

# Human Resources Policy Manual (HRPM) Human Resources Operating Instructions (HROI)

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## Drugs and Alcohol

**This HROI established:** July 1, 2008

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**Background information:** This HROI is established to supplement [DOT Order 3910.1\(series\)](#) (PDF) to provide for specific procedures pertinent to the FAA.

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**1. Background:** The Federal Aviation Administration (FAA) is committed to the departmental policy of maintaining a drug- and alcohol-free workplace. The FAA takes its responsibility for aviation safety and security seriously and is especially concerned when an employee's use of drugs or alcohol, on- or off-duty, could affect the safety or security of the flying public. The maintenance of a safe and effective transportation system demands, in particular, that those employees whose jobs involve significant responsibilities affecting public safety and national security remain totally drug-free and alcohol-free in the workplace.

A determination by the FAA to initiate action on the basis of illegal drug use or alcohol misuse is warranted since such misconduct is inconsistent with the mission of the FAA and the nature of the employee's duties. Safety- and security-sensitive jobs are classified as Testing Designated Positions (TDP) and these positions are subject to drug and alcohol testing.

Incumbents of TDP positions require the highest degree of trust and confidence. As such, these employees are held to a higher standard of conduct than other FAA employees pertaining to the use of drugs and alcohol, both on and off the job.

Employees occupying TDPs must assure not only that their on-duty state of mind and diligence is above reproach, but that their off-duty conduct does not cause the FAA concern for their health, well being and/or judgment. The job responsibilities of individuals occupying safety-sensitive positions are so sensitive that the FAA can insist not only that the employee perform his/her work capably, but that the employee avoid other conduct that would indicate irresponsibility or lack of judgment that is incompatible with the position. Off-duty conduct that poses a potential threat to the capability to safely perform critical mission duties will result in the initiation of appropriate corrective measures.

FAA employees are required to immediately inform the Employee Assistance Program (EAP) or Office of Aerospace Medicine (AAM) officials when a lifestyle develops, such as excessive use of alcohol, which is considered adverse to the continuing ability to safely/securely perform TDP duties. It is in the best interest of the employee to self-refer to the EAP prior to being identified through some other means. A determination by management that an employee has engaged in off-duty conduct that constitutes a drug or alcohol violation may be made on the basis of an administrative inquiry that produces evidence of drug- or alcohol-related misconduct.

Employees occupying non-Testing Designated Positions (non-TDP) must also assure that their conduct does not violate the basic DOT/FAA policy of a drug- and alcohol-free workplace. As specified in this Human Resource Operating Instruction (HROI) and HROI, Table of Penalties, certain misconduct will result in a proposed adverse action, up to and including removal, on a first offense. Employees must assure that off-duty behavior does not negatively impact their conduct and/or performance on the job or the agency.

## 2. Definitions:

**Last Chance Agreement (LCA):** A LCA includes pertinent information that clearly defines the terms and conditions of the employee's employment and that failure to comply will result in the implementation of a disciplinary/adverse action. The LCA is developed and monitored by the responsible management official. Only the management official may make changes to the LCA.

**Treatment and Rehabilitation Plan (TRP):** The TRP includes a diagnosis, the employee's clinical status and the treatment and rehabilitation requirements that must be followed. The FAA affords an employee only one opportunity to enter and successfully complete an FAA EAP approved and monitored TRP. The TRP is developed and monitored by the EAP, in conjunction with the AAM flight surgeon. Only EAP or AAM may make changes to the TRP.

**Triggering Event:** This is behavior that proves to be a violation of an employee's LCA or TRP that results in the implementation of the disciplinary/adverse action that had been held in abeyance.

**3. Management Responsibility:** A manager of an employee who occupies a TDP for whom a determination has been made that the employee has violated a drug or alcohol prohibition or has engaged in other alcohol-related misconduct, such as an arrest for driving under the influence, shall: (1) assure that the individual is not assigned safety-sensitive duties; (2) assure that appropriate disciplinary/adverse action is initiated; (3) contact their servicing Office of Security and Hazardous Materials to inform security about the violation and (3) cooperate with recommended rehabilitation efforts of the employee.

**4. Procedures:** This HROI provides specific guidance for the processing of drug and alcohol violations cases. In general, an employee subject to these provisions receives a proposed disciplinary/adverse action notice with a specific timeframe for reply. The notice informs the employee if s/he is eligible for a one-time opportunity to enter into a Treatment and Rehabilitation Plan (TRP), or prohibited from a TRP opportunity. The employee is informed that participation in a TRP requires accepting the terms of a Last Chance Agreement (LCA). An eligible employee must state in his/her reply to the proposal notice a willingness to participate in a TRP and LCA. After receipt and consideration of the employee's reply, a written decision notice is rendered advising the employee what disciplinary/adverse action will be imposed, if any. If the eligible employee requested an opportunity for rehabilitation, the decision notice advises the employee of the decision and states that the implementation of the decision is held in abeyance pending the employee's successful completion of the TRP. The decision notice also informs the employee that entering into a TRP is contingent upon their acceptance of a LCA. Upon the employee's signature that they voluntarily accept the terms and conditions of the LCA, the FAA EAP and AAM representatives officially develop a TRP. The decision notice advises the employee that failure to adhere to the LCA or TRP results in a written notice of implementation of the decision.

The procedures addressed in this HROI allow for the placement of employees in an enforced leave status when non-TDP duties are not available and the employee fails to request leave. It is important to check a bargaining unit employee's negotiated contract since some contracts allow for the placement of an employee into a leave status without due process. Special circumstances may arise where initiation of an indefinite suspension, possibly with a shortened notice period, is more appropriate than an enforced leave status. An example may include an employee arrested for drug trafficking or other drug- or alcohol-related criminal misconduct for which the crime provision may be imposed.

Periodically, other actionable misconduct occurs that may be related to the use of drugs and/or alcohol. On those occasions when other unacceptable behavior is evident, managers must initiate the necessary corrective action recommended in the HROI, Table of Penalties. It is imperative management address the behavior as it would any other employee not affected by drugs and/or alcohol. Consequently, a proposed action for such things as leave abuse, disruptive behavior, fighting, sleeping or failure to record alcohol/drug related traffic violations on official government documents or other misconduct, need to be initiated separate and distinct from any proposed drug and/or alcohol related action discussed in this HROI.

It cannot be emphasized enough that the FAA's policy to ensure a safe and secure national airspace system (NAS) rests with high caliber and trustworthy employees. Individuals serving a probationary period or subject to a suitability review, who have an infraction pertaining to drugs and/or alcohol are not covered by the procedures described in this HROI or [DOT Order 3910.1\(series\)](#) (PDF). In order to eliminate perceived risks at a very early stage, the FAA will exercise its discretion to pursue termination during probation or suitability termination. For further guidance about these employees and the procedures applicable to them, refer to the following:

- [ER-4.6 Termination During New Hire Probationary Period and HROI: Procedures for Termination during New Hire Probationary Period](#),
- [EMP-1.24, Suitability](#)

This HROI should be used in conjunction with the following:

- [DOT Order 3910.1 \(series\) Drug and Alcohol-Free Departmental Workplace](#) (PDF),
- [ER-4.1, Standards of Conduct and HROI: Table of Penalties](#),
- [ER-4.2, Maintaining Discipline](#) and [HROI: Maintaining Discipline — Processing Procedures](#) (under construction)

The following describes various offenses and procedures to be utilized.

- a. Drug Trafficking or Refusal to Comply with Procedures during Collection or Testing.** Action shall be initiated to remove an employee, both TDP and non-TDP, who: (1) has engaged in illegal drug trafficking (sale, manufacture, growth, distribution, transportation) either on- or off-duty; (2) fails to report to a testing site; (3) refuses to provide a urine specimen or for TDP only, an adequate breath sample for alcohol testing; (4) attempts to alter, adulterate or substitute the specimen provided; (5) engages in conduct that obstructs the collection or testing process; or, (6) fails to empty the contents of pockets. An employee occupying a TDP will be temporarily assigned non-TDP duties, if available, pending a decision on the proposed removal. If non-TDP duties are unavailable, and the employee fails to request leave, action shall be initiated to place the employee on enforced leave or indefinite suspension. No opportunity to enter into a TRP or LCA is afforded to any employee for an infraction in this paragraph.

- b. **On-Duty Use or On-Duty Possession of Illegal Drugs.** Action shall be initiated to remove an employee, both TDP and non-TDP, when it is determined that the employee: (1) possesses an illegal drug on-duty, or (2) has engaged in on-duty use. A TDP employee will be temporarily assigned non-TDP duties, if available, pending a decision on the proposed removal. If non-TDP duties are unavailable, and the employee does not request leave, then action shall be initiated to place the employee on enforced leave or indefinite suspension. No opportunity to enter into a TRP or LCA is afforded to any employee for the misconduct cited in this paragraph.
- c. **On-Duty Use of Alcohol.**
1. Action shall be initiated to remove a TDP employee when credible evidence demonstrates that the employee engaged in on-duty use of alcohol. This includes consuming alcohol during lunch if in a duty status. A TDP employee will be temporarily assigned to non-TDP duties, if available, pending decision on the proposed removal. If non-TDP duties are unavailable, then action shall be initiated to place the employee on enforced leave should the employee fail to request leave. No opportunity to enter into a TRP or a LCA is afforded to an employee occupying a TDP.
  2. Appropriate disciplinary action, up to and including removal, shall be initiated against a non-TDP employee when credible evidence demonstrates that the employee has engaged in on-duty use of alcohol. The proposed disciplinary/adverse action notice may afford a one-time opportunity to enter into an LCA along with a substance abuse rehabilitation program, if determined appropriate by management, after consultation with the EAP and/or AAM representatives. A TRP will be developed to meet the clinical needs of the employee. A decision notice is issued informing the employee of the disciplinary/adverse action to be imposed. If the employee requests a TRP and a LCA, the decision notice will inform the employee that the implementation of the disciplinary/adverse action is held in abeyance pending successful completion of the TRP and the LCA. If the employee does not request a TRP and LCA, the disciplinary/adverse action shall be implemented.
- d. **Positive Drug Test in Violation of DOT/FAA Policy.**
1. Action shall be initiated to remove a TDP employee in the case of off-duty use of illegal drugs or inappropriate use of legal substances (prescription or over-the-counter (OTC) medications) as determined by a Medical Review Officer's (MRO) verified positive test conducted during duty hours under the auspices of the DOT/FAA drug testing program. A TDP employee will be temporarily assigned to non-TDP duties, if available, pending a decision on the proposed removal. If non-TDP duties are unavailable, then action shall be initiated to place the employee on enforced leave should the employee fail to request leave.
  2. Appropriate disciplinary/adverse action, up to and including removal, shall be initiated against a non-TDP employee.
  3. The proposal notice will inform the TDP or non-TDP employee of an opportunity to enter into a LCA, which includes a one-time opportunity for a TRP. A decision notice is issued informing the employee of the disciplinary/adverse action to be imposed. If the employee accepts the offer of a TRP and LCA, the decision notice informs the employee that the implementation of the disciplinary/adverse action is held in abeyance pending successful completion of the TRP and LCA. If the employee declines the offer of a TRP and the LCA, the disciplinary/adverse action shall be implemented.
- e. **Positive Alcohol Test in Violation of DOT/FAA Policy.**  
(Safety-Sensitive TDP Employees Only)
1. Action shall be initiated to remove a TDP employee in the case of off-duty use of alcohol that results in a measured breath alcohol concentration during on-duty hours equal to or greater than 0.04 on a confirmation alcohol test performed under the auspice of the DOT/FAA alcohol-testing program. A TDP employee will be temporarily assigned non-TDP duties, if available, pending a decision on the proposed removal. If non-TDP duties are unavailable, then action shall be initiated to place the employee on enforced leave should the employee fail to request leave.
  2. The proposed removal notice informs the TDP employee of an opportunity to enter into a LCA, which includes a one-time opportunity for a TRP. A decision notice is issued informing the employee of the disciplinary/adverse action to be imposed. If the employee accepts the offer of the TRP and LCA, the decision notice informs the employee that the implementation of the disciplinary/adverse action is held in abeyance pending successful completion of the TRP and LCA. If the employee declines the offer of a rehabilitation program and a LCA, then the disciplinary/adverse action shall be implemented.
- f. **Not-Ready-For-Duty Status.** (Safety-Sensitive TDP Employees Only) An on-duty TDP employee with a breath alcohol concentration equal to or greater than 0.02 but less than 0.04 on a confirmation alcohol test, conducted under the auspices of the DOT/FAA alcohol testing program is considered to have had a not-ready-for-duty infraction.
1. **First Occurrence.** An on-duty TDP employee testing in a not-ready-for-duty status shall not perform his/her safety-sensitive duties for the remainder of their shift. The employee is not permitted to return to safety-sensitive duties until the start of their next regularly scheduled shift, provided that the shift occurs no sooner than 8 hours after the alcohol test was conducted. The employee may take accrued annual leave, compensatory time, credit hour or leave without pay in order to meet the 8-hour requirement. The employee shall be issued a written admonishment that includes an explanation of the consequences of any future determination of

a not-ready-for-duty status and a management referral to the EAP.

2. **Subsequent Occurrences.** An on-duty TDP employee who has a second not-ready for-duty status within 24 months of the first occurrence, shall be dismissed from the worksite and charged absent without leave (AWOL) for the remainder of the shift. Appropriate disciplinary action shall be initiated.

g. **Abstinence Period Failures.**

1. Action shall be initiated to remove a TDP employee who fails to abstain from the use of alcohol for 4 hours prior to reporting to their safety-sensitive duties or for 8 hours after an event qualifies as a post-accident incident and the employee was informed of the abstinence requirement. The pre-duty abstinence requirement for air traffic controllers and FAA aircrew members is 8 hours. A TDP employee will be temporarily assigned non-TDP duties, if available, pending a decision on the proposed removal. If non-TDP duties are unavailable, then action shall be initiated to place the employee on enforced leave should the employee fail to request leave.
2. A TDP employee's duty status or abstinence requirements does not change even if the individual is attending training, at lunch, during duty hours while in a travel status, etc.
3. The proposal notice shall afford the employee an opportunity to enter into a LCA, which includes a one-time opportunity for a TRP. A decision notice is issued informing the employee of the action to be imposed. If the employee accepts the offer of a TRP and LCA, the decision notice informs the employee that the implementation of the action is held in abeyance pending the successful completion of the TRP and LCA. If the employee declines the offer of the TRP and LCA, the disciplinary/adverse action shall be implemented.

- h. **Off-Duty Misconduct by a TDP Employee.** It is imperative that the FAA responds to off-duty drug and/or alcohol misconduct in order to ensure the safety of the flying public. The nature of the work performed by TDP employees requires one's full faculties on a regular basis. The FAA must be entirely sure that employees are operating without the constraint of drugs or alcohol, or the consequences of such abuse, such as a hangover. DOT Order 3910.1(series), recognizes the serious consequences of this type of misconduct and allows for DOT agencies to initiate a corrective course of action for those employees who violate any Federal, State, local or tribal government's threshold for an alcohol violation.

When the agency learns of an off-duty event covered by this paragraph, the employee is no longer eligible to self-refer to the EAP. Such misconduct includes, but is not limited to: (1) arrests for a driving infraction (DWI, DUI, etc) or refusal to submit to an alcohol test, (2) any other police matter, such as public intoxication, wherein the use of drugs or alcohol are noted in any police report or court documents, etc. The agency may learn about an off-duty incident through any means available. Some employees may come to the attention of management because of: (1) a Report of Investigation (ROI); (2) newspaper article; (3) information or inquiry from a police source (4) information obtained as a result of a periodic medical clearance examination; or, (5) an illness-related medical examination. For the purpose of this offense, a plea of no contest or other plea arrangement, as discussed in HROI, Table of Penalties, offense number 43 a or b, is not cause for drug or alcohol misconduct to be excused.

The actions described below pertain strictly to off-duty misconduct only. If an employee is involved in an off-duty event, such as an arrest for a DWI/DUI, etc., and the employee was previously found to have already violated DOT Order 3910.1(series) based on a positive random drug or alcohol test or reasonable suspicion test, etc., conducted under the auspices of the DOT testing program, the DWI is considered a second violation of the DOT Order and the employee is not eligible to enter into a TRP or LCA.

1. **First Off-Duty Offense.**

- a. An employee who has a single off-duty incident, such as an arrest for an alcohol-related driving infraction, shall notify his/her manager before the start of his/her next regularly scheduled work shift, but in any event no later than 48 hours after the arrest. The employee must also contact the RFS within 48 hours. The RFS will ensure that an assessment is conducted to determine whether the employee is a candidate for rehabilitation. A TDP employee will be temporarily assigned non-TDP duties, if available, pending action by the RFS. If such duties are not available, and the employee fails to request leave, then action shall be initiated to place the employee on enforced leave or indefinite suspension.
- b. If a determination is made that the employee is not at risk and rehabilitation is not necessary, the employee will be issued a written admonishment that warns the employee that the conduct is unacceptable and not compatible with the behavior expected for an employee occupying a safety- or security-sensitive TDP. The employee must attend, at a minimum, an approved alcohol awareness education program. The programs approved by the EAP manager or under a court order will be acceptable. The admonishment informs the employee that any similar misconduct in the future will result in the issuance of a proposed removal notice.
- c. If a determination is made that the employee is at risk and rehabilitation is advisable, then the employee will be offered a TRP. If however, the employee declines this offer, then a proposed removal will be issued informing the employee of an opportunity

to enter into a LCA, which includes a one-time opportunity for a TRP. A decision notice is issued informing the employee of the disciplinary/adverse action to be imposed. If the employee accepts the offer of the TRP and LCA, the decision notice informs the employee that the implementation of the disciplinary/adverse action is held in abeyance pending successful completion of the TRP and LCA. If the employee declines the offer of a rehabilitation program and a LCA, then the disciplinary/adverse action shall be implemented.

**2. Two or More Off-Duty Offenses.**

- a. An employee who has an off-duty incident, such as an arrest for an alcohol-related driving infraction or public intoxication, shall notify his/her manager before the start of his/her next regularly scheduled work shift, but in any event no later than 48 hours after the arrest. The employee must also contact the RFS within 48 hours. If it is determined that the instant event is a second or more off-duty violation, then action shall be initiated to remove a TDP employee. A TDP employee will be temporarily assigned to non-TDP duties, if available, pending decision on the proposed removal. If non-TDP duties are unavailable, and the employee fails to request leave, then action shall be initiated to place the employee on enforced leave or indefinite suspension.
- b. The proposed removal notice informs the TDP employee of a one-time opportunity to enter into a LCA, which includes a one-time opportunity for a TRP. A decision notice is issued informing the employee of the disciplinary/adverse action to be imposed. If the employee accepts the offer of the TRP and LCA, the decision notice informs the employee that the implementation of the disciplinary/adverse action is held in abeyance pending successful completion of the TRP and LCA. If the employee declines the offer of a rehabilitation program and a LCA, then the disciplinary/adverse action shall be implemented.

**i. Repeated Misconduct/Post-Treatment and Rehabilitation Plan (TRP) Failures.**

1. Action shall be initiated to remove any employee who received a management referral and who has a second, on- or off-duty, illegal drug event, inappropriate use of a legal drug to include prescription and over-the counter medications or an alcohol violation. The second violation can differ from the first infraction and still qualify as repeated misconduct.
2. Employees who successfully complete a TRP, to include follow-up testing, may still have restrictions in place for the remainder of their career while occupying a TDP. For instance, total abstinence from the use of alcohol or substances that contain alcohol shall be required as a result of a diagnosis that mandates the abstinence in order to avoid a relapse.
3. Employees in the follow-up testing program have an abstinence requirement from all substances, including alcohol. If the result of a screening test, conducted under the auspices of the DOT testing program, is 0.01 or greater, the employee will be required to take an alcohol confirmation test. If a confirmation test is greater than or equal to 0.01 and less than 0.02, the employee will be referred to EAP and their RFS for an evaluation to determine whether or not the employee has violated the abstinence requirement. A confirmation test of 0.02 or greater is considered a violation of the abstinence requirement.
4. Employees in the follow-up testing program and those that have successfully completed their TRP to include follow-up testing, must notify their RFS within 48 hours of the results of a breath test for the use of alcohol, conducted by Federal, State, local or tribal government officials, having independent authority for the test, where the test results registered 0.01 or higher. The RFS will determine whether or not the employee has violated their abstinence requirement. (Note: Employee who exceed the State's threshold for alcohol and are arrested/ticketed, must also notify their management official in accordance with paragraph "h" above.)
5. **Management-Referral:** Deciding officials have two options, as discussed below, on how to proceed with repeated misconduct or a post-TRP infraction. First, it must be determined whether the original case file is still sufficiently intact to support a removal action in front of a third party review. If not, the management official may opt to initiate a new action described in 5(b) below. The deciding official can also consider pursuing the second option listed below if s/he is a different official than the original management official. Even if the management official is the same official who rendered the original decision, they can give consideration to the proximity of the second infraction to the first violation. For instance, the management official may decide to initiate a new action if the triggering event is more than 7 or so years after the original misconduct. Action must be initiated for repeated misconduct or a post-TRP violation.
  - a. Employees previously referred to EAP as a result of a drug and/or alcohol violation discussed in this HROI are considered management- referred employees. Violation of a post-TRP requirement may result in the implementation of the disciplinary/adverse action previously decided. The implementation notice reminds the employee of the original misconduct that resulted in their referral to the EAP in the first place and the resulting decision. The implementation notice explains that the current infraction is a trigger event causing the implementation of the original decision. The employee will be assigned non-TDP duties, if available, until the effective date of the disciplinary/adverse action. No opportunity to enter into a TRP or LCA is afforded to any employee for repeated misconduct or a post-TRP failure since the employee had already participated in a one-time opportunity for rehabilitation.

- b. Repeated misconduct or a violation of a post-TRP may result in the initiation of a proposed removal based on the current infraction. Management-referred TDP employees will be temporarily assigned non-TDP duties, if available, pending decision on the proposed removal. If non-TDP duties are unavailable, and the employee fails to request leave, then action shall be initiated to place the employee on enforced leave. No opportunity to enter into a LCA or TRP is afforded to the employee for repeated misconduct or a post-TRP failure since the employee had already participated in a one-time opportunity for rehabilitation.
6. **Self-Referral:** Employees who self-identify themselves as an individual with a drug and/or alcohol problem and voluntarily seek the assistance of the EAP prior to being identified as someone who inappropriately uses alcohol or illegal drugs are considered self-referred employees. Repeated misconduct or a violation of a post-TRP requirement results in the initiation of a proposed removal. Self-referred TDP employees will be temporarily assigned non-TDP duties, if available, pending decision on the proposed removal. If non-TDP duties are unavailable, and the employee fails to request leave, then action shall be initiated to place the employee on enforced leave. The proposal informs the employee of a one-time opportunity to enter into a LCA, which includes a one-time opportunity for a TRP. A decision notice is issued informing the employee of the action to be imposed. If the employee accepts the offer of a TRP and LCA, the decision notice informs the employee that the implementation of the action is held in abeyance pending successful completion of the TRP and LCA. If the employee declines the offer of a TRP and LCA, the action shall be implemented.
- j. **Non-TDP Employees (Non-Safety or Non-Security-Sensitive Employees).**
1. Off-duty abuse of alcohol by employees occupying non-TDP positions will generally manifest with on-duty misconduct or poor performance. Managers should follow the guidance provided in the Personnel Management System, Chapter III, Performance Management; HRPM, Chapter 4, Employee Relations as well as other authoritative policy or guidance documents to correct conduct or performance deficiencies.
  2. Occasionally, credible evidence indicates an employee's misconduct or poor performance is adversely affected because of substance abuse. While the employee will typically be charged with an appropriate penalty listed in the HROI, Table of Penalties (e.g., AWOL, failure to follow leave procedures, inattention to duty, disruptive behavior, etc.), the manager should accurately record their observations (e.g., smell of alcohol, unsteady gait, etc.) and consider a management referral to the EAP. In fact, it is highly recommended that the manager schedule an appointment for the employee (management referral). The employee is not required to keep the scheduled appointment. It is not the manager's responsibility to diagnose what the problem may be, if any, but to assure that the employee is aware of the services of the EAP and that consultation with an EAP counselor may help resolve a personal situation that may be negatively impacting the employee's performance or conduct. While the manager is prohibited to learn about the details of the meeting between the employee and EAP, the manager can confirm that the employee kept the appointment if duty time is used.
  3. Notwithstanding an employee's willingness to enter into a TRP, appropriate disciplinary or adverse action may be initiated and implemented when warranted. The manager may also consider offering a LCA in conjunction with a TRP that would place in abeyance the implementation of the disciplinary/adverse action.
- k. **Last Chance Agreement (LCA).** When an employee is issued a proposed disciplinary/adverse action, information is provided about the potential for a TRP. This notice informs the employee that acceptance of a LCA is also required and who to contact to obtain further information about the LCA. Should the employee request an opportunity for rehabilitation during his/her reply, then the decision notice will inform the employee that participation in the TRP mandates their execution of a LCA. The LCA ultimately incorporates the TRP and implementation of the disciplinary/adverse action is held in abeyance pending successful completion of both the TRP and LCA. The LCA includes pertinent information that clearly defines the terms and conditions of the employee's employment and that failure to comply will result in the implementation of the disciplinary/adverse action. The LCA also includes a waiver of all appeal or grievance rights should the employee be removed. The LCA is developed and monitored by the responsible management official and can only be modified by that official.
- l. **Treatment and Rehabilitation Plan (TRP).** With the exception of an employee who self-refers as discussed in paragraph "m" of this HROI, the agency affords an employee only one opportunity to enter and successfully complete an FAA EAP approved and monitored TRP. If the employee willingly and voluntarily agrees to enter into TRP (at the employee's expense), the employee must adhere to the terms and conditions stated in the TRP and LCA discussed in paragraph "k" of this HROI. During this time, the manager holds the implementation of the decided disciplinary/adverse action in abeyance. Further clarification of the TRP and specific clauses and stipulations that are included in the TRP are discussed below.
1. The TRP is developed by the EAP, in conjunction with the AAM flight surgeon and other substance abuse professionals, as needed. The TRP includes a diagnosis, the employee's clinical status and the treatment and rehabilitation requirements that must be followed. Such requirements may include inpatient treatment, continued outpatient counseling, follow-up programs, self-help group sessions, education programs, etc. Additionally, the TRP will indicate an estimated period of time that the employee

participates in the TRP. The TRP is monitored by the EAP and AAM and can only be modified, in writing, by the EAP or AAM.

2. The employee agrees in writing to willingly and voluntarily participate in and comply with the requirements of the FAA EAP approved and monitored TRP. Once the employee signs all the required forms, it is deemed that the employee is voluntarily participating in the rehabilitation program despite verbal and/or written statements to the contrary.
3. The employee agrees that refusal to sign the required forms for the release of information constitutes a non-compliance infraction of the TRP and invokes the imposition of the discipline/adverse action.
4. The TRP notifies the employee that should a non-compliance infraction of the TRP occur, the agency representatives of EAP and/or AAM inform the employee's manager, who, in turn will implement the disciplinary/adverse action. Examples of non-compliance are: (1) an employee who misses a scheduled counseling session, (2) an employee who has a second verified positive drug or confirmed alcohol result on a DOT/FAA administered test, (3) or an employee who has an off-duty situation as discussed in paragraph "h" of this HROI.
5. The TRP requires that the employee refrain from any use of: (1) illegal drugs on- or off-duty, (2) inappropriate use of legal substances, (3) use of prescription or over-the-counter medications without approval of the RFS or their designee, (4) use of any alcohol while in an on-duty status or pre-duty status. In addition, the TRP may require a TDP employee to totally abstain at all times from the use of alcohol. These prohibitions prevail for the remainder of the employee's FAA career while they occupy a TDP. Stipulations may vary depending on whether the employee occupies a TDP or non-TDP.
6. The employee agrees that refusal or failure to comply with procedures during drug or alcohol testing constitutes non-compliance with the TRP and will result in the implementation of the discipline/adverse action.
7. The employee will coordinate with appropriate agency officials before taking leave or proceeding on travel/training status to ensure that appropriate provisions are made for rehabilitation, treatment and/or follow-up testing.
8. The employee agrees and acknowledges that a permanent medical file will be created, if one is not already established, and it will record his/her one and only rehabilitation opportunity. This acknowledgment indicates that the employee understands that s/he will not be afforded another opportunity at rehabilitation should there be any future instances of drug and/or alcohol misconduct. (note: See paragraph "m" for the only exception for a second opportunity for rehabilitation.)

**m. Self-Referral.**

1. TDP employees, who self identify to AAM and/or the agency EAP as someone who inappropriately uses legal or illegal substances including alcohol, prior to being identified through some "other means," is not identified to the agency on the first occurrence of such a self-referral for the purposes of initiating discipline.
2. The manager will not initiate action, i.e. proposed removal, of the self-referring employee provided that the employee agrees to enter into and adhere to the requirements and conditions specified in the employee's FAA EAP approved and monitored TRP. If the employee fails to adhere to any of the requirements and conditions set forth in the TRP, the employee is assigned non-TDP duties, if available, receives a proposed removal notice and is afforded one final opportunity for rehabilitation along with a LCA. If non-TDP duties are unavailable, then action shall be initiated to place the employee on enforced leave should the employee fail to request leave.
3. "Other means" includes, but is not limited to, specific notification of testing for any purpose (e.g., random, reasonable suspicion, post-accident testing, etc.). An employee may self-refer until the time the DOT drug/alcohol testing personnel arrive at the testing site. On rare occasions, the potential exists that a self-referral may be changed to a management referral under the auspices of this HROI when a reasonable argument can be made that an employee self-referred primarily because of an off-duty event described in paragraph "h" of this HROI. A detailed analysis of the case, along with a justification for the rationale to nullify the self-referral must be forwarded to FAA Headquarters, Employee Relation (AHL-100), where the final determination will be made after consultation with Office of Chief Counsel (AGC) and AAM.

**n. Prescription Drugs and Over-the-Counter Medications.**

1. When the FAA can demonstrate that it is job-related and consistent with business necessity, it can require that employees whose position affects the public safety, advise their manager if they need to use physician prescribed and/or over-the-counter (OTC) medications. In nearly all instances, this group will be safety-sensitive TDP employees, regardless of whether they occupy a position that has medical standards or not. This requirement is necessary since prescription drugs and/or OTC's can impair an employee from safely performing the essential function(s) of their job and consequently cause a direct threat to either the employee or the flying public. In accordance with FAA Order 3930.3(series), safety-sensitive TDP employees are obligated to inform their management when illness, injury or other medical conditions could affect the safe performance of their duties. The manager will take immediate action to eliminate any real or potential dangers by contacting the RFS to discuss the matter.
2. Absent medical standards, a direct threat assessment determination must be made in order to ensure an employee's ability to safely

perform their essential duties. In making a direct threat determination, the manager and RFS, in consultation with their advisors, AHR, AGC and possibly the employee's personal physician, must make an individualized assessment of the employee's ability to safely perform the essential functions of the job. The determination should be based on reasonable judgment that relies on the most current medical knowledge and information and/or best available objective evidence. As deemed appropriate, the manager may initiate action to temporarily assign the employee non-TDP duties, if available, or place the employee on enforced leave should the employee fail to request leave.



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