

## POLICY CONCEPT FORM E INSTRUCTIONS AND GUIDELINES

**All policy proposals – including new policy concepts, proposed revisions, or suggested repeals – must be submitted via this form to the Office of the University Secretary with appropriate supporting information and documents.** Completed submissions are forwarded to the President’s Policy Advisory Council (PAC), which ensures proper routing through the policy-making process. (See UO Policy I.03.01 for more information.)

**Please keep the following definition of a university policy in mind as you develop your concept:**

*A University Policy (“Policy”) is a policy that (1) has broad application or impact throughout the University community, (2) must be implemented to ensure compliance with state or federal law, (3) is necessary to enhance the University’s mission, to ensure institutional consistency and operational efficiency, or to mitigate institutional risks; or (4) is otherwise designated by the Board [of Trustees] or the President [of the University] as a University Policy.*

*A policy establishes rights, requirements or responsibilities. Excluded from this definition are things such as, but not limited to, implementation guides, operating guidelines, internal procedures, and similar management controls and tools.*

**To help facilitate as smooth a process as possible, please consider the following:**

1. Consult as many stakeholders as possible *prior to submitting* your concept. A primary role for the PAC is to ensure that appropriate offices, departments or groups are consulted.
2. Run your concept by the Office of General Counsel (OGC) *prior to submission*. OGC review is a required step in policy-making.
3. Please use the proper template for revisions or a new concept. The existing policy template (revisions) or a blank template (new concepts) can be obtained from the Office of the Secretary by emailing [uopolicy@uoregon.edu](mailto:uopolicy@uoregon.edu).
4. A “redlined” version of your concept is required for proposed revisions.
5. Include any appropriate related resources. Links are preferred, but supplemental documents are of course acceptable for items not online. Examples include:
  - Other policies or procedures related to, overridden by, necessary as a result of, or otherwise affiliated with your concept
  - Statutory or regulatory citations
  - Necessary notations or a summary of changes if changes are numerous or not obvious when reading the submitted template

**Please email [uopolicy@uoregon.edu](mailto:uopolicy@uoregon.edu) if you have any questions.**

## POLICY CONCEPT FORM

Name and UO Title/Affiliation:	Peter Fehrs and Brittany Jayne, Associate Directors of Employee and Labor Relations
Policy Title/# (if applicable):	Fitness for Duty and Drug-Free University (updates existing policy Drug-free Workplace)
Submitted on Behalf Of:	Human Resources
Responsible Executive Officer:	Jamie Moffitt, VPFA

**SELECT ONE:**  New Policy       Revision       Repeal

*Click the box to select*

**HAS THE OFFICE OF GENERAL COUNSEL REVIEWED THIS CONCEPT:**     Yes     No

**If yes, which attorney(s):** [Jeslyn Everitt](#)

### GENERAL SUBJECT MATTER

*Include the policy name and number of any existing policies associated with this concept.*

[Drug-free Workplace 03.04.03](#), [Smoke and Tobacco-Free University](#), [Student Leave Policy](#), [Student Conduct Code](#)

### RELATED STATUTES, REGULATIONS, POLICIES, ETC.

*List known statutes, regulations, policies (including unit level policies), or similar related to or impacted by the concept. Include hyperlinks where possible, excerpts when practical (e.g. a short statute), or attachments if necessary. Examples: statute that negates the need for or requires updates to an existing policy; unit level policy(ies) proposed for University-wide enactment; or existing policies used in a new, merged and updated policy.*

[21 USC 812, Drug-Free Workplace Act of 1988, Drug-Free School and Communities Act Amendments of 1989.](#)

### STATEMENT OF NEED

*What does this concept accomplish and why is it necessary?*

[Updates an existing policy \(Drug-free Workplace\) and broadens the scope to include non-drug/alcohol-related reasons why an individual may be impaired on campus, including medical reasons such as stroke or seizure. Introduces new concept of fitness-for-duty certification for employees prior to return to work if they are unsafe in the workplace due to health or impairment.](#)

### AFFECTED PARTIES

*Who is impacted by this change, and how?*

[All University employees, students, and community members.](#)

## CONSULTED STAKEHOLDERS

*Which offices/departments have reviewed your concept and are they confirmed as supportive? (Please do not provide a list of every individual consulted. Remain focused on stakeholders (e.g. ASUO, Office of the Provost, Registrar, Title IX Coordinator, etc.))*

<b>Name</b>	<b>Office</b>	<b>Date</b>
Human Resources Policy Advisory Committee (including representatives from SEIU, United Academics, GTFF, UOPA, OAs, academic CFOs, and various other stakeholders), Seven review sessions from June 2023-December 2023		
Office of the General Counsel, Jeslyn Everitt, January 2024		
HR Leadership Group (all Central HR Directors and Chief Human Resources Officer), April-May 2024		
Jamie Moffitt, VPFA, May 2024		

# Fitness for Duty & Drug Free University

## Reason for Policy:

This policy outlines the university's requirements around fitness for duty and drug and alcohol use on campus.

## Entities Affected by this Policy:

All UO students, employees, and community members.

## Responsible Office:

For questions about this policy, please contact the Office of Human Resources at 541-346-3159 or [hrpolicy@uoregon.edu](mailto:hrpolicy@uoregon.edu).

## Website Address for this Policy:

### **Last Updated:**

05/13/2011

### **Effective Date:**

03/08/1989

## Reason for Policy:

The University of Oregon is committed to providing a safe and healthy learning environment for all ~~of its~~ members of its community. The university recognizes that compromised physical or mental health, or the improper ~~or excessive~~ use of alcohol or other drugs, may interfere with the university's mission by negatively affecting the health and safety of employees and students, faculty, and staff~~employees~~. This policy (1) establishes the expectation that employees and students ~~can be able to~~ perform their responsibilities~~duties~~ in a manner that protects their own and others' safety and health, (2) outlines expectations related to the use of drugs and alcohol, and (3) complies with the Drug-Free Workplace Act of 1988 and the Drug-Free School and Communities Act Amendments of 1989.

### **Definitions:**

"Controlled Substance" – Any substance found in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812). In the event of a conflict between federal law and state law, federal law controls. Marijuana (cannabis) and its derivatives are controlled

**Commented [JE1]:** Make clear on the policy concept form that this is replacing the drug-free workplace policy, <https://policies.uoregon.edu/policy/by/1/0304-employee-relations/drug-free-workplace>

**Commented [JE2]:** You use employees and students in the sentence below and throughout so perhaps use that same order here.

**Commented [EL3]:** The policy sometimes says "employees" and sometimes "faculty and staff." Consistency would be good. I would recommend "employees"

**Commented [BJ4R3]:** Change to employees

**Commented [PF5]:** Responsibilities instead of duties

substances that, despite state law, remain illegal under federal law and are strictly prohibited on University Premises.

“Impaired” **“Impairment”** – The inability to perform duties in a safe, secure, and productive manner.

“University Premises” – includes all land, buildings, grounds, or other property owned, leased, rented, operated, or controlled by the university and adjacent sidewalks and streets. This term also includes university vehicles whether operated on or off campus and whether owned or leased.

### Policy-

#### Fitness for Duty Requirements:

The university expects employees and students to participate safely and effectively in work, class, and other university activities. Factors that may impact one’s ability to participate safely and effectively include, but are not limited to, impairment from drugs or alcohol, or compromised mental, emotional or physical health. This policy requires employees and students exhibiting behavior that indicates that they are unsafe in the workplace or pose a direct threat to themselves or others to be referred for a fitness for duty evaluation.

No employee or student shall report to work or class or engage in any university activity while impaired by alcohol, a Controlled Substance, or a legal or illegal drug.

Steps to address concerns related to an employee’s fitness for duty shall be made in consultation with University Human Resources, unless the situation precludes contact with Human Resources, in which case, such consultation must occur as soon as possible. Steps to address concerns related to a student’s behavior shall be made in consultation with the Dean of Students.

It is expected that employees, students, and other members of the university community who are ill or contagious will use good judgment as it relates to taking care of their own health and minimizing exposure to others. A supervisor may make the determination, in consultation with University Human Resources, that an employee’s presence in the workplace endangers themselves or others as a result of illness or impairment and may require the employee to leave the workplace. Some units require employees to have current certifications, immunizations, or licenses related to health, safety, or professional standards. Inconsistency with such requirements may result in a determination that the employee is unfit for duty.

The university may require a medical examination or fitness-for-duty certification from a health care provider for employees prior to, or as a condition for, their return to work as long as the

**Commented [JE6]:** Note definition from conduct code if you want to use the same: “University Premises’ includes all land, buildings, or grounds owned, leased, operated, controlled, or supervised by the University and adjacent sidewalks and streets.”

**Commented [LH7]:** define contagious? illness? compromised health?

**Commented [MA8]:** This feels out of scope for this policy? And it’s unclear what that means?

**Commented [MA9R8]:** I think my concern about the mental and emotional (and to some degree physical) health additions is that we know that policies like this are inequitably applied. A person of color is seen as a threat when they raise their voice, while a white person is seen as passionate. Women are often seen as overly emotional or hysterical. So, I want us to be very careful having a policy that allows us to declare someone unfit for mental and emotional health.

**Commented [MF10]:** Who/how is the determination made about what is unsafe? Who completes the evaluation of fitness for duty for the person we’re concerned about?

**Commented [MF11R10]:** My biggest concern is: what if someone simply engages differently with the world around them and that makes others uncomfortable, but they aren’t unsafe? Where/how will we prevent discrimination if

**Formatted:** Not Highlight

**Commented [EL12]:** We should capitalize Impaired to clarify we are referring to Impaired as defined above, rat

**Commented [MA13]:** what about football games or other sporting events?

**Commented [MF14R13]:** I think that’s covered by “University activity” although I could be way off base

**Commented [MA15R13]:** Exactly - are we saying that students (and staff) can’t have a few drinks at a football

**Commented [MF16R13]:** AHHH, I see!

**Commented [CH17R13]:** I agree that we need some distinction between how the policy applies to those work

**Commented [MF18]:** Is this piece just about physical illness?

**Commented [MA19R18]:** I had the same question.

**Commented [LH20]:** “good judgment” seems subjective - is it possible to define acceptable behavior around

**Commented [CH21]:** I think we need further elaboration on this.

**Commented [JE22]:** I think we want to give ourselves broader latitude to require fitness for duty exams. The “j

**Commented [JE23]:** Should/could we make this section about fitness for duty exams just for employees (note the

review is job-related and consistent with business necessity. This includes, but is not limited to, situations where an employee This policy requires employees and students is exhibiting behavior that indicates that they are unsafe in the workplace or pose a direct threat to themselves or others to be referred for a fitness for duty evaluation. For employees taking leave under the Family and Medical Leave Act (FMLA), the university will notify the employee if a fitness-for-duty certification is required for them to return to work, including a list of the essential functions of the employee's job, prior to the leave. If the university provides the notice required, an employee who does not provide a fitness-for-duty certification and otherwise exhausts their protected leave is no longer entitled to reinstatement under the FMLA.

This Policy is not meant to supersede, modify, or otherwise change the uU university's obligations under the Americans with Disabilities Act, as amended (ADA) and other laws. In the event that an employee is not fit for duty because of an underlying medical condition that qualifies as a disability, the uU university will take steps consistent with its obligations under the ADA. For related information, please see <https://hr.uoregon.edu/employee-labor-relations/accommodations>.

#### Prohibited Drug Use:

It is the policy of the University of Oregon to maintain a drug-free workplace and campus. The unlawful manufacture, distribution, possession, and/or use of Controlled Substances or other drugs, including unauthorized prescription drugs, on University Premises or as part of any uU university activity is strictly prohibited. Any person taking prescription drugs or over-the-counter medication is personally responsible for ensuring that while taking such drugs or medications they are fit for duty and not a safety risk to themselves or other members of the uU university community.

Federal law and this policy require that uU university employees notify the uU university within five (5) days should they be convicted of violating any criminal drug statute while at the workplace or on University premises. Employees shall give such notification in writing to their immediate supervisor with a copy to University Human Resources. The Office of Human Resources will contact the Office of the Vice President for Research to determine if any federal grants or contracts are implicated. If the employee is directly or indirectly engaged in the performance of a federal grant or contract, the uU university shall notify the granting or contracting agency within ten (10) days of receiving notice of the criminal drug statute conviction.

#### Prohibited Alcohol Use:

The University Oregon is committed to creating and maintaining an environment that is free from alcohol abuse. The uU university complies with federal and state law and other applicable regulations governing alcoholic beverages, including the prohibition on underage consumption of alcohol. The uU university expects that those who choose to include alcohol as part of their activities will do so responsibly and lawfully. Responsible drinking includes making sound

**Commented [MF24]:** Who/how is the determination made about what is unsafe? Who completes the evaluation of fitness for duty for the person we're concerned about?

**Commented [MF25R24]:** My biggest concern is: what if someone simply engages differently with the world around them and that makes others uncomfortable, but they aren't unsafe? Where/how will we prevent discrimination if someone just engages differently because of who they are, how they process the world, etc. Additionally, how do we prevent this from being used as a way to discriminate against already minoritized people? Does the employee have to disclose their medical records and ADA status to their boss for protection? That seems concerning.

**Commented [JE26]:** From the law, 29 CFR section 825.312: An employer may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification from the employee's health care provider must certify that the employee is able to resume work. Additionally, an employer may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employer must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by § 825.300(d), and must indicate in the designation notice that the certification must address the employee's ability to perform those essential functions. If the employer satisfies these requirements, the employee's health care provider must certify that the employee can perform the identified essential functions of his or her job. Following the procedures set forth in § 825.307(a), the employer may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The employer may not delay the employee's return to work while contact with the health care provider is being made.

**Commented [JE27]:** Move to resources below?

**Commented [EL28]:** What is the consequence if they do not?

**Commented [BJ29]:** Although in the last policy, this binds us to a back end process that does not outwardly face or effect the employee per this policy.

**Commented [JE30]:** Should we add back the part in redline from the prior policy about getting the info to VPRI?

Here's what the prior policy said: "The University is then required to notify the applicable Federal agency if the employee is directly or indirectly engaged in the

**Commented [CH31]:** I think we need to provide some clarification. This reads that we are ok with individuals drinking on the job as long as they do so responsibly and lawfully.

judgments about whether, when, and how much to drink, understanding the health issues related to the consumption of alcohol, and avoiding excessive alcohol use that interferes with the university's mission by negatively affecting the health and safety of students, ~~faculty, and staff, or~~ and employees.

#### Penalties:

The university may impose disciplinary sanctions against any employee or student found to have violated this policy and/or may require satisfactory participation in an approved drug or alcohol abuse assistance or rehabilitation program. ~~The permissible sanctions include, but are not limited to, suspension without pay, and termination of employment. The university also reserves the right to refer employees' and students' actions to appropriate civil authorities for possible prosecution.~~ Behavior related to prohibited alcohol and drug use is subject to the Student Code of Conduct, Policy III.01.01.

#### Drug-free Awareness:

The university, ~~through University Human Resources,~~ shall maintain a drug-free awareness program to inform employees and students about the dangers of drug abuse, the policy of maintaining a drug-free workplace, and the availability of drug counseling, rehabilitation, and other assistance programs. In addition, all employees and students shall receive descriptions of applicable legal sanctions under local, state, or federal law and health risks associated with the abuse of drugs and alcohol.

#### Annual Notice and Biennial Review:

~~Annually, and in compliance with applicable law, the u~~University will distribute annually in writing to ~~in writing to~~ information to employees and students ~~information regarding this policy, a description of the applicable legal sanctions for the unlawful possession or distribution of illicit drugs or alcohol, a description of the health risks associated with the use of illicit drugs and the abuse of alcohol, and a description of assistance resources available to employees and students.~~

~~The u~~University ~~Human Resources and the Vice President of Student Life~~ shall arrange for the distribution of materials mandated by law and this policy to new and existing employees and students respectively. ~~They shall also be responsible for conducting a biennial review of the u~~University program ~~to determine its effectiveness, to implement changes as needed, and to ensure that sanctions are consistently enforced.~~

#### Revision History:

*Supersedes all earlier policies issued on this subject.  
12/12/1990 Reviewed and Recommended for Revision by President's Staff  
03/08/1989 Originally issued  
Reissued by Vice President for Administration*

**Commented [JE32]:** This language is in the old policy, <https://policies.uoregon.edu/policy/by/1/0304-employee-relations/drug-free-workplace>, think about whether to include it so employees are on notice of potential sanctions/actions.

**Commented [BJ33]:** Do not want to include this since above gives us authority for all discipline.

**Commented [BJ34]:** This was dropped when the new policy was made. Jeslyn added it back. Since this was originally taken out by Chris, can we talk through the risk of it being added back in?

**Commented [MA35]:** These penalties seem related to drug and alcohol use on campus - but are there penalties related to someone being removed for emotional or mental health?

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**Commented [KR36]:** I don't think HR informs students about this; that likely comes from VPSL. (?)

**Commented [KR37R36]:** It seems like the Drug-free Awareness paragraph and the Annual Notice paragraph duplicate each other?

**Commented [SR38R36]:** There seem to be some differences in the CFR that might not be as clear here. [eCFR :: 34 CFR Part 84 -- Governmentwide Requirements for Drug-Free Workplace \(Financial Assistance\)](https://www.ecfr.gov/current/title-28--chapter-1--part-84)

**Commented [CH39]:** will University HR be responsible for this annual notification?

02/08/2010 Policy number revised from 3.350 and 3.550 to 03.04.03

5/13/2011 Reviewed by Linda King, HR. No changes needed.

**Original Source:**

UO Policy Statement

**Related Resources:**

Drug-free Workplace Requirements for Federal Contractors (41 U.S.C. 701):

<https://www.gpo.gov/fdsys/granule/USCODE-2009-title41/USCODE-2009-title41-chap10-sec701/content-detail.html>

Drug-Free Schools and Communities Act Amendments of 1989:

<https://www.gpo.gov/fdsys/pkg/STATUTE-103/pdf/STATUTE-103-Pg1928.pdf>

U.S. Drug Enforcement Administration, Drug Schedules:

<https://www.dea.gov/drug-scheduling>

~~UO Employee Assistance Program: <https://hr.uoregon.edu/er/general-information/employee-assistance-program>~~

[Smoke and Tobacco-Free University](#)

[Student Conduct Code](#)

[Student Leave Policy](#)

[HR Protected Medical Leave Guidance](#)

~~Accommodation Resources: <https://hr.uoregon.edu/employee-labor-relations/accommodations>~~

[Substance Abuse Prevention](#)

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**Commented [JE40]:** Move to resources below?

**Field Code Changed**



# Fitness for Duty & Drug-Free University

## **Reason for Policy:**

This policy outlines the university's requirements around fitness for duty and drug and alcohol use on campus.

## **Entities Affected by this Policy:**

All UO students, employees, and community members.

## **Responsible Office:**

For questions about this policy, please contact the Office of Human Resources at 541-346-3159 or [hrpolicy@uoregon.edu](mailto:hrpolicy@uoregon.edu).

## **Website Address for this Policy:**

### **Last Updated:**

05/13/2011

### **Effective Date:**

03/08/1989

## **Policy:**

The University of Oregon is committed to providing a safe and healthy learning environment for all members of its community. The university recognizes that compromised physical or mental health, or the improper use of alcohol or other drugs, may interfere with the university's mission by negatively affecting the health and safety of employees and students. This Policy (1) establishes the expectation that employees and students can perform their responsibilities in a manner that protects their own and others' safety and health, (2) outlines expectations related to the use of drugs and alcohol, and (3) complies with the Drug-Free Workplace Act of 1988 and the Drug-Free School and Communities Act Amendments of 1989.

## **Definitions:**

"Controlled Substance" – Any substance found in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812). In the event of a conflict between federal law and state law, federal law controls. Marijuana (cannabis) and its derivatives are controlled substances that, despite state law, remain illegal under federal law and are strictly prohibited on University Premises.

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“University Premises” – includes all land, buildings, grounds, or other property owned, leased, rented, operated, or controlled by the university and adjacent sidewalks and streets. This term also includes university vehicles whether operated on or off campus and whether owned or leased.

### **Fitness for Duty Requirements:**

The university expects employees and students to participate safely and effectively in work, class, and other university activities. Factors that may impact one’s ability to participate safely and effectively include, but are not limited to, impairment from drugs or alcohol or compromised mental, emotional or physical health.

No employee or student shall report to work or class or engage in any university activity while impaired by alcohol, a Controlled Substance, or a legal or illegal drug.

Steps to address concerns related to an employee’s fitness for duty shall be made in consultation with University Human Resources, unless the situation precludes contact with Human Resources, in which case, such consultation must occur as soon as possible after. Steps to address concerns related to a student’s behavior shall be made in consultation with the Dean of Students Office.

It is expected that employees, students, and other members of the university community who are ill or contagious will use good judgment as it relates to taking care of their own health and minimizing exposure to others. A supervisor may make the determination, in consultation with University Human Resources, that an employee’s presence in the workplace endangers themselves or others as a result of illness or impairment and may require the employee to leave the workplace. Some units require employees to have current certifications, immunizations, or licenses related to health, safety, or professional standards. Failure to adhere to such requirements may result in a determination that the employee is unfit for duty.

The university may require a medical examination or fitness-for-duty certification from a health care provider for employees prior to, or as a condition for, their return to work as long as the review is job-related and consistent with business necessity. This includes, but is not limited to, situations where an employee is exhibiting behavior that indicates that they are unsafe in the workplace or pose a direct threat to themselves or others. For employees taking leave under the Family and Medical Leave Act (FMLA), the university will notify the employee if a fitness-for-duty certification is required for them to return to work. If the university provides the notice required, an employee who does not provide a fitness-for-duty certification and otherwise exhausts their protected leave is no longer entitled to reinstatement under the FMLA.

This Policy is not meant to supersede, modify, or otherwise change the university's obligations under the Americans with Disabilities Act, as amended (ADA) and other laws. In the event that an employee is not fit for duty because of an underlying medical condition that qualifies as a disability, the university will take steps consistent with its obligations under the ADA.

### **Prohibited Drug Use:**

It is the policy of the University of Oregon to maintain a drug-free workplace and campus. The unlawful manufacture, distribution, possession, and/or use of Controlled Substances or other drugs, including unauthorized prescription drugs, on University Premises or as part of any university activity is strictly prohibited. Any person taking prescription drugs or over-the-counter medication is personally responsible for ensuring that while taking such drugs or medications they are fit for duty and not a safety risk to themselves or other members of the university community.

Federal law and this policy require that university employees notify the university within five (5) days should they be convicted of violating any criminal drug statute while at the workplace or on University premises. Employees shall give such notification in writing to their immediate supervisor with a copy to University Human Resources. If the employee is directly or indirectly engaged in the performance of a federal grant or contract, the university shall notify the granting or contracting agency within ten (10) days of receiving notice of the criminal drug statute conviction.

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### **Penalties:**

The university may impose disciplinary sanctions against any employee or student found to have violated this policy and/or may require satisfactory participation in an approved drug or alcohol abuse assistance or rehabilitation program. Behavior related to prohibited alcohol and drug use is subject to the Student Code of Conduct, Policy III.01.01.

### **Drug-free Awareness:**

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The university shall arrange for the distribution of materials mandated by law and this policy to new and existing employees and students respectively.

**Revision History:**

*Supersedes all earlier policies issued on this subject.*

*12/12/1990 Reviewed and Recommended for Revision by President's Staff*

*03/08/1989 Originally issued*

*Reissued by Vice President for Administration*

*02/08/2010 Policy number revised from 3.350 and 3.550 to 03.04.03*

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Drug-Free Schools and Communities Act Amendments of 1989:

<https://www.gpo.gov/fdsys/pkg/STATUTE-103/pdf/STATUTE-103-Pg1928.pdf>

U.S. Drug Enforcement Administration, Drug Schedules:

<https://www.dea.gov/drug-scheduling>

[UO Employee Assistance Program](#)

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[Accommodation Resources](#)

## Substance Abuse Prevention