



Office of the Mayor
City of Columbus
Ohio

DRUG AND ALCOHOL TESTING POLICY

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CITY OF COLUMBUS DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES FOR CITY EMPLOYEES

1) POLICY STATEMENT

The City and all bargaining units representing City employees, through the respective collective bargaining agreements, recognize and agree that it is their mutual goal to pledge and maintain a concerted effort in assuring a safe and secure workplace. This effort will be maintained through a drug and alcohol-free workplace environment.

2) PROCEDURES TO IMPLEMENT THE POLICY

All drug and alcohol testing will be administered through the Drug and Alcohol Coordinator (DAC) in the Human Resources Department, in cooperation with a third party vendor or vendors which will be selected in compliance with all applicable ordinances, statutes and contract provisions. All covered employees will be treated in a fair and impartial manner and according to the terms set forth in collective bargaining agreements, and/or this policy.

3) COVERED EMPLOYEES

All City employees are covered by this policy. However, in the case of pre-employment testing, temporary (480-hour) employees are exempted. This policy incorporates the provisions of the respective collective bargaining agreements for those in bargaining units. Employees are responsible for adhering to these procedures without exception.

4) EDUCATION AND TRAINING

To increase an employee's awareness of the policies, procedures and potential dangers of substance abuse in the workplace, the DAC will provide or will coordinate education and training for all covered employees as needed. Before drug and alcohol testing begins, the DAC will provide that all employees be given training and written copies of the Alcohol and Drug Testing Procedures. Supervisors who are responsible for making reasonable suspicion testing referrals will be provided with additional training. This training will focus on physical and behavioral indicators and the proper procedure that could lead to reasonable suspicion testing. The failure of a supervisor to participate in this training will not render the results of a reasonable suspicion test invalid or inadmissible in any disciplinary action under this policy.

5.) **PROHIBITED CONDUCT**

Employees are prohibited from:

- reporting to work or working under the influence of alcohol or drugs
- purchasing alcohol or drugs for himself/herself or others when on duty
- consuming or possessing alcohol at any time while on duty or anywhere on any City premises or in any City vehicles;
- possessing, using, selling, purchasing, manufacturing, dispensing or delivering any illegal drug at any time and at any place;
- abusing any prescription drug;
- failing to report immediately to their supervisor any duty related restrictions imposed as a result of prescription or over-the-counter medications.

6) **USE OF PRESCRIPTION DRUGS**

An employee who is using therapeutic (i.e. prescription) drugs or over-the-counter medications shall use such medication in compliance with instructions from the prescribing doctor, the pharmacist, or package instructions. Failure to follow such instructions could indicate the misuse and/or abuse of the medication. If an employee is unable to perform his/her duties because of his/her prescription medication, as described in City Work Rule #3, he/she will voluntarily use sick or other approved leave of absence or will be placed on restricted duty, if applicable. In the case of prescribed substances, the employee should ask his/her doctor for any duty-related restrictions that may be imposed as a result of taking the prescription. Upon request, an employee will be required to submit written verification from his/her physician.

7) **RECORDS**

The DAC will handle all matters related to drug and alcohol testing in accordance with Federal and State of Ohio law. No records of drug/alcohol testing will be maintained in the employee's personnel file. The third party vendor will keep all collection records. Due to Federal regulations governing testing for employees who hold a Commercial Drivers License (CDL), the City will maintain the minimal amount of records. For random testing of uniformed employees (Police and Fire), all records will be maintained by the third party vendor. The third party vendor will notify the City of all positive results.

8) **MONITORING OF EMPLOYEE'S COMPLIANCE**

For purposes of monitoring an employee's compliance with the Employee Assistance Program (EAP) and any treatment/educational provider, the employee, who is ordered to EAP as a result of a positive test result, will be required to sign a release of information form, which will allow the DAC and EAP to communicate. Any communication between the DAC and EAP will be held in the strictest confidence. Should the employee fail to comply with any recommendation of EAP, the employee may be subject to disciplinary action.

9) **DISCIPLINE**

An employee who has completed his/her probationary period shall not be disciplined for the first positive test; however, separate concurrent work rule violations may warrant disciplinary action. A second positive test may result in termination. Since the time period between the first and second positive test results can cover an employee's entire career with the City, mitigating circumstances will be considered.

Employees who have not completed their initial probationary periods may be terminated for a first positive. An employee who voluntarily requests drug/alcohol education/treatment shall not be disciplined in connection with that request if the request is done prior to selection for testing; however, the employee could be subject to disciplinary action for a concurrent work rule violation.

10) **TESTING STANDARDS**

The City will contract with a third party vendor or vendors to provide collection services, laboratory testing and medical review of the test results. The selection of the vendor or vendors will be in cooperation with union representatives in accordance with collective bargaining agreements. The vendor or vendors will utilize only laboratories that are federally certified to do drug testing. Personnel employed by the lab shall be certified as required by federal certification requirements. The facility collecting and testing breath samples shall hold all legally necessary licenses. Collection of samples shall be conducted in a manner that is consistent with Health and Human Services (HHS) guidelines. The drug testing cutoff levels will be consistent with standards set by HHS.

11) **MEDICAL REVIEW OFFICER (MRO)**

The Medical Review Officer (MRO) must be a licensed physician who is familiar with characteristics of tests in the facilities conducting the testing. The role of the MRO will be to review and interpret all positive test results. The MRO will notify the employee of any positive result and will examine any medical explanations for the positive result. An employee shall cooperate fully and promptly with the MRO. This may include a medical history, review of the employee's current prescribed medications, chain of custody and any relevant biomedical factors. The MRO must review all medical records made available by the employee. After a full review, the MRO may conclude that an apparent positive test is actually a negative test based on the existence of additional reasons. In such a conclusion the MRO shall report the test result as a negative to the City.

The MRO may verify a test as positive without interviewing the affected employee if more than five (5) days elapse after the MRO first attempts to contact the employee. The MRO will make all reasonable attempts to contact the employee. Once the MRO determines the result of a test to be positive, then he/she will contact the DAC.

12) **DEFINITION OF POSITIVE TEST RESULT**

For the purpose of this policy a positive test result will be any result which:

- 1) exceeds the federal guidelines, or levels provided in the respective collective bargaining agreements if different than the Federal guidelines, for the tested substance and is determined positive by a MRO, or
- 2) results from any refusal to test or failure to cooperate by an employee, or
- 3) a sample which is adulterated in anyway, as determined by the HHS certified laboratory.

13) **PROCEDURES AFTER A POSITIVE TEST RESULT**

When the DAC receives notice from the third party vendor/ vendors that an employee has a confirmed positive result the DAC will institute the following steps:

- 1) All nonuniformed employees will be relieved of duty by the DAC without pay (unless the employee elects to use available vacation or compensatory time). A Deputy Chief or designee will relieve employees who are part of FOP bargaining unit. The Fire Chief or designee will relieve employees who are part of the IAFF bargaining unit.

- 2) The employee will be referred to the Employee Assistance Program (EAP). Employees who are part of the IAFF bargaining unit may choose to use an alternate counseling source; however, EAP or the DAC must be kept informed in order to maintain compliance with the Systems Manual and collective bargaining agreement. The EAP will conduct an assessment and make appropriate referrals and will determine when the employee is ready for the return to duty test.
- 3) The employee must take and test negative on a return to duty test to return to active duty. The employee will be subject to follow-up testing as described in Paragraph 19 of this document.

14) **SPECIMEN COLLECTION/TESTING FOR DRUGS**

Urine specimens will be collected, stored and transported in a manner consistent with HHS guidelines. The collection of breath samples will be conducted in a manner consistent with HHS guidelines. The third party vendor(s) will follow all HHS guidelines for the chain of custody paperwork. If the chain of custody is broken for any sample, then that test shall be considered a canceled test and may not be used for any purpose. Canceled tests will not be counted against the number of tests to be performed annually.

All urine samples will be collected in a private and secure bathroom. All specimens will be packaged and sealed by the third party vendor(s) or designee(s), and the seal initialed by the employee to ensure that the specimen is not tampered with in any manner. All specimens will be packaged as split specimens, except the for non-DOT pre-employment samples. Split sample tests will be available to the employee for independent analysis, at a HHS certified laboratory, if there is a positive test result. The standards used for drug testing shall be the HHS standards in effect at the time the test was administered. Specimens are to be tested for adulterants, creatinine and specific gravity values. An adulterated specimen is defined as a specimen that contains a substance not expected to be present in human urine, or contains a substance to be present but the concentration level is so high that is not consistent with human urine. A diluted specimen is defined as a specimen with creatinine and specific gravity values that are lower than expected for human urine. A substituted specimen is defined as a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine. When urine specimens are presented to the third party vendor or designee, which are not in an acceptable temperature range (90-100 °), another specimen will be observed and collected. Both specimens will be sent to the HHS certified laboratory for analysis.

When an employee does not supply a sufficient amount of urine the collector will instruct the employee to drink up to forty (40) ounces of fluid in a period not to exceed three (3) hours. In this situation the first specimen (if in the temperature range and the specimen does not appear to have been tampered) will be discarded. The testing laboratories will report a result as a negative if the result is below the cutoff concentration pursuant to HHS standards on the screening test (known as an immunoassay). If the result is above the cutoff concentration, then the laboratory will conduct a confirmation test (known as a gas chromatography/mass spectrometry-GCMS). If the result is above the guidelines, then the laboratories will report the result as positive to the MRO. If the result is below the cutoff level, then the laboratory will report the result as negative to the MRO.

15) **BREATHALYZER TESTING FOR ALCOHOL**

Alcohol tests performed under this policy will be done with an evidential breath-testing device (EBT), otherwise known as a Breathalyzer. The Breathalyzer will be utilized first if an employee is to be tested for alcohol and drugs. This device has been approved for alcohol testing by the National Highway Traffic Safety Administration (NHTSA).

For non-CDL holders, a breath test will be required to determine if a person has an alcohol concentration of .04 gram per 210 liters of breath. Any result, which is .0399 or less, will be considered negative. Any result of .04 or greater will be confirmed by a second breath sample (for employees who are part of the IAFF bargaining unit the confirmation test will consist of a blood sample). For employees who are part of AFSCME and CMAGE bargaining units, if both the initial and confirmation results are between .04 and .06, the employee will be relieved of duty for the remainder of his/her shift and may use vacation or compensatory time. In this case, the result will not be considered positive; however, the employee may be presumed to be impaired, based on the employee's pattern of behaviors, and may face disciplinary action.

For CDL holders, a breath test will be required to determine if a person has an alcohol concentration of .02 or greater per 210 liters of breath. Any result of .0399 or less will be considered negative. Any result of .02 or greater will be confirmed by a second breath sample. For any sample that is between .02 and .0399, the CDL holder will be relieved of safety-sensitive duties for a 24-hour period. The CDL holder may utilize vacation or compensatory time to cover this absence, if non-safety sensitive duties are not available. Although the result will not be considered positive, the employee may be presumed to be impaired, based on the employee's pattern of behaviors, and may face disciplinary action.

Any result of .04 or higher (on both the initial and confirmation tests) will be considered positive and the employee will need to follow the Procedures after a Positive prescribed in Paragraph 13 of this document.

Any employee who does not provide a sufficient amount of breath to permit a valid breath test will be instructed to attempt again to provide a sufficient sample. If the employee refuses to attempt, then the test will discontinue and will be considered a refusal to test. If after attempting three (3) times to provide a sufficient sample of breath, an employee is still unable to provide a sufficient amount of breath, then the DAC will be contacted. The DAC will then instruct the employee to obtain, within five (5) days, an evaluation from a licensed physician who is acceptable to the MRO and who has expertise in the medical issues raised by the employee's failure to provide a sufficient sample. The physician must provide a report to the MRO and the DAC stating, in his/her medical judgment, an adequate medical basis exists which precludes the employee from providing a sufficient sample of breath. If a medical condition does exist, then the test is cancelled. If a medical condition does not exist, then the test will be considered a refusal to test.

16) **TYPES OF TESTS**

As listed in the collective bargaining agreements between the City and employees' representatives and pursuant to these procedures, employees represented by employee representatives are subject to the following types of tests:

- Reasonable Suspicion,
- Random (uniformed Police and Fire and CDL holders),
- Return to Duty and
- Follow-up testing.

The City and the employee representatives agree that the City has the right to conduct pre-employment drug testing of applicants seeking employment prior to date of employment.

17) **REASONABLE SUSPICION**

The term “reasonable suspicion” shall be defined as atypical, uncharacteristic or unusual behavior of an employee which:

- is observed on duty and confirmed by a supervisor and another witness;
- is observed behavior recognized and accepted symptomatic of intoxication or impairment caused by controlled substances or alcohol;
- is not reasonably explained by other factors, as determined by the DAC or authorized designee.

Where the City has a reasonable suspicion to believe that an employee:

- is being affected by the use of alcohol; or
- is consuming or possessing alcohol in violation of City policy or collective bargaining agreement; or
- is abusing prescription drugs; or
- is possessing or using illegal drugs; or

is engaging in prohibited conduct as described in the respective collective bargaining agreements, then the City shall require the employee to submit to both alcohol and drug testing. The reasonable suspicion must be based on specific observable behavior which must be documented in writing. No testing for reasonable suspicion may be conducted without the authorization of the DAC or designee (except in the case of uniformed employees, who will utilize the DAC as a consultant and to arrange the location of testing). The employee will normally have the reasons for testing explained to him/her by a member of the City management team prior to testing. Testing may be requested and performed during all shifts. The employee, which management “reasonably suspects”, may consult with a union representative, if available. The unavailability of a union representative will not delay the testing. Refusal to submit to drug/alcohol testing after being properly ordered to do so will result in a constructive positive and may result in disciplinary action for insubordination. A member of City management shall transport the employee to the testing site and will remain with the employee throughout the testing process. The employee shall provide a urine specimen and a breath sample. See sections titled “Specimen Collection” (Paragraph 14) and “Breathalyzer” (Paragraph 15) for specific procedures regarding insufficient specimen or sample. At the completion of gathering all necessary specimens and samples, the member of City management shall transport the employee home. The employee shall be relieved of duty without pay from the time the employee arrives home until the employee is ordered to return to work. If the drug and alcohol test is negative, the employee will be compensated for the period on leave of absence, unless other work rule violations are proven to occur.

If the drug or alcohol and/or both tests are positive, the employee may utilize his/her available vacation or compensatory time balances, or in the case of the FOP and IAFF employees, utilize their sick time, upon approval of the Appointing Authority. If no leave balances exist, then the employee will be carried in leave without pay status.

The DAC or designee shall communicate the test results to the employee and his/her appropriate Human Resources Manager.

18) **RANDOM TESTING**

For the purposes of random testing, City employees will be divided into the following groups:

- IAFF covered employees (pursuant to collective bargaining agreement);
- FOP covered employees (pursuant to collective bargaining agreement);
- FOP/OLC covered employees (pursuant to collective bargaining agreement);
- CDL holders (pursuant to federal law and respective collective bargaining agreements).

The City will perform or cause to be performed a number of tests which is consistent with respective collective bargaining agreements. CDL holders will be tested per federal regulations.

Employees will be randomly selected for drug and alcohol testing by a third party vendor(s) from a list of employees from the designated groups, which is provided by the City. The list provided to the third party vendor will be updated monthly or as needed to include new hires, delete employees who have retired, resigned or otherwise have been terminated from City service. Employees will be chosen through a computer software program known as a random number generator. This software must meet industry standards. Random drug and alcohol testing will be coordinated through the DAC of the Human Resources Department, who will call for the third party vendor(s) to generate a random list. Thereafter, the DAC will coordinate the scheduling of employees with department/division Human Resources personnel. All testing will occur during a regularly scheduled workday for employees. If an employee is on vacation leave, sick leave, or any other type of leave during a specific test, he/she will be excused from that test, but will remain in the eligibility group.

A Human Resources Manager or designee will notify the employee of the random test. The Human Resources Manager or designee will transport the employee to the collection site and back to the work site or home depending on the result of the test. Collection sites may be fixed or mobile.

19) **RETURN TO DUTY AND FOLLOW-UP TESTING**

Before returning to work after a positive test result, an employee must take a return to duty (RTD) test and have a negative result. The RTD test will be scheduled at the request of EAP and in conjunction with the DAC. The following is the schedule for follow-up testing:

- Employees covered by the IAFF collective bargaining agreement are subject to eight (8) times in a one (1) year period for three (3) years from the date of return to duty.
- Employees covered by the FOP collective bargaining agreement are subject to testing up to eight (8) times in a two (2) year period from the date of return to duty.
- CDL holders are subject to testing for a minimum of six (6) times in a one (1) year period from the date of return to duty.
- Employees covered by the collective bargaining agreements of AFSCME and CMAGE/CWA, and MCP employees who test positive for reasonable suspicion are subject to a maximum of six (6) times in a one (1) year period from the date of return to duty.