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**CHAPTER 75  
DRUG TESTING**

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**§ 75100. Definition.**

As used in this Chapter:

(a) *Law enforcement personnel, employee or position* means the following:

- (1) All sworn members of the Guam Police Department, including the Chief of Police;
- (2) All sworn members of the Guam Fire Department, including the Fire Chief;
- (3) All officers of the Department of Corrections including the Director;
- (4) All Customs Officers of the Customs and Quarantine Agency, including the Director;
- (5) Employees of the Department of Youth Affairs who are engaged in juvenile detention and rehabilitation, and work rehabilitation work as designated by the Director of the Department of Youth Affairs, including the Director;
- (6) All Tax Agents Enforcement Officers of the Department of Revenue and Taxation, the Attorney General, Deputy and Assistant Attorney Generals, and Attorney General Investigators;
- (7) All security officers employed by the government of Guam, or performing security work for the government of Guam pursuant to their employer’s contract, including, but *not* limited

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to, lock-up guards, security for the A. B. Won Pat International Airport Authority, and security for the J.D. Leon Guerrero Commercial Port Authority of Guam.

(8) All Deputy Marshals of the Unified Guam Judiciary, including the Chief;

(9) All Probation Officers and Alternative Sentencing Officers of the Unified Guam Judiciary, including the Chief Probation Officer;

(10) All Territorial Park Patrol Officers of the Department of Parks and Recreation, including the Superintendent;

(11) All Conservation Officers of the Department of Agriculture, including the Chief;

(12) All J.D. Leon Guerrero Commercial Port Authority Police Officers, including the Chief;

(13) All A.B. Won Pat International Airport Authority Police Officers, including the Chief; and

(14) All Firefighters of the A.B. Won Pat International Airport Authority, including the Chief.

(b) *Drug test* means a urinalysis test administered under approved conditions and procedures to detect drugs.

(c) *Supervisor* means law enforcement personnel assigned to a position having day-to-day responsibility for supervising subordinates, or responsible for commanding a work element.

(d) *Reasonable objective basis* means an apparent state of facts and/or circumstances found to exist upon inquiry by the supervisor, which would induce a reasonably intelligent and prudent person to suspect the employee was under the influence or using drugs/narcotics; or a reasonable ground for suspicion in the existence of facts or circumstances warranting an order to submit a drug test.

(e) *Controlled substance* means a drug, substance or immediate precursor in Schedules I through II of 9 GCA Chapter 67, Article 2.

**SOURCE:** Added by P.L. 19-44:4. Subsection (a) amended by P.L. 31-028:3 (Apr 18, 2011).

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**§ 75101. Drug Testing; Applicants for Law Enforcement Positions.**

Applicants for law enforcement positions with the Government of Guam, as the term is defined by this Chapter, shall be tested for drug or narcotic usage as a condition of employment or as part of their pre-employment medical examination. The testing procedure shall contain safeguards outlining physician and others involved in the testing procedure. The following rules shall apply to said applicants:

(a) Refusal to take the test, or test results reporting a presence of controlled substance, or the use of non-prescription drugs, shall be the basis of discontinuing an applicant in the selection process and preclude any further consideration for employment.

(b) Applicants found to be involved in the illegal sale, manufacture or distribution of any controlled substance will be permanently rejected.

(c) Applicants demonstrating addiction to any controlled substance will be permanently rejected.

(d) Any improper use of any controlled substance by an applicant after application will be grounds for permanent rejection.

(e) The results of drug tests on applicants for law enforcement positions shall be kept confidential and shall not be used as evidence in any subsequent criminal prosecution of the applicant.

**SOURCE:** Added by P.L. 19-44:4.

**§ 75102. Drug Testing; Current Law Enforcement Personnel.**

All current law enforcement personnel with the Government of Guam, as that term is defined in this Chapter, shall be required to submit to a drug test as outlined below:

(a) A supervisor may order a drug test when there is a reasonable objective basis or documentation or allegation that an employee is impaired or incapable of performing his or her assigned duties such as reduced productivity, excessive vehicle accidents, high absenteeism, or other behavior inconsistent with previous performance. The contents of the documentation shall be made available to the employee.

(b) Current law enforcement personnel may be ordered by a supervisor to take a drug test:

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(1) Where the allegation involved the use, or sale of a controlled substance; or

(2) Where the allegation, involves the actual use of force; or

(3) Where there is serious on-duty injury to the employee or another person.

(c) A supervisor who orders a drug test when there is a reasonable objective basis for suspecting usage shall forward a report containing the facts and circumstances directly to the head of the department or agency.

(d) Test results reporting the presence of a controlled substance, or the use of prescription drugs without a prescription, or the abuse of any over the counter drugs, will be submitted as a part of a complaint by the supervisor to the head of the department or agency.

**SOURCE:** Added by P.L. 19-44:4.

**§ 75103. Periodic Testing in Certain Units.**

Current law enforcement personnel assigned to drug or narcotics enforcement units, vice unit, intelligence unit or internal affairs shall be required in addition to § 75102 of this Chapter to submit to periodic announced drug test at the direction of their supervisor. Prior to assignments to these units, law enforcement personnel shall execute a written agreement of release stating that he or she fully consents to any medical, physical, psychotic, psychological or other testing, including urine and/or blood for controlled substances. In addition, the agreement or release shall give the department or agency permission to review the employees' medical records relating to fitness for performance. The department head shall select the date and time when each employee assigned to the narcotics, vice, intelligence and internal affairs units will be tested. The tests shall be administered randomly at least three (3) times a year without advance notice.

**SOURCE:** Added by P.L. 19-44:4.

**§ 75104. Prohibitions; Enforcement Measures.**

All law enforcement personnel as that term is defined in this Chapter shall not take any narcotics or dangerous substance unless prescribed by a person licensed to practice medicine. Law enforcement personnel who are required to take prescription medicine shall notify their immediate

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supervisors in writing of the medication prescribed and the nature of the injuries. Any statutory defined illegal use of drugs by law enforcement personnel, whether at or outside law enforcement employment, will not be tolerated.

Law enforcement personnel who have a reasonable basis to believe that another law enforcement personnel is illegally using a controlled substance shall report the facts and circumstances immediately to their supervisor.

Failure to comply with the intent or provisions of this section may be used as grounds for disciplinary action. Refusal by law enforcement personnel to take the required drug test or comply with the provisions of this Chapter will result in immediate relief from law enforcement duties pending disposition of any administrative personnel action.

**SOURCE:** Added by P.L. 19-44:4.

**§ 75105. Drug Testing/Urinalysis.**

(a) Obtaining Urine Samples

(1) The employee designated to give a sample must be positively identified prior to any sample being obtained.

(2) The room where the sample is obtained must be private and secure with documentation maintained that the area has been searched and is free of any foreign substance. An observer of the appropriate sex shall be present for direct observation to insure the sample is from the employee and was actually passed at the time noted on the record. Specimen collection will occur in a medical setting, and the procedures should not demean, embarrass, or cause physical discomfort to the employee.

(3) An interview with the employee prior to the test will serve to establish use of drugs currently taken under medical supervision.

(4) Specimen samples shall be sealed, labeled and checked against the identity of the employee to insure the results match the testee. Samples shall be stored in a secured and refrigerated atmosphere until tested or delivered to the testing lab representative.

(b) Processing Urine Samples

(1) The testing or processing phase shall consist of a two step

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procedure.

- A. Initial screening, and
- B. Confirmation step

(2) The urine sample is first tested using a screening procedure. A specimen testing positive will undergo an additional confirmation test. An initial positive; rather, it should be classified as confirmation pending.

(3) The confirmation procedure should be technologically different than the initial screening test. Notification of test results to the supervisor or internal affairs investigator will be held until the confirmation test results are obtained. In those cases where the second test confirms the presence of drugs or drugs in the sample, the sample will be retained for six (6) months to allow further testing in case of dispute.

(4) The testing method selected shall be capable of identifying marijuana, cocaine, and every major drug or abuse including heroin, amphetamines and barbiturates. Personnel utilized for testing will be certified as qualified to conduct urinalysis, or adequately trained.

(5) Employees who have participated in the drug test program, where no drugs were found, shall receive a letter stating that no illegal drugs were found. If the employee request, such a copy of the letter will be placed in the employees personnel file.

(c) Chain of Evidence-Storage

(1) Where a positive is received, urine specimens shall be maintained under secured storage for a period of not less than six (6) months.

(2) Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and chain of evidence.

**SOURCE:** Added by P.L. 19-44:4.

**§ 75106. Penalty.**

Any person who knowingly tampers with a drug test or a report of a drug test required by this Chapter shall be guilty of a misdemeanor.

**NOTE:** Chapter 75, Drug Testing was added to 10 GCA as Chapter 71, but as this

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designation is already occupied, has been renumbered by the Compiler.

**§ 75107. “Safe Harbor” Exemption and Restriction.**

(a) Notwithstanding any other law, rule, executive order, regulation or policy, the provision of “Safe Harbor,” as the term is described in the Department of Administration Drug-Free Workplace Program as promulgated by Executive Order 95-29, *shall not* be applicable to law enforcement personnel, employees and positions, as the term is defined in §75100(a), Chapter 75, Title 10 Guam Code Annotated, and *shall not* be applicable to all Test Designated Positions (TDP) of the government of Guam.

(b) Notwithstanding any other law, rule, executive order, regulation or policy, the provision of “Safe Harbor,” as the term is described in the Department of Administration Drug-Free Workplace Program as promulgated by Executive Order 95-29, *shall not* be applicable or available to any employee who:

- (1) is the subject of an investigation involving drug use;
- (2) is the subject of an investigation that could result in an adverse action;
- (3) is required to submit to a drug test for immediate employment or possible promotion;
- (4) was involved in an incident that may require or warrant a drug test;
- (5) has been found to be in violation of a rule or regulation of the government of Guam; *or*
- (6) has been arrested for a drug-related offense.

**SOURCE:** Added by P.L. 31-028:2 (Apr. 18, 2011). Amended by P.L. 31-096:1 (Sep. 30, 2011).

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