

PROPOSED PERSONNEL POLICY FOR BOARD OF HIGHER EDUCATION

Submitted for: Action.

Summary: This item submits for Board action a proposed personnel policy for the Board of Higher Education. The new policy is for a drug and alcohol-free workplace to ensure the well-being of employees by prohibiting working while impaired or under the influence and to ensure compliance with federal and State drug-free workplace laws and regulations.

Action Requested: That the Board of Higher Education adopt the proposed personnel policy as presented in this item.

STATE OF ILLINOIS
BOARD OF HIGHER EDUCATION

PROPOSED PERSONNEL POLICY FOR BOARD OF HIGHER EDUCATION

The Illinois Board of Higher Education (IBHE) first adopted personnel policies on February 3, 2004 pursuant to Section 5-5 of the State Officials and Employees Ethics Act. (5 ILCS 430) The Act requires the Board to adopt personnel policies for public universities and for the Board and its staff. The policies must include, but are not limited to, the following: (1) work time requirements; (2) documentation of time worked; (3) documentation for reimbursement for travel on official State business; (4) compensation; and (5) the earning or accrual of State benefits for all State employees who may be eligible to receive those benefits.

The proposed policy does not apply to the Board's personnel policies for public universities. Universities must comply with federal Drug-Free Schools and Communities Act Amendments of 1989 that require campuses to be drug free.

IBHE has adopted and been subject to similar workplace policies but the passage of the Cannabis Regulation and Tax Act (Public Act 101-27) impacts current policies. The Act, which takes effect on January 1, 2020, will allow anyone age 21 or older to possess, use or buy cannabis for recreational purposes. The Act does not require an employer to permit employees to be under the influence of or to use cannabis in the employer's workplace; while performing employee's job duties; or while on-call. An employer, such as IBHE, is not required to rely on drug tests to determine use. Instead, the law provides a safe harbor wherein a good faith belief is enough. The factors for a good faith belief are provided in the Act and incorporated into the new policy, including an opportunity for the employee to contest the basis of the determination.

Attached is the proposed policy which has been reviewed by the Board's legal counsel, Burke Burns & Pinelli, Ltd. The new personnel policy will be filed with the Executive Ethics Commission pursuant to the State Officials and Employees Ethics Act.

Staff Recommendation

Staff recommends the adoption of the following resolution:

The Illinois Board of Higher Education hereby adopts the personnel policy for a drug and alcohol-free workplace as provided in this agenda item.

ATTACHMENT: PROPOSED PERSONNEL POLICY

Drug and Alcohol-Free Workplace

It is the policy of the Illinois Board of Higher Education (IBHE) to maintain a workplace that is free from drugs and alcohol. Any employee who abuses alcohol or unlawfully uses controlled substances or drugs, including the unlawful use of prescription drugs, on the job, or comes to work under the influence of alcohol, cannabis or illegal drugs, or possesses, sells, or distributes such substances in the workplace, jeopardizes the well-being of everyone. Additionally, in compliance with the federal Drug-Free Workplace Act and Illinois Drug-Free Workplace Act, the IBHE hereby notifies its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in this workplace and actions will be taken against employees for violation of such prohibition, which includes without limitation, suspension and/or termination.

All employees must comply with all federal and Illinois laws that pertain to drugs and alcohol. Nothing in this policy prohibits the appropriate use of legally prescribed medications, including the use of medical cannabis by a registered qualifying patient, pursuant to Illinois' Compassionate Use of Medical Cannabis Pilot Program Act. (410 ILCS 130) However, if the use of legally prescribed medications will impact an employee's ability to perform his/her job, or his/her ability to do so safely, the employee is required to inform the supervisor or the HR officer.

The following conduct is strictly prohibited:

- Reporting to work under the influence of cannabis¹, alcohol or illegal drugs;
- Reporting to work under the influence of a prescription drug in excess of the prescribed dosage;
- Drinking alcohol on the job or on the Board's property (except as may be authorized by the Executive Director or his/her designee at approved social functions and in accordance with applicable laws); or
- Use, manufacture, possession, sale, distribution or offer of cannabis, illegal drugs, including prescription drugs for which the employee has no prescription, on the job or on the Board's property.

Any employee violating this policy may be subject to discipline, up to and including termination. Any potentially criminal conduct may be reported to the proper police authorities. IBHE may favorably consider the actions of an employee who voluntarily reports he/she is seeking and accepting drug counseling, rehabilitation, and employee assistance through the Employee Assistance Program (EAP) provided by IBHE or through another resource.

¹ Pursuant to Illinois' Cannabis Regulation and Tax Act, the IBHE may consider an employee to be impaired or under the influence of cannabis if IBHE has a good faith belief that an employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position. This includes the following: (1) symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery; (2) disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; (3) disruption of a production or manufacturing process; or (4) carelessness that results in any injury to the employee or others. If IBHE elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the IBHE will afford the employee a reasonable opportunity to contest the basis of the determination. (410 ILCS 705/10-50)

Employees Believed to be Impaired or Under the Influence of Alcohol, Cannabis, or other Substance

1. If an employee suspects another employee is impaired or under the influence of alcohol, cannabis, or other substance, said employee shall immediately notify a supervisor. If a supervisor is not available, the employee shall immediately notify the HR Officer who shall assume the role of supervisor.
2. The supervisor shall investigate the matter immediately to determine if he/she reasonably believes the employee is impaired or under the influence of alcohol, cannabis, or other substance.
 - a. If the supervisor reasonably believes the employee is impaired or under the influence, the supervisor in his/her sole discretion may dismiss the employee from work for the day.
 - b. The supervisor shall prepare a report and timely submit it to the HR Officer or Executive Director for further investigation and determination.
3. If the IBHE determines that the employee was under the influence or impaired by cannabis and intends to discipline the employee, the IBHE shall notify the employee in writing and allow the employee a reasonable opportunity to contest the basis of the determination.

Notifications Required of Employees²

As a condition of employment, any employee directly engaged in work pursuant to a federal contract or grant or grant from the State of Illinois in the amount of \$5,000 or more, must comply not only with this policy, but must also notify his/her Deputy Director within five (5) days of any conviction under a criminal drug statute where the criminal act upon which the conviction is based occurred upon property owned, operated or controlled by IBHE. IBHE will notify the federal or state grant or contract authority within ten (10) days after receiving the notice from a covered employee or otherwise receiving actual notice of such conviction.

IBHE shall either sanction the employee receiving said conviction by terminating the employee or in the alternative it may require the employee to satisfactorily complete a drug abuse assistance or rehabilitation program prior to returning to work.

² The federal Drug-Free Workplace Act of 1988(41 U.S.C 81) and the Illinois Drug-Free Workplace Act (30 ILCS 508)