

CITY OF CLEVELAND
Human Resources Policies and Procedures
Workplace Policies

DRUG & ALCOHOL TESTING POLICY

Mission Statement

The City of Cleveland has developed this Drug and Alcohol Testing Policy as part of the City's continuing commitment to increasing and promoting safety in the workplace, productivity, accident prevention, loss of control, commitment to rehabilitation, and employee well-being. All persons employed by the City are subject to this Policy.

Under this Policy, there is zero-tolerance for employees working while impaired and for on-the-job possession, use, or selling of drugs or alcohol. The City of Cleveland is a Drug-Free Workplace. All employees will be treated in a fair and impartial manner and according to the terms set forth in their respective collective bargaining agreements and/or this Policy. This Policy attempts to incorporate the provisions of the respective collective bargaining agreements for those in bargaining units. Should the provisions conflict with the Policy, the provisions in the collective bargaining agreement shall prevail for those in the respective bargaining unit.

This Policy will be maintained through a program designed to comply with the provisions of the Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, and Department of Transportation ("DOT") regulations.

I. Statement of Policy

- A. City policy prohibits the distribution, possession, sale, or use of illegal drugs, marijuana (THC), or alcohol during working hours at any City of Cleveland worksite. 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 while on duty; consuming or possessing alcohol at any time while on duty or at a worksite; possession, using, selling, purchasing, manufacturing, dispensing, or delivering any illegal drug at any time and at any place; abusing any prescription drug; and failing to report immediately to their supervisor any duty related restrictions imposed as a result of prescription or over-the-counter medications.

"Worksite" is defined as any office, building, property, motor vehicle, or equipment, owned or operated by the City of Cleveland or any site at

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which an employee is to perform work for the City. Although this policy is intended to encourage voluntary rehabilitation, nothing in this policy waives the City’s rights to discipline an employee, or to initiate or cooperate with law enforcement in prosecuting offenders.

- B. All employees shall be required to be fit for work and free from the effects of alcohol, illegal drugs, marijuana (THC), or the abuse or misuse of prescribed drugs or over-the-counter drugs at all times during working hours. Employees shall be responsible for following the instructions of the prescribing physician or medical provider when taking prescription medication. Employees shall be responsible for following the manufacturer’s instructions when taking over-the-counter medication. Employees shall immediately report to their supervisor any duty-related restrictions imposed as a result of prescription or over-the-counter medication.
- C. Employees in safety-sensitive positions subject to U.S. Department of Transportation (“DOT”) regulations shall be tested using a five (5) drug panel. Drug classes include the following: Amphetamines (amphetamine and methamphetamine), Cocaine Metabolites, Marijuana Metabolites, MDA-Analogues (MDA, MDMA), Opiates (morphine, codeine), Opiates – Semi-Synthetic (hydromorphone, hydrocodone), 6-Acetylmorphine, Oxycodone (oxymorphone, oxycodone) and Phencyclidine. The initial test levels and confirmatory test levels are as follows:

<u>Drug</u>	<u>EMIT Screen (ng/ml)</u>	<u>GC/MC Confirmation (ng/ml)</u>
Amphetamines	500	250
Cocaine	150	100
Marijuana (THC)	50	15
Opiates	2000	2000
Phencyclidine (PCP)	25	25

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D. All other employees in select and/or safety-sensitive positions as described in Section IV shall be tested using the standard ten (10) drug panel: Drug classes include the following: Amphetamines (amphetamine and methamphetamine), Cocaine Metabolites, Marijuana Metabolites, MDA-Analogues (MDA, MDMA, MDEA), Opiates (morphine, codeine), Opiates – Semi-Synthetic (hydromorphone, hydrocodone), 6-Acetylmorphine, Oxycodone (oxymorphone, oxycodone), Phencyclidine, Barbiturates (amobarbital, butalbital, pentobarbital, phenobarbital, secobarbital), Benzodiazepines (alprazolam metabolite, oxazepam, flurazepam metabolite, lorazepam, nordiazepam, temazepam, triazolam metabolite), Methadone, Methaqualone, and Propoxyphene. The initial test levels and confirmatory test levels are as follows:

<u>Drug</u>	<u>EMIT Screen (ng/ml)</u>	<u>GC/MC Confirmation (ng/ml)</u>
Amphetamines	500	250
Cocaine	150	100
Marijuana (THC)	50	15
Opioids	2000	2000
Phencyclidine (PCP)	25	25
Barbiturates	300	300
Benzodiazepines	300	300
Methadone	300	300
Propoxyphene	300	300

E. An employee testing at and above the levels of the drugs identified shall be considered a positive test, and the employee is in violation of the Policy.

F. Any employee testing at .03% or higher for alcohol shall be considered positive as “under the influence” and is in violation of the Policy will be

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relieved of duty without pay immediately and subject to positive test results procedures.

- G. Any employee testing at .02% shall be automatically relieved of duty for the remainder of the work-day, unless the employee's collective bargaining agreement indicates otherwise.
- H. Drug paraphernalia and items used for substance abuse are prohibited from the workplace at all times. Employees found with such paraphernalia or items used for substance abuse on or in their possession are in violation of the Policy.

II. Employee Awareness

The City provides employees with an opportunity to overcome drug and alcohol related problems through an Employee Assistance Program ("EAP").

- A. The Department of Human Resources ("DHR") shall be the office responsible for maintaining and implementing this Policy.
- B. The DHR will conduct an initial training when this Policy goes into effect and is responsible to update procedures; communicate with employees, management and supervisory personnel, and union leadership about the Policy.
- C. The DHR is the liaison with the City's testing facilities and is responsible to maintain all records derived from implementing this Policy.
- D. The DHR will be the resource for employees in all matters related to assistance and access to referral services.

III. Testing Procedures

- A. The City's testing facilities will follow relevant state, federal, or local agencies testing procedures.
- B. When testing for drugs, the employee is to provide a urine specimen at the testing facility as prescribed by the regulations. If the specimen tests positive for one of the drugs in the panel, the Medical Review Officer (MRO) will contact the employee and the DHR.

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1. Employees are subject to additional types of drug testing (i.e., hair, blood, breath) if it is deemed necessary by the appointing authority and/or the Department of Human Resources.
- C. The usual method used for alcohol impairment is by breathalyzer.
 - D. The testing sites will provide detailed reports of the findings and analyses of the test results to the MRO before forwarding to the DHR. The report will include each substance tested and the results, as required by guidelines established by the U.S. Department of Health and Human Services.
 - E. The DHR receives a summary report indicating that the employee's test is positive or negative.
 - F. Employees testing positive for proper use of prescription or over-the-counter medications are not in violation of this policy. However, for purposes of this policy, marijuana (THC), including medical marijuana, is a prohibited substance; not prescription medication.
 - G. The City is responsible for the initial costs associated with testing under this Policy. Additional costs for independent tests requested by employees are the responsibility of the requester.

IV. Testing Categories

- A. The City shall conduct pre-employment drug and alcohol testing for all positions as required by, but not limited to, the Department of Transportation ("DOT") 49 CFR Part 40; Federal Aviation Act ("FAA") 14 CFR Part 120; Omnibus Transportation Employees Testing Act of 1991; Commercial Driver License ("CDL") Drivers; CDL Holders; all positions within the Department of Public Safety; all positions that require the operation of heavy equipment, machines, and/or mechanical tools; and safety-sensitive and/or security-sensitive positions as identified by the Department of Human Resources, collective bargaining agreements, and/or other federal, state, or local laws once an applicant receives a conditional offer of employment. Pre-employment testing is done prior to an employee's first day of employment.
- B. Random Testing is an unannounced testing of employees selected from a pool of employees where there is no suspicion of drug and/or alcohol

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use. Randomly selected employees must immediately submit for testing. Every employee subject to Random Testing has an equal chance of being selected for a random drug test. Employees designated as “safety sensitive” or under DOT regulations are required to be tested randomly. Employees defined as “safety sensitive” under respective collective bargaining agreements will also be tested randomly in accordance with the terms of the CBA.

- C. Reasonable Suspicion Testing is conducted after an employee is suspected of using or being under the influence of alcohol and/or drugs while at work or if there is a report or observation of drug, or alcohol use, possession, or distribution while on the job. These specific physical, behavioral, or performance indicators may include, but are not limited to, the following:
1. Balance or gait problems, e.g., lack of balance, unsteady or staggered walk, muscle twitching, red, water, or glassy eyes, dilated or constricted pupils, or having difficulty focusing eyes;
 2. Disorientation, uncoordinated movement of body and hands, flushing of the face/cheeks, slurred speech, memory loss, or drowsiness;
 3. An observation may be any of the behaviors described in this policy, direct observation of consumption, or other indications such as, but not limited to odor, irritability, anxiety, or inability to communicate coherently;
 4. Absenteeism, tardiness, AWOL, or a pattern of absence from work;
 5. Deteriorating work performance;
 6. If the City receives information from a law enforcement agency that an employee is the focus of a criminal investigation into unauthorized drug possession, use, or trafficking;
 7. A report of alcohol or other drug use provided by a reliable and credible source.

When there is reasonable suspicion/cause that an employee is using illegal drugs or alcohol at work, the following procedure should be followed:

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1. If an employee is suspected of being under the influence of drugs and/or alcohol by a co-worker, the co-worker should immediately report the suspicion to his/her supervisor. If an employee is suspected of being under the influence of drugs and/or alcohol by his/her supervisor, the supervisor should immediately contact another supervisor to serve as a witness and complete the requisite reasonable suspicion forms. The behavior should be documented and reported it to his/her Appointing Authority and/or their designee and the DHR.
2. The DHR is responsible for analyzing the information provided by the supervisor to make an informed decision as to whether the circumstances justify sending the employee suspected of illegal drug or alcohol use for a reasonable suspicion test.
3. If the DHR orders a drug and alcohol test, the supervisor shall immediately notify the employee that he/she is being directed to submit to a drug and alcohol test.
4. If the employee agrees to submit to the drug and alcohol test, he/she will be transported by his/her supervisor, or a supervisor's designee to the City's designated testing facility.
5. An employee who refuses to submit to a drug and alcohol test will be subject to discipline, up to and including termination of employment. Any lack of cooperation or significant delay on the part of the employee shall be deemed a refusal. A refusal shall be deemed a positive test result.
6. After the employee has submitted to the drug and alcohol test, he/she shall be relieved of duty for the remainder of the day. Furthermore, he/she will not report to work until the DHR has received the results of the drug and alcohol test.
7. The DHR will notify the employee's appointing authority or his/her designee of the results (positive/negative) of the drug and alcohol test. The actual results will be kept confidential in the DHR and will not be placed in the employee's personnel file.
8. If the employee produces an initial positive drug or alcohol screen, the appointing authority or his/her designee shall hold a pre-

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disciplinary hearing with the employee to advise the employee of the results, and inform the employee that he/she must enroll in the City's Employee Assistance Program (EAP). The employee shall also be informed that he/she may receive a copy of the results by request, from contacting the DHR. The employee will not be reimbursed for time lost while waiting on the results. Please see the Positive Results Procedure Section of this Policy for additional information.

9. If the employee produces a negative drug and alcohol screen, the appointing authority or his/her designee shall hold a meeting with the employee to advise him/her of the results. Furthermore, the employee shall be reimbursed for any time lost while waiting on the results.

10. Failure to comply with any of the requirements of acknowledgment or failing a second drug and alcohol test shall result in discipline up to and including termination of employment. If the employee is found to have failed a second drug and alcohol test or refused to comply with any of the requirements of acknowledgment, the employee shall be terminated.

D. Post-Accident Testing should occur as soon as practicable after any incident or accident for all non-union employees and those union employees with applicable language in their respective collective bargaining agreements. An accident is defined as an unplanned, unexpected, or unintended event that occurs at or on a city worksite during an employee's work hours, or while conducting business for the City. Accidents also include any incidents with or that involve a city-supplied motor vehicle, machinery, or equipment. It must be determined that an employee's conduct contributed to the accident in order to perform a post-accident test.

1. Post-accident testing may be required for any City of Cleveland employee involved in:
 - a. A fatality

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- b. Injury, presumed injury to an employee, co-worker, bystander, or other person or persons requiring medical attention on or off-site of the accident.
- c. An accident causes vehicular damage (any property) or damage to equipment.
- d. An accident results in non-vehicular damage (any property) in apparent excess of \$1,000.00.
- e. The City cannot completely discount the employee's conduct as a contributing factor to the accident (non-vehicular or vehicular).

2. Post-Accident Procedures

- a. When an employee is involved in an incident/accident, the employee must report the incident/accident to the supervisor, manager, unit leader as soon as practicable. The appropriate division or department representative shall contact the DHR.
- b. After notification of an accident, the DHR will review and may recommend post-accident testing.
- c. The DHR will contact the testing facility. The employee will then immediately report to the testing facility. After the test, the employee may return to work. Under applicable CBAs, the DHR may be required to notify the union in writing, which includes email or facsimile, of the test.
- d. When a post-accident test is ordered, and the employee refuses to test, or the result of the test is positive for drugs and/or alcohol, the employee may be disqualified for compensation and benefits under the Ohio Workers' Compensation Act.
- e. Employees that refuse to test or test positive after an accident remain subject to disciplinary action, up to and including termination.

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f. Test results and other information concerning substance abuse investigations will be treated confidentially as allowable under applicable laws. Test results and other documents relating to investigations and/or rehabilitative treatment will be kept separate from personnel records.

V. Positive Test Result Procedures

- A. An employee who tests positive under this Policy shall be relieved from duty without pay immediately.
- B. Employees who test positive have the right to request an independent test at a certified laboratory of their choice. Employees making this request are responsible for the costs. The City's testing facility will send the specimen to the independent testing facility at the employee's request; the specimen will not be given to the employee directly. Any cost of rehabilitation not covered by the employee's health insurance or health insurance provided by other eligibility is the responsibility of the employee.
- C. An employee who tests positive for the first time for drugs or alcohol may be offered rehabilitative treatment through the City's Employee Assistance Program (EAP). An employee enrolled in a treatment program may use accrued benefit time, including sick leave, but is not eligible for sick time donation.
 - 1. Follow-up treatment or assessment with the City of Cleveland's Employee Assistance Provider occurs after an employee has tested positive and/or has received treatment or assessment under this Policy.
 - 2. Before returning to duty and upon completion of the City's designated rehabilitation program, the employee must undergo a return-to-work drug test, and test negative for drugs or alcohol. The return-to-work drug test is not included as one of the follow-up tests in the first year. If the employee passes the return to work drug and alcohol test, he/she may be permitted to return to work under the conditions of the acknowledgment or Last Chance Agreement (LCA). If the employee fails to pass the return to work

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drug and alcohol test, he/she will be subject to discipline up to and including termination of employment.

3. Upon returning to work, the employee is required to sign and comply with a Last Chance Agreement (LCA). The LCA is effective for one (1) year unless otherwise stated. An employee's failure to comply with the terms of the LCA will be subject to discipline up to and including termination of employment.
4. The employee is also subject to additional observed random follow-up tests over a two (2) year period from the date of the employee's return to duty.

VI. Diluted Specimen Procedures

When the Medical Review Officer (MRO) determines that a positive drug screen is diluted, the test will be treated as a verified positive test. The employee will not be directed to provide another test. When the MRO determines that a negative drug test is dilute, the following action will be taken:

- A. If the specimen is diluted, but not substituted, recollection will be performed immediately.
- B. Recollection will be performed immediately under direct observation if specific behaviors have been observed that include:
 1. The collector identifies an attempt to alter a specimen has occurred;
 2. The collector identifies an attempt to tamper with a specimen;
 3. A specimen is reported as invalid because there is no adequate medical explanation for the result.
 4. When a positive, adulterated or substituted test result is reported as a cancelled test because testing on the split specimen could not be in range.
 5. The temperature of the specimen falls out of the normal range.

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6. Following a negative diluted sample, the employee will be required to undergo another test. Should the second test result be a negative dilute result, the test will be considered a positive test result and the employee is required to sign and comply with a Last Chance Agreement (LCA).

VIII. Direct Observation Collection

A. The following may be circumstances may be subject to direct observation collection:

1. Return-to-duty and follow-up drug and/or alcohol tests;
2. Random follow-up and reasonable suspicion drug and/or alcohol tests;
3. Anytime the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90F – 100F;
4. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
5. Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
6. Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
7. Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated, or substituted, but had to be cancelled because the test of the split specimen could not be performed.

B. Failure to comply with any of the above requirements shall subject an employee to disciplinary action, up to and including termination.

1. The City encourages employees to seek assistance voluntarily for any problems they may have with substance or alcohol before they lead to injury, performance issues, and/or disciplinary actions. The City will

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not consider an employee's decision to seek assistance voluntarily as an independent reason for reasonable suspicion or discipline; however, an employee's decision to seek assistance does not prevent the City from bringing disciplinary action against the employee for misconduct associated with the employee's use of drugs or alcohol.

IX. Refusal to Submit to Drug and Alcohol Testing

- A. An employee who fails to make themselves available for drug and alcohol testing when required under any of the above-referenced testing categories will be deemed to have refused to test. An employee who refuses to submit to a drug and alcohol test may be subject to disciplinary action, up to and including termination.
- B. Refusal can include, but is not limited to, the following:
 - 1. Unauthorized departure from the worksite following notification of testing;
 - 2. Unauthorized departure from the testing facility prior to testing;
 - 3. Any employee conduct that interferes with the testing process;
 - 4. Substitution or alteration of urine specimen or other clinical material;
 - 5. Failure to comply with testing instructions; or
 - 6. Any behavior that constitutes refusal under DOT or other applicable regulations.

X. Other Consequences

- A. Although the City's efforts in establishing this Policy are to encourage employees to commit themselves to a workplace free of drugs and alcohol, those employees testing positive for drugs or alcohol, resulting in injury to person or property, or testing positive in a random test are subject to immediate discipline up to and including termination. Other conduct that may result in discipline, up to and including termination includes:
 - 1. Refusal to sign a Last Chance Agreement (LCA);
 - 2. A second positive test result;

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3. Failure to complete rehabilitation or dismissal from a rehabilitation program;
 4. Possession or sale of illegal drugs by an employee on or off city property;
 5. Arrest or indictment for possession or sale of illegal drugs;
 6. Consuming alcohol or any prohibited substance while on duty;
 7. Failure of a pre-employment drug and/or alcohol screen.
- B. When an employee is arrested, charged, or indicted for illegal drug possession, or drug-use, or for an alcohol-related offense; and where a prosecutor refers the person to a diversion program (with or without a plea or acknowledgment of wrongdoing) the employee is still subject to administrative disciplinary action. In such cases, the employee is not assured of continued employment while in a diversion program.
- C. Law enforcement authorities may be contacted in relation to employee drug-related criminal activity, when deemed appropriate by the DHR.

XI. Statement of Confidentiality/Privacy

Employee assistance program participation, testing procedures, investigations, or other related information collected and maintained by the City will be kept confidential unless legally required to be disclosed.

This policy has been issued under the authority of:



Signature

Director of Human Resources

Title

December 7, 2023

Date