

NINTH LEGISLATURE
OF THE
CHEYENNE AND ARAPAHO TRIBES
REGULAR SESSION
DECEMBER 10, 2022
LCR, CONCHO, OK

RESOLUTION: A Resolution to Amend 6L-RS-2016-10-002 – A Resolution to Implement the Drug and Alcohol-Free Workplace Policy

RESOLUTION NO: 9L-RS-2022-12-002

DATE INTRODUCED: November 9, 2022

SPONSOR: Travis Ruiz, Arapaho District 3

CO-SPONSOR: Bruce Whiteman, Jr., Cheyenne District 1

[Legislative History: On October 8, 2016, the Sixth Legislature passed 6L-RS-2016-10-002. On October 8, 2022, the Ninth Legislature amended 6L-RS-2016-10-002 to require that amendments to the Drug and Alcohol-Free Workplace Policy only occur through Legislative Resolution.]

SUBJECT: A Resolution to Amend 6L-RS-2016-10-002 – A Resolution to Implement the Drug and Alcohol-Free Workplace Policy

WHEREAS: The Cheyenne and Arapaho Tribes are duly recognized by the United States Secretary of the Interior as a self-governing, Sovereign Nation, that is a federally recognized Indian Tribe with all rights, privileges, and powers attended thereto as a sovereign government, and organized in accordance with Title 25 of the United States Code, Section 450, the “Indian Self-Determination and Education Assistance Act,” and Article XVII of the Tribe’s Constitution and By-Laws and Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), under an amended Constitution ratified on August, 2006 and approved by the Secretary of Interior on May 17, 2006; and

WHEREAS: Article VI, Section 5(a) of the Constitution provides that the Legislative power shall be vested in the Legislature; and

WHEREAS: Article VI, Section 5(a) of the Constitution grants the Legislature the power to make laws and resolutions in accordance with the Constitution which are necessary and proper for the good of the Tribes; and

WHEREAS: The Legislature has the Constitutional obligation and public responsibility to the Tribes to oversee the Tribes’ operations in order to establish and promote justice, establish guidance and direction for the government, and advance the general welfare of the Tribes; and

WHEREAS: The Cheyenne and Arapaho Tribes Drug and Alcohol-Free Workplace Policy is in need of an update in order to reflect the current times and laws of the Tribes; and

WHEREAS: The Ninth Legislature of the Cheyenne and Arapaho Tribes recognizes the need to update the Tribes’ Drug and Alcohol-Free Workplace Policy to better guide the tribal government workforce; and

NOW, THEREFORE BE IT RESOLVED, the Ninth Legislature of the Cheyenne and Arapaho Tribes, pursuant to its Constitutional authority, approves and adopts the attached Drug and Alcohol-Free Workplace Policy.

Travis Ruiz
Speaker of the Ninth Legislature
Ninth Legislature, Cheyenne and Arapaho Tribes



**CHEYENNE & ARAPAHO
TRIBES**



**Cheyenne and Arapaho Tribes
Drug and Alcohol Free
Workplace Policy**

Effective January 1, 2019

Revised December 10, 2022

Cheyenne and Arapaho Tribes Drug and Alcohol Free Workplace Policy

Purpose

The Cheyenne and Arapaho Tribes provide a variety of governmental and community services. The employees of the Tribes are their most valuable resource since it is through the employees' work that services are provided. When delivering services, the health and safety of the community and the health and safety of employees are of utmost importance.

Prohibitions

The Cheyenne and Arapaho Tribes Drug and Alcohol Policy prohibits the following:

- The use, possession, sale, manufacture distribution, and/or dispensation of controlled substances, equipment and/or drug paraphernalia on the CAT premises, work sites, or within tribally-owned vehicles or being under the influence of controlled substances. Violations shall result in the notification of appropriate law enforcement authorities.
- The use, possession, sale, manufacture, distribution, and/or dispensation of alcohol on the CAT premises, work sites, or within tribally-owned vehicles, or being under the influence of alcohol on the CAT premises, work sites, or within tribally-owned vehicles. Violations shall result in the notification of appropriate law enforcement authorities.
- A positive test result for any controlled substances.
- A BAC test result of .02 or greater.
- Refusal to consent to provide a sample for a controlled substance and/or alcohol test.
- Tampering with or adulterating any sample submitted for testing or submitting a false sample for testing.
- Failing to report a suspected on-the-job accident/injury or situation in which an employee believes drugs or alcohol may be involved.
- Failing to comply with rules and regulations made known under any testing program maintained by the CAT in accordance to such rules and regulations.

A violation of any of these prohibitions shall be grounds for disciplinary action up to and including termination.

The Tribes recognize, however, that employees can fall victim to drug and alcohol abuse. The tribes will offer resources for rehabilitation and treatment options to

employees through referral sources. This policy is an attempt to achieve a drug and alcohol free workplace through drug and alcohol testing practices. It also recognizes the need to assist employees, when appropriate, with second chances through a "Last Chance Agreement." This policy is the sole source of information for drug and/or alcohol related employment issues and may be updated and amended periodically.

The federal Drug-Free Workplace Act of 1988 holds employers receiving federal grants or contracts of \$100,000 or more, responsible for certifying that they maintain a drug-free workplace. This policy is intended to comply with the requirements of the law.

Scope

This Policy applies to all Cheyenne and Arapaho Tribes employees and all elected officials subject to resolution 100607ATC-004. This policy also applies to all individuals selected for hire by a tribally owned enterprise unless the enterprises have adopted their own drug and alcohol policy.

Employee work areas, tribal issued equipment, containers and vehicles under employee's control may be subject to search and surveillance at all times while on Cheyenne and Arapaho Tribal property or while conducting tribal business off-property. Privately owned vehicles used for tribal business may be subject to search and surveillance while being used for such business.

The CAT will provide a Drug and Alcohol Free Workplace Officer who will ultimately be responsible for the enforcement of this policy. The DFWO will:

- Provide notice of procedures and possible consequences for failure to comply with the policy to employee(s)
- Obtain employee consent to testing
- Arrange for testing and transportation to the collection site or testing facility
- Give notice of right to further testing at employee expense
- Give notice of any pending disciplinary action
- Receive and review test results
- Document any refusals to test.

CAT directors, coordinators, supervisors, and personnel staff will be designated alcohol/drug officer(s). ADOs shall be fully trained in the detection of alcohol/drug use and the CAT Drug and Alcohol Policy, under the direction of the DFWO.

Testing Required

The Cheyenne and Arapaho Tribes reserves the right to conduct pre-employment, random, for cause/reasonable suspicion, post-accident and post-rehabilitation follow-up testing for drugs and alcohol.

Employees shall be required to present government issued photo identification before a sample can be taken for any type of testing.

- Pre-Employment – The CAT will drug test all final job applicants, including new hires and rehires. Each offer of employment shall be conditioned upon a successful completion of a test for controlled substances as defined by this policy. Applicants who receive a positive drug test result will not be eligible for hire and may not reapply for employment for three (3) months. Applicants will not be eligible for a last chance agreement and have no other rights provided under this policy or any other CAT employee policy. Unless the position is federally funded, Pre-Employment drug testing will exclude tests for THC (cannabinoids, marijuana, hash).
- Random Testing – All employees will be subject to routine random drug testing. A third party administrator (TPA) will randomly select, through computer generated selection, the employees for testing to ensure each employee in the pool an equal chance of selection. Employees on personal time off or travel are excused. Employees who call-in on a testing day will be tested on their next scheduled workday. Unless the position is federally funded, Random Testing will exclude tests for THC (cannabinoids, marijuana, hash).
- Post-Accident Testing – In the event that an employee or employees are involved in an accident where tribal property and/or premises are damaged, and/or where a tribal employee sustains an injury, the CAT reserves the right to require post-accident drug and alcohol testing. The CAT shall take all reasonable steps to test employees whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident. As such, the employee may be required to undergo post-accident drug and alcohol testing as soon as possible when the employee or another person has sustained a work related injury or property has been damaged, including damage to equipment. The CAT shall take all reasonable measures to ensure that a drug test and/or an alcohol test are conducted within two (2) hours after the accident, and must ensure that a drug test and/or an alcohol test are conducted within twenty-four (24) hours following the accident. If, after a work-related accident, an employee is hospitalized or under the care of a medical facility, but is conscious and able to provide consent to the test (in the opinion of a medical professional), drug and/or alcohol test samples shall be collected and drug and/or alcohol testing

may proceed as outlined in this policy. Post-Accident Testing will include testing for THC (cannabinoids, marijuana, hash).

- For Cause/Reasonable Suspicion – When there is reasonable belief that an employee has used controlled substances or engaged in prohibited alcohol use, the CAT may require the employee to submit a sample for testing for reasons of for cause/reasonable suspicion, as outlined:
 - The decision to test must be based on reasonable belief by a supervisor that an employee is under the influence of drugs and/or alcohol on the basis of specific, physical, behavioral, or performance indicators. At least two ADOs, who have been trained in the detection of the possible symptoms of controlled substance or alcohol use, shall document and concur in the decision to test an employee. In making a determination of reasonable belief, the factors that may be considered include, but are not limited to, the following:
 - Documented accidents, incidents, and/or a pattern of unsatisfactory work performance (including excessive or unexplained absenteeism or tardiness), which indicates or gives reasonable suspicion that there has been a detrimental change in an employee's work performance.
 - Physical signs and symptoms consistent with controlled substance and/or alcohol use.
 - Evidence of controlled substance use, possession, sale, or delivery while on duty or other evidence of on-the-job alcohol use or controlled substance use, such as finding alcoholic beverage containers or drug paraphernalia.
 - Any violation of established safety, security, or other operational procedures which may have been caused by human error, and which gives reasonable suspicion that it is attributable to alcohol use or controlled substance use.
 - For Cause/Reasonable Suspicion testing will include testing for THC (cannabinoids, marijuana, hash).

At a minimum, the Cheyenne and Arapaho Tribes Controlled Substance tests shall test for the following substances:

- Amphetamines (meth, speed, crank, ecstasy)
- THC (cannabinoids, marijuana, hash)¹
- Cocaine (coke, crack)
- Opiates (heroin, opium, codeine, morphine)
- Phencyclidine (PCP, angel dust)

¹ THC (cannabinoids, marijuana, hash) will only be tested in the limited circumstances described in this policy.

- Barbiturates (phenobarbital, butalbital, secobarbital, downers)
- Benzodiazepines (tranquilizers like Valium, Librium, Xanax)
- Methaqualone (Quaaludes)
- Methadone (often used to treat heroin addiction)
- Propoxyphene (Darvon compounds)
- Synthetic (K2)

Testing Administration

Employees are notified of drug testing requirements during employee orientation. Prior to any drug testing, employee/applicant consent will be obtained. No alcohol test may be administered, urine sample collected, nor any drug test administered without first giving notification of the right to refuse such testing, the consequences of a refusal, the consequences of a positive result, and then obtaining the written consent of the person being tested.

Drug/alcohol testing will be conducted with accuracy and reliability. The CAT uphold a high regard for privacy and dignity in specimen collection, testing, and the notification process. All drug and alcohol testing under this policy can be conducted by any common means utilized by a testing facility for the purpose of detecting controlled substances or alcohol, including urinalysis, an oral strip test, a blood test, or a breathalyzer test.

Pre-employment applicants subject to pre-hire testing shall be given a place, date and time at which to appear, by the use of their own transportation, for the purposes of sample collection. Failure to report by the time allowed may be considered as refusal to take the test.

Designated personnel staff will be responsible for specimen collection and will also be the sole recipients of testing results.

When necessary, the DFWO shall designate qualified testing facilities, collection sites, and laboratories to be used by the CAT in administering all testing for CAT employees, which may include tribally operated health facilities. The DFWO shall work with these facilities to develop a testing protocol and to ensure that all testing procedures comply with the requirements of this Policy.

The CAT will be responsible for the cost of initial testing. Job applicants and employees may, at their own expense, have confirmation testing completed.

The CAT shall maintain, as confidential medical records, separate from other personnel records of an employee and/or an applicant, all drug and alcohol test results and related information, including, but not limited to, interviews, reports, statements, and

memoranda. Testing and all related records shall be considered separate employment records held by the CAT in its role as employer, and are the property of CAT.

All steps necessary shall be taken to ensure employee privacy and confidentiality during testing and collection of samples. The staff shall collect two samples for each test, and/or split a collected sample to ensure that confirmation testing can be completed. After collection, the samples are to be properly sealed and labeled, initialed and confirmed, to reflect the employee's identity as well as the time/date of collection. The samples must be stored in a secure/locked place, with minimal time between collection and testing, and kept within a climate controlled environment in order to ensure that the samples do not degrade. Records must be kept by the DFWO and the testing facilities at all stages of the collection and testing process, including keeping records noting each individual who takes possession or control of the sample(s) to create a chain of custody. Only appropriate carriers as designated by the testing laboratory may transport the samples.

Testing Results and Notification

The Medical Review Officer will be the sole recipient of the initial positive testing laboratory results. The MRO will verify the results are reasonable by:

- Reviewing the information provided by the employee at the time of collection.
- Affording the individual employee an opportunity to discuss the test results with the MRO.
- Requesting, as needed and after patient authorization, medical records to verify information obtained.
- Determining whether there is a legitimate medical explanation for the results, including legally prescribed medication.

The MRO will report each test result (after review) exclusively to the designated personnel staff. The names of CAT contacts will be on file with the MRO in the event the DFWO is unavailable.

The DFWO shall take all reasonable action to immediately notify an employee of their rights and responsibilities upon receiving a positive drug and/or alcohol test result no later than 72 hours after receiving a positive test result from the testing lab.

Employees may have the opportunity, at their own expense, to complete a confirmation drug test for an initial positive drug test result. All confirmation tests must be performed with a sample taken simultaneously with the original test sample or split specimen.

Employees who have a positive drug test will be immediately placed on administrative leave without pay if they are eligible for a "Last Chance Agreement." Employees may

use annual or sick leave in place of leave without pay. If an employee is not eligible for a "last chance agreement," he/she will be immediately terminated.

In the event that CAT is unable to locate a drug testing company that will remove THC (cannabinoids, marijuana, hash) from the testing panel, CAT will not refuse to hire or rehire an employee on the basis that the employee tested positive for THC. Additionally, CAT will not discipline or terminate an employee on the basis that an employee tested positive for THC as a result of a Random Testing.

Last Chance Agreement

An employee with a positive test may be allowed to retain employment by signing a "Last Chance Agreement" and agreeing to engage in a drug and alcohol assessment and/or program. By signing the Last Chance Agreement, the employee agrees to abide by all of its requirements. Failure to sign or adhere to the requirements of the agreement will result in immediate termination. Eligible employees shall only be allowed one "Last Chance Agreement".

A Last Chance Agreement shall require:

- The employee will obtain an appointment for an alcohol and/or controlled substance dependency assessment from a qualified rehabilitation facility within 48 hours of receiving notice from the DFWO regarding their positive drug test result.
- The employee will sign a release of information document allowing the CAT to obtain information regarding the recommendations made by the rehabilitation facility for treatment and the "fitness for duty" of the employee.
- The employee will start a treatment plan immediately upon its formation as recommended by results of the initial assessment by a certified alcohol/substance abuse professional.
- The employee will comply with all of the recommendations for treatment and the treatment plan.
- The employee will consent to random alcohol and/or controlled substance testing by the CAT (in addition to other types of employee testing as provided in this policy) during the employee's treatment period and for one year following completion of treatment.

Individuals will be responsible for paying for the assessment and treatment and may utilize health insurance or Medicaid if applicable.

Employees must use their annual leave, sick leave, or leave without pay to attend recommended treatment which is scheduled during the employee's work period. All leave shall be taken in accordance with the CAT Personnel Policies. The CAT shall not deny a person who has entered a Last Chance Agreement leave if it is necessary to

complete a treatment plan. Although it is not guaranteed, employees may qualify for short-term disability while receiving treatment.

Employees who enter into a Last Chance Agreement shall not return to work until they have started a treatment program recommended by a professional assessment and have provided proof from the treatment facility of their fitness for duty, such as a doctor's note or other related documentation.

If an employee has a second verified positive controlled substance or alcohol test result at any time during the remainder of their employment with the CAT, or violates any provision of this policy, the employee shall be immediately terminated. This includes during the treatment period and/or the one (1) year post-treatment testing period, or at any other time during employment.

Employees in a non-federally funded position that are placed on a "Last Chance Agreement" will only be subject to THC testing if the employee was placed on a "Last Chance Agreement" for Reasonable Suspicion Testing or Post-Accident Testing because of a positive THC test.

Temporary, Seasonal, Probationary, and On-Call employees are not eligible for a "Last Chance Agreement."

Confidentiality

All controlled substance and alcohol testing information regarding a specific individual, interviews, reports, statements, memoranda, and test results, written or otherwise, will remain strictly confidential.

Any communications between the DFWO and the testing facility regarding specific employees will be kept confidential and will be restricted to issues of compliance. All test results will be regarded as employee medical records held by a covered entity in its role as employer and shall be kept by the DFWO separately from the employee's other employment records. Test results and related information will not be filed in an employee's personnel file. The status of an employee's drug test will be communicated within the CAT on a strict need-to-know basis.

Consequences for Violation of the Drug and Alcohol Policy

The CAT reserves the right to take disciplinary action, up to and including termination, based on any violation of the policy.

An employee who fails a controlled substance or alcohol test, refuses to submit to testing as required by this policy, or failure to provide adequate specimen for any reason, may be subject to termination or employment ineligibility.

Drug-Free Awareness Program

To assist employees in understanding and avoiding the risks of controlled substance use and alcohol abuse, the CAT will provide a comprehensive drug-free awareness program, organized by the DFWO and tribal departments and programs. The CAT will use this program in an on-going educational effort to prevent and eliminate controlled substance use, controlled substance abuse, and alcohol abuse. The drug-free awareness program will inform employees about:

- The dangers of controlled substance use and alcohol use.
- The CAT Drug and Alcohol Free Workplace Policy and the sanctions imposed for violations of policy; and
- Any other information deemed pertinent or beneficial by the DFWO.

Assistance in Overcoming Controlled Substance or Alcohol Abuse

Early recognition and treatment of controlled substance use or alcohol abuse is important for successful rehabilitation, return to productive work, and reduced personal, family and social disruption. The CAT encourages the earliest possible diagnosis and treatment for controlled substance or alcohol abuse.

An employee with controlled substance or alcohol problems may request assistance from his/her supervisor, an ADO, or the DFWO. Assistance will be provided on a confidential basis and each employee will be referred to the appropriate treatment and counseling services.

Employee Assistance Program

The CAT provides a confidential Employee Assistance Program through the health insurance carrier. Counseling services are available to employees for controlled substance or alcohol abuse and associated problems.

Employee & Supervisor Substance Abuse Training & Education

Every employee will receive a copy of this policy, will be required to read this policy, and will sign a statement acknowledging the employee's understanding and compliance of the policy. The CAT will conduct a policy orientation for all new hires and will provide policy updates when necessary.

The CAT shall provide training to supervisors and appropriate personnel on an annual basis. This training shall include: the connection between job performance deficiencies and impairment through controlled substance and alcohol abuse; the importance of documentation of work performance deficiencies and impairment; how to refer impaired

employees to evaluation and treatment; circumstances and procedures for post-injury testing or incident; supervisor responsibilities in a last chance agreement, and employee confidentiality.

The CAT shall provide education to all employees regarding controlled substance and alcohol abuse and its effects on the workplace by the Personnel Department on an annual basis. The CAT shall provide education to all employees at the initial adoption of the policy and at any time of revision.

Searches and Inspections

No employee has an expectation of privacy in his or her workplace. The CAT reserve the right at all times and without prior notice to have law enforcement conduct searches and inspections of all tribal property, including but not limited to offices, workspaces, and tribally-owned vehicles located on CAT premises for the purpose of determining if an employee is in possession of alcohol or controlled substances. These searches may be conducted from time to time without prior notice if reasonable suspicion exists. Such illegal and unauthorized items discovered may be taken into custody by law enforcement.

Authorized Use of Prescribed or Over the Counter Drugs (OTC)

An employee undergoing medical treatment with any drugs, whether prescribed or OTC, should check with his or her physician or pharmacist about whether using said drugs may impair his/her physical or mental ability to safely perform his/her workplace duties. An employee or applicant who is subject to drug testing will be given an opportunity to disclose any prescription or OTC Drugs that they may have used within the previous 30 days to the Medical Review Officer.

Reporting

All employees who have witnessed an on-the-job accident/injury or situation in which they believe drugs or alcohol may be involved shall report that situation in writing to the ADO within their department or the DFWO.

All employees who have received an arrest, charge, or conviction for a drug-related criminal offense MUST notify the DFWO and their supervisor immediately and in no later than five (5) days after the arrest, charge, or conviction. If applicable, the DFWO shall, within ten (10) days after receiving notice of the employee's criminal drug conviction, take steps to notify the federal contracting or granting agency if the employee is funded through a federal contract or federal granting agency.

Definitions

As used in this Policy, the capitalized terms set forth below shall have the following meanings:

- "Alcohol" shall mean any alcoholic beverage restricted for sale to individuals 21 and older, including, but not limited to, liquor, wine, and beer (including 3.2% or low alcohol beer).
- "Alcohol/Drug Officer" or "ADO" shall mean supervisors of tribal departments, or other designated tribal officials or employees, who receive special training to assist them in identifying and handling employee controlled substance and Alcohol use, under the direction of the DFWO.
- "BAC" means "Breath Alcohol Content" or "Blood Alcohol Content" indicated through a test designed to determine the amount of alcohol in an individual's bloodstream. BAC is expressed as the weight of ethanol, measured in grams, in 100 milliliters of blood, or 210 liters of breath. BAC can be measured by breath, blood, and/or urine tests.
- "CAT" shall mean the Cheyenne and Arapaho Tribes.
- "Controlled Substance" shall have the same meaning as in the Cheyenne and Arapaho Tribes' Criminal Offenses Law.
- "Drug" means a controlled substance.
- "Drug Free Workplace Officer" or "DFWO" shall mean a tribal official designated to oversee the implementation of the Cheyenne and Arapaho Tribes Drug and Alcohol Free Workplace Policy. Unless otherwise designated, the DFWO shall be the director of personnel, or another tribal employee or official appointed as DFWO by the director of personnel.
- "Drug Paraphernalia" shall have the same meaning as in the Cheyenne and Arapaho Tribes' Criminal Offenses Law.
- "Last Chance Agreement" or "LCA" shall be an agreement that the CAT may, in its discretion, offer any employee who returns a positive test indicating the presence of Alcohol or Controlled Substances in the employee's system. The LCA is meant to assist the employee in rehabilitation so that the employee may retain their employment with the CAT and receive assistance for any alcohol or controlled substance problems.
- "Over the Counter Drugs" or "OTC Drugs" shall mean nonprescription drugs which are readily available at a pharmacy or store for purchase without a prescription from a physician, and which are not a controlled substance.
- "Policy" means the Cheyenne and Arapaho Tribes Drug and Alcohol Free Workplace Policy.
- "Prescribed Drugs" means drugs which an individual obtains through the recommendation of a physician, and which are issued in accordance with a prescription issued by a physician to that individual, including certain drugs which may be controlled substances if obtained without a physician's prescription.

- "Law Enforcement" means local, federal or Bureau of Indian Affairs officers.
- "Medical Review Officer" or MRO is a physician knowledgeable about drugs and alcohol.