drug abuse problems, whether in the public or private sector, be given a chance to undergo treatment before significant adverse job-related action is taken against them. Terminating alcohol or other drug involved employees does little to actually reduce the problems of alcohol or other drug abuse. Such action simply transfers the problems to another employer or adds another individual to the unemployment line. Since two-thirds of drug abusers are employed, the Commission believes that the workplace can be an effective point of intervention for adults with substance abuse problems, if they are given a chance to receive employee assistance program services, proper assessment, and referral to a suitable treatment modality. The Commission also strongly recommends that public employees be subject to the same substance abuse testing policies and procedures as employees in the private sector. The Commission's view of a comprehensive drug-free workplace program is established in the Model Drug-Free Private Sector Workplace Act, found in this volume.

This public work force legislation is based, in part, on a similar Georgia state law.

Highlights of the Model Drug-Free Public Work Force Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol and other drug abuse adversely affects employee health and well-being, jeopardizes employee safety, and reduces the quality of services to the state.
- Recognizes that the manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs or unlawful driving while under the influence of alcohol and/or other drugs by public officials and employees are serious threats to the public health, safety, and welfare and violate the public trust.
- Recognizes that drug offenses and driving while under the influence of alcohol and/or other drugs does not meet the high professional standards of employment or service to the state and that the state will take all necessary measures to eradicate such offenses by public officials and employees.
- Provides for the termination of public employment of any public employee who is convicted for the first time of any criminal offense involving the manufacture, sale, distribution, or possession with intent to sell or distribute.
- Provides for the termination of public employment of any public employee who is convicted for the second time of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs.
- Provides opportunities for public employees to voluntarily seek or maintain treatment for alcohol and other drug problems while maintaining public employment. Such opportunities shall exist only so long as those public employees have sought treatment before any contact with the criminal justice system.

SPECIFIC RECOMMENDATIONS

- Provides probationary employment of public employees convicted for the first time of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs. During this probationary employment, the violator shall submit to an assessment of alcohol and other drug problems and actively engage in appropriate supervised treatment or educational services in accordance with the clinical assessment. Provisions are made in instances where no appropriate treatment or education services are available.

Model Drug-Free Public Work Force Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the “Model Drug-Free Public Work Force Act.”

Section 2. Legislative Findings.

(a) Alcohol and other drug abuse adversely affects employee health and well-being on and off the job.

(b) A healthy and productive public work force, safe working conditions free from the effects of alcohol and other drugs, and maintenance of the quality of services rendered to the state, are important to public employees, the government, and the general public of the state.

(c) The manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs or unlawful driving while under the influence of alcohol and/or other drugs by public officials and employees are serious threats to the public health, safety, and welfare and violate the public trust.

(d) A primary purpose and goal of this state, its agencies and instrumentalities, and its public officials and employees is to take all reasonable steps possible to eradicate the manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs, or unlawful driving while under the influence of alcohol and/or other drugs, by public officials and employees.

(e) The state work force must not include any person who would manufacture, sell, distribute, possess with intent to sell or distribute, possess, or use drugs or who drives while under the influence of alcohol and/or other drugs.

(f) Public employees, including elected officials, must hold themselves and be held to high professional standards during the course of their employment. Unlawful substance abuse does not meet such standards of employment.

Section 3. Purpose.

This [Act] allows public employees who abuse alcohol and other drugs an opportunity to identify their problems and be referred to treatment without the loss of employment. This [Act] provides for the probationary employment of any public employee, including any elected official, convicted of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs, provided they enter into and actively engage in a treatment program. However, this [Act] also provides for the termination of any public employee, including any elected official, who is convicted for the second time of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs, or who is convicted for the first time of any drug trafficking offense, or who refuses to actively engage in a treatment program.

Section 4. Definitions.

As used in this [Act]:

(a) “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(b) “Convicted” or “conviction” means a finding of guilt, including a plea of nolo contendere or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state alcohol and/or criminal drug statutes.

(c) “Criminal drug offense” means a criminal offense involving the manufacture, sale, distribution, possession with intent to sell or distribute, or possession or use of any drug.

(d) “Drug” or “drugs” means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, barbiturates, benzodiazepines, methadone, methaqualene, propoxyphene, or a metabolite of any such substance.

(e) “Manufacture,” “sale,” “distribution,” “possession with intent to sell or distribute,” “possession,” and “use” shall have the same meaning as those terms are used in [cite to applicable state controlled dangerous substance law].

(f) “Public employee” means any person employed on a full-time, part-time, temporary, or intermittent basis by the state, county, or municipality, including any agency, authority, department, bureau, or instrumentality thereof, or by any entity covered under the state merit system or equivalent state entity or system. Such term shall also include all employees, officials, or administrators of any public school system, including, but not limited to, primary, secondary, and postsecondary institutions operated by local or independent boards of education that receive any funds from the state or any agency thereof. Such term, for the purposes of this [Act], shall also mean any elected public official.

(g) “Public employer” means any person or entity that is subject to the provisions of this [Act].

(h) “Public employment” means employment by any public employer.

(i) “[Single state authority on alcohol and other drugs]” means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

Section 5. Probationary Employment or Termination of Public Employees or Elected Officials Convicted of an Alcohol or Other Drug Offense.

(a) Any public employee, including any elected official, who is convicted for the first time under the laws of this state, the United States, or any other state, of any criminal offense involving the possession or use of drugs or of unlawful driving under the influence of alcohol and/or other drugs, shall be placed on probationary employment for 60 days or until the recommended course of treatment described in this section has been completed successfully, whichever is longer. During such probationary employment, the violator shall:

(1) Submit to an assessment of alcohol and other drug problems, to be conducted by the [single state authority on alcohol and other drugs], a designee of the [single state authority on alcohol and other

drugs], or a treatment program licensed by the [single state authority on alcohol and other drugs]; and

(2) Actively engage in appropriate supervised treatment or education services in accordance with the clinical alcohol and other drug abuse assessment.

(3) Should no suitable treatment or education services be available:

(A) The violator shall place himself or herself on a certified waiting list until a position for the recommended course of treatment becomes available;

(B) The violator shall also remain alcohol- and drug-free and submit to substance abuse testing as ordered by the assessment; and

(C) The violator shall attend, with verification, no fewer than [five] twelve-step recovery meetings per week, until the course of treatment begins.

(4) If the violator for any reason fails to comply with the conditions of paragraphs (2) and (3) and provides written substantiation of active engagement in the recommended treatment process to his or her employer, the public employment shall be terminated, unless it is determined that there are extraordinary and compelling reasons to reinstate the violator pending the person’s participation in the recommended course of treatment or education by a date certain to be fixed by the assessment.

(b) Any public employee, including any elected official, who is convicted for the first time under the laws of this state, the United States, or any other state, of any criminal offense involving the manufacture, sale, distribution, possession with intent to sell or distribute any drug shall be terminated from his or her public employment and shall be ineligible for other public employment for a period of five years from the most recent date of conviction. Elected officials subject to this subsection shall be removed from office, pursuant to [insert state constitutional provision for removal of elected officials for malfeasance]

(c) Any public employee, including any elected official, who is convicted for a second or subsequent time, under the laws of this state, the United States, or any other state, of any criminal offense involving the possession or use of drugs or of unlawful driving under the influence of alcohol and/or other drugs shall be terminated from his or her public employment and

shall be ineligible for other public employment for a period of five years from the most recent date of conviction. Elected officials subject to this subsection shall be removed from office, pursuant to [insert state constitutional provision for removal of elected officials for malfeasance].

COMMENT

All public employees, including elected officials, represent their state or local jurisdiction and must hold themselves accountable to the laws of the state and country. Substance abuse offenders in particular, impact adversely on their service to the state. Therefore, any public employee, including any elected official, convicted for the first time of a criminal offense involving the possession or use of drugs or of driving while under the influence of alcohol and/or other drugs, shall be placed on probationary employment for 60 days or pending the successful completion of a recommended treatment or education program.

During this probationary employment, the public employee must submit to an assessment of alcohol and other drug problems and enter into treatment or education programs in accordance with the clinical alcohol and other drug abuse assessment. Failure to comply with the assessment and treatment process or failure to provide written substantiation of compliance will result in termination of the individual's public employment.

Any public employee, including any elected official, who is convicted for a second or subsequent time of a criminal offense involving the possession or use of drugs or of driving while under the influence of alcohol and/or other drugs, shall be terminated from his or her public employment, or, in the case of elected officials, removed from office.

The treatment and rehabilitation provisions of this section should not be construed in any way to protect serious drug trafficking felons. Subsection (b) provides for the termination of those public employees who have been convicted for the first time of such trafficking offenses. Such convicted felons should not remain in the public work force and should fulfill all requirements of any sentence imposed for their offenses. The Commission does not intend this legislation to allow such individuals to avoid their sentences by entering into a treatment program in accordance with the provisions of this [Act]. Public sector employers may consider more stringent public workforce substance abuse policies in accordance with Section 7 to insure that such situations do not occur.

Section 6. Ineligibility for Public Employment of Person Convicted of Drug Offense.

(a) Any person who has been convicted for the first time, under the laws of this state, the United States, or any other state, of any criminal offense involving the possession or use of drugs or of unlawful driving while under the influence of alcohol and/or other drugs, shall be ineligible to enter into any public employment for a period of [three months] from the date of conviction.

(b) Any person who has been convicted two or more times, under the laws of this state, the United States, or any other state, of any criminal offense involving the possession or use of drugs, or of unlawful driving while under the influence of alcohol and/or other drugs, or who has been convicted at least once of any criminal offense involving the manufacture, sale, distribution, or possession with intent to sell or distribute drugs shall be ineligible to enter into any public employment for a period of five years from the most recent date of conviction.

COMMENT

This section applies to any person convicted of a drug possession or drug use offense or of driving under the influence of alcohol and/or other drugs. In such circumstances, that person shall not be allowed to enter into any public employment within three months from the date of conviction. If a person has been convicted two or more times of a drug possession or drug use offense or of unlawful driving while under the influence of alcohol and/or other drugs, or has been convicted at least once of the manufacture, sale, distribution, or possession with intent to sell or distribute drugs, the ineligibility for public employment shall be five years from the most recent date of conviction.

Section 7. Additional or More Stringent Sanctions Authorized.

The suspension, termination, and ineligibility sanctions prescribed in this [Act] are intended as minimum sanctions, and nothing in this [Act] shall be construed to prohibit any public employer from establishing and implementing additional or more stringent sanctions for criminal offenses and other conduct involving the manufacture, sale, distribution, possession, or use of drugs, or unlawful driving while under the influence of alcohol and/or other drugs.

COMMENT

Public employers may establish more stringent workplace sanctions for criminal drug offenses. In particular, public employers may consider differentiating between alcoholic or addicted employees who need treatment and employees solely involved in drug trafficking.

Section 8. Requirements and Procedures for Continuance of Employment for Drug User.

(a) After the enactment of this legislation, if, prior to an arrest for an offense involving alcohol or other drugs, a public employee notifies the employer that the employee has an alcohol or other drug problem and is receiving or agrees to receive treatment under an alcohol or other drug abuse treatment and education program licensed by the [single state authority for alcohol and other drugs], and approved by the [state personnel board] in the case of employees in the classified service of the state merit system or equivalent state entity or system or the public employer having management and control of the employee in the case of other public employees, the public employee shall be entitled to maintain employment as long as the employee continues to actively engage in the treatment process. During this period, the public employee shall not be separated from public employment solely on the basis of the employee's drug dependence, but the employee's work activities may be restructured if practicable to protect persons and property.

(b) No statement made by the employee to a supervisor of the public employee or other person in order to comply with this section shall be admissible in any civil, administrative, or criminal proceedings as evidence against the public employee.

(c) The rights granted by this section shall be available to a public employee only once during a five-year period.

COMMENT

This section offers a public employee who has an alcohol and/or other drug problem while engaged in public employment an opportunity to seek an assessment, referral, and treatment without being terminated from his or her position. Provisions are also made in instances where treatment may not be available at the time. In order to qualify for such protections, those individuals must seek such assistance before they come in contact with the criminal justice system. This section

also allows those public employees who are currently in treatment to maintain their employment so long as they are actively engaged in the treatment process.

It is assumed that successful completion of a treatment program would entitle a public employee (except elected officials) to return to his or her job, in accordance with applicable state employment laws.

Section 9. Administrative Procedures.

Administrative procedures for the implementation of this [Act] shall be promulgated by the [state personnel board] for the classified service of the state merit system or equivalent state entity or system and by other public employers for other public employees under their management and control. Such procedures shall include those elements of due process of law required by the state constitution and the United States Constitution.

Section 10. Application of Act.

This [Act] shall apply only with respect to criminal offenses committed on or after [date on which this legislation is enacted]. However, nothing in this section shall prevent any employer from imposing additional sanctions for offenses committed prior to [date on which this legislation is enacted].

Section 11. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 12. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].