

Safe Harbor under Navy Drug-Free Workplace Program

1. Executive Order 12564 allows agencies to provide an opportunity for assistance to those employees who voluntarily seek treatment for drug use. Safe Harbor insulates the employee from discipline for admitted acts of using illegal drugs when the agency is unaware of such use. The Department of the Navy will offer such a safe harbor for any employee who meets all of the following conditions:

- Voluntarily identifies himself or herself as an illegal user of drugs to the activity head/commander, via the immediate supervisor and the DPC, prior to being identified through other means.
- Obtains counseling and rehabilitation through the CEAP.
- Agrees to be tested by the activity/command as part of, and as a follow-up to, counseling and rehabilitation.
- Consents, in writing, to the release to appropriate management and CEAP officials of all counseling and rehabilitation records related to the illegal use of drugs.
- Subsequently refrains from illegal use of drugs.

2. An employee who admits to drug use after being identified that he or she is scheduled for a test, or just after a sample is collected, or who is found to use drugs on the basis of other appropriate evidence (e.g., direct observation or evidence obtained from an arrest or criminal conviction) is not eligible for safe harbor. For example, an employee arrested over the weekend on drug-related charges is released and reports to work as usual on Monday requesting safe harbor. Since the activity head/commander is unaware of the arrest, he/she signs the agreement. A safe harbor agreement signed under these circumstances will be considered invalid and obtained by the employee under false pretenses. Any request or agreement denied or invalidated must be fully documented and maintained by the DPC. Further, safe harbor is for illegal users of drugs, not drug dealers or those involved in other drug-related misconduct.

3. An employee who meets the safe harbor conditions will be advised that he or she will not be subject to discipline for the admitted acts of illegal use of drugs, including possession incident to such personal use. However, if the employee occupies a Testing Designated Position (TDP) subject to random testing, he or she must immediately be removed from that position. In addition, if the employee holds a current security clearance, the provisions of reference (e) apply. Agency officials are not relieved of their obligation to take appropriate action to protect national security information when they are made aware of information reflect unfavorably on an individual's reliability or trustworthiness. Thus, an employee's admission of drug use under the safe harbor provision may be used by activity security personnel for access and clearance determinations. A notice to this effect is to be given to all new CNO employees.