



Personnel and Administrative Policy and Procedure

SUBJECT: Drug and Alcohol Policy	EFFECTIVE DATE: July 1, 2003 REVIEWED: May 2011 REVISED: November 2014
CATEGORY: 200 POLICY NUMBER: 200.13	CROSS REFERENCE: Conduct and Discipline 200.9

Purpose: The City Drug and Alcohol Policy is intended to assist employees in identifying and overcoming substance abuse problems through appropriate treatment, with rehabilitation as the desired objective, while maintaining high-quality employee job performance and a safe working environment. The policy is also intended to comply with the requirements of the Federal Drug-Free Workplace Act of 1988 and the regulations of the Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) (49 CFR Parts 40 and 382) promulgated pursuant to the Federal Omnibus Transportation Employee Testing Act of 1991 which requires drug and alcohol testing of all employees who perform safety-sensitive functions.

Definitions

Controlled Substance: Includes all forms of narcotics, depressants, stimulants, hallucinogens, and cannabis, or any other drug whose sale, purchase, transfer, use, or possession is prohibited or restricted by law.

Marijuana is a Schedule I controlled substance; its use is illegal under federal law. Some states allow marijuana for personal use or to treat medical conditions when authorized in writing by a licensed medical doctor ("medical marijuana"). These are not valid reasons for the presence of marijuana in an employee's system under this Policy. The presence of marijuana is prohibited regardless of the reason for use.

Federally Certified Testing Facility: Any laboratory that is certified to perform drug testing by the Substance Abuse and Mental Health Services Administration (SAMHSA).

Prescription Drugs: Those drugs, which are used in the course of medical treatment and have been legally prescribed to the employee.

Reasonable Suspicion: That which is reasonable under the totality of the circumstances existing at the time and place. It may include, but is not limited to, such circumstances as the work performance, appearance (e.g., noticeable odor of an alcoholic beverage), behavior, or speech of an employee, or the involvement of an employee in an accident, which results in physical injury or property damage.

Safety-Sensitive Function: Any of the following on-duty functions:

1. All time waiting, to be dispatched;
2. All time inspecting equipment required by law or otherwise inspecting, servicing or conditioning any commercial motor vehicles
3. All driving time, i.e., all time spent at the driving controls of a commercial motor vehicle in operation;
4. All time, other than driving time, in or upon any commercial motor vehicle;

5. All time loading, or unloading, a vehicle, supervising or assisting, in the loading or unloading, attending a vehicle being loaded or unloaded, remaining, in readiness to operate the vehicle, or in giving or receipts for shipments loaded or unloaded.
6. All time spent performing all activities required by law at the scene of an accident in which the driver was involved; and
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Substance Abuse Professional (SAP): The Department of Transportation (DOT) regulation – 49 CFR Part 40 – defines the Substance Abuse Professional as a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. In order to be an SAP an individual must have certain credentials, possess specific knowledge, receive training, and achieve a passing score on an examination.

Under the Influence: Any noticeable or perceptible impairment of the employee's mental or physical facilities, such that the person is likely to be deprived of that clearness of intellect and control the employee would otherwise possess.

Work Time: Includes: a) that time during which an employee is being paid to work on behalf of the City, b) that time during which an employee is representing the City in an official capacity, and c) that which is defined as "work time" under any applicable collective bargaining agreement.

Scope: All employees (certain portions of the policy may apply to some employees and not others).

Policy: Concern for the safety and well-being of City employees and Milwaukee's citizens demands that each City employee report to work in a condition to perform the employee's duties in a safe, effective, and efficient manner. Thus, the presence or treatment of a substance abuse problem will not relieve an employee from normal performance, safety, or attendance standards, and violations of this drug and alcohol policy may result in discipline, up to and including termination. The City encourages employees with a substance abuse problem to seek voluntary confidential assistance through the City's Employee Assistance Program or through any chemical dependency rehabilitation program offered under existing employee benefit plans.

Pursuant to the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance on City property, in City vehicles or equipment, or on work time is prohibited. Employees must abide by this provision as a condition of employment. The misuse or abuse of legal drugs or legally prescribed drugs, the distribution, dispensing, possession, or use of illegally obtained prescription drugs, and the distribution, dispensing, possession, or use of any substance containing alcohol on City property, in City vehicles or equipment, or on work time is also prohibited. Additionally, employees are prohibited from refusing to submit to any drug or alcohol test required under this policy.

The following are examples of prohibited conduct under this policy:

- A. Buying, selling, providing, or possessing for the purpose of buying, selling, or providing controlled substances and or alcohol in City vehicles or equipment at any time or while on-duty on or off City property.
- B. Being at work under the influence of alcohol or a controlled substance or consuming alcohol or a controlled substance in City vehicles or equipment at any time or while on duty on or off City property.
- C. Possession of alcohol or any controlled substance (but excluding any substance lawfully prescribed which has not been obtained for the purposes of abuse and any controlled substance which is required to perform employer-assigned duties) in City vehicles or equipment at any time or while on duty on or off City property.

The items listed above are examples only and are not intended as a complete list of prohibited conduct under this policy. Additionally, exceptions to the conduct described in A, B, and C above may be made if the conduct occurs as the result of performance of an employee's official duties and the City is aware of and has consented to the activity. For example, the seizing of drugs by a City police officer would not constitute possession of drugs in violation of this policy. Similarly, the consumption of alcohol or the purchase of controlled substances in an undercover capacity by a City police officer also would not constitute a violation of this policy.

DOT and FHWA regulations further prohibit employees in positions requiring the performance of safety-sensitive functions from engaging in the following conduct:

1. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater;
2. Being on duty or operating a commercial motor vehicle while possessing alcohol, or using alcohol while performing safety-sensitive functions. Note: Federal regulations include non-prescription and prescription medications containing alcohol in the substances banned from use or possession in the workplace. Therefore, employees should not report for duty while using prescription medication if such medication contains any measurable amount of alcohol;
3. Performing safety-sensitive functions within four (4) hours after using alcohol; therefore no person performing safety sensitive functions may consume alcohol over a lunch period or during a break;
4. Using alcohol within eight (8) hours following an accident, if the employee was required to be tested, unless an earlier test results in a reading of less than 0.02;
5. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions when using any controlled substance, unless the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle;
6. Reporting for duty, remaining on duty or performing a safety-sensitive function if the employee tests positive for controlled substances; or

7. Refusing to submit to any alcohol or drug, testing, required by the applicable federal regulations. The consequences of refusal to take a test required by applicable federal regulations will be the same as the consequences for a verified positive drug test result or an alcohol test result of 0.04 or greater. Refusal to take a test can include an inability to provide a sufficient urine specimen or breath sample without a valid medical explanation or conduct that clearly obstructs the testing process, such as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

Pursuant to applicable federal regulations, any employee who engages in any prohibited conduct under this policy will be immediately removed from duty, informed of available educational, treatment, and rehabilitation programs, referred to a Substance Abuse Professional ("SAP") for evaluation, and subject to disciplinary action, up to and including termination.

Additionally, pursuant to applicable federal regulations, employees in positions which require the performance of safety-sensitive functions who refuse a drug or alcohol test required by applicable federal regulations or who have a verified positive drug test result or an alcohol test with a result indicating an alcohol concentration of 0.04 or greater may not resume the performance of safety-sensitive functions until the employee has taken a drug test with a verified negative test result or an alcohol test with a result indicating alcohol concentration of less than 0.02 and has met all other DOT requirements.

Additionally, under the Federal Drug-Free Workplace Act of 1988, all employees are required to notify the City in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after the conviction. Failure to comply with this provision may result in disciplinary action, up to and including termination.

This policy is not intended to prohibit the appropriate use of legally prescribed drugs and nonprescription medications. However, it is the employee's responsibility to determine from the employee's **health care provider** whether any legally prescribed drugs or nonprescription medications could impair the employee's ability to perform safely his or her job duties. **Employee must notify their supervisor if the medication could impair the employee's ability to safely perform the job duties.**

Education Program

An on-going drug and alcohol awareness program is an important part of the City's efforts to educate all employees about the potential personal and professional hazards of substance abuse. Employee education and training will include but not be limited to: (1) display and distribution of informational materials, (2) information on the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; and (3) training on the behavioral signs and manifestations of drug and alcohol abuse. Additional information is available on request from both the Human Resources Department and the City's Employee Assistance Program.

Drug and Alcohol Testing

The City takes seriously both its commitment to remaining a drug-free workplace and its responsibility to provide and maintain a safe work environment for its employees. To those ends, the City may require employees and applicants to submit to drug and alcohol testing as provided in this section.

All employees may be required to submit to drug or alcohol testing if there is reasonable suspicion that the use of any drugs or alcohol is adversely affecting job performance or endangering the safety of employees or the public or if there is reasonable suspicion that the employee is under the influence of drugs or alcohol. All such tests will be conducted in conformance with these procedures. A federally certified laboratory will conduct all such tests, and any laboratory reports or test results will be held in the strictest confidence.

As required by applicable federal regulations, **employees in positions requiring the performance of safety sensitive functions** will be required to submit to pre-employment, reasonable suspicion, random, post-accident, return to duty, and follow-up drug and alcohol testing, as described below.

A. Pre-employment: All applicants for safety sensitive functions shall undergo pre-employment drug testing. Receipt by the City of a verified negative drug test result is required prior to employment or before the performance of safety-sensitive functions. An applicant for a DOT position who had a positive pre-employment test will need to complete the DOT return-to-duty procedure before being eligible for hire.

B. Reasonable Suspicion Testing: All employees shall be subject to drug or alcohol testing if the City has reasonable suspicion that the use of any drugs or alcohol is adversely affecting job performance or endangering the safety of employees or the public or if there is reasonable suspicion that the employee is under the influence of drugs or alcohol.

A request for reasonable suspicion drug or alcohol testing will not be made unless two supervisors or managers concur that a test should be requested. A written record will be made of the observations, which support the reasonable suspicion testing. An employee's refusal to comply with the terms of a request for reasonable suspicion testing will result in termination of employment in accordance with the City's Policies and Procedures or applicable collective bargaining agreements.

C. Random Testing: Employees in safety-sensitive positions shall be subject to random, unannounced drug and alcohol testing. Random alcohol and drug testing will be conducted just before, during, or just after an employee's performance of safety-sensitive functions. The employee will be randomly selected for testing from a pool of employees subject to testing. Under the selection process, each employee will have an equal chance of being tested each time selections are made.

An employee who is selected will be required to proceed directly to the collection site once notified of selection. Testing dates and times will be unannounced and will be reasonably spread throughout the calendar year.

D. Post-Accident Testing: As soon as practical following an accident involving a commercial motor vehicle, the City will test for alcohol and drugs each employee:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
2. Who received a citation under State or local law for a moving traffic violation arising from the accident and the accident results in:
 - a) Bodily injury to person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

- b) One or more vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

Alcohol testing will be administered as soon as possible, but no later than eight (8) hours following the accident. Drug testing will also be administered as soon as possible, but no later than thirty-two (32) hours following the accident. An employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the City to have refused to submit to testing.

E. Return-to-Duty/Follow-Up Testing:

The City will ensure that before an employee returns to duty requiring the performance of safety-sensitive functions after engaging in conduct prohibited by this policy, the employee will undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and a return-to-duty drug test with a verified negative result. Before returning to duty, employees must also be evaluated by the City's EAP provider in order to determine the employee's fitness-for-duty.

Following a determination by a SAP that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the City will ensure that the employee is subject to unannounced follow-up alcohol and/or drug testing as directed by the SAP. The employee will be given at least six (6) random tests during the twelve (12) month period immediately following the employee's return to duty with the possibility of follow-up testing for up to sixty (60) months.

Any employee who has a confirmed positive drug or alcohol test will be immediately removed from active work duty, informed of educational, treatment, and rehabilitation programs available, and referred to a SAP for assessment. A positive drug and/or alcohol test will also result in disciplinary action, up to and including termination.

Testing Procedure

In order to assure confidentiality and the greatest possible degree of accuracy, all drug tests administered under this policy will be conducted by a federally-certified testing facility consistent with the procedures set forth in 49 CFR Part 40, as amended. Collection of specimens will be done at a local collection facility, under strict federally certified guidelines for chain of control of the specimen. The original sample will be split to provide two sources of the same sample for testing; one for the original test and subsequent confirming test and another for any subsequent employee requested, City authorized, and employee paid confirming test.

Pursuant to applicable federal regulations governing employees in safety-sensitive positions, the drugs that will be tested for include: THC (marijuana), cocaine and its derivatives, opiates, amphetamines, and phencyclidine (PCP).

All alcohol tests administered under this policy will also be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. If an initial alcohol test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. An employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his/her position for at least 24 hours. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy.

Test results will be kept confidential in accordance with all applicable federal regulations.

Contesting Test Results: If an employee disagrees with the results of a positive drug test, within 72 hours of notification of the result, the employee may request that the second original split sample be tested. The test will be at the employee's expense, and will be conducted at a different laboratory or medical facility Federally certified to do drug testing. Should the results differ from those determined in the initial test, the City will reimburse the employee for the cost of the test.

Employment Assessment

Pursuant to applicable federal regulations, any DOT/safety sensitive employee who refuses to submit to a required or reasonable suspicion drug or alcohol test, who has a verified positive test result, or who engages in any prohibited conduct under this policy, will be referred for evaluation by a SAP. . The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with drug abuse or alcohol misuse.

If an employee is allowed to return to duty, he or she must properly follow the rehabilitation program prescribed by the SAP. The employee must have a negative return-to-duty drug and/or alcohol test and, if the employee has been identified as needing assistance in resolving problems associated with alcohol or drug use, the employee will be subject to unannounced follow-up testing for a period of one to five years.

Searches

The City reserves the right to search, without employee consent, all areas and property in which the City maintains joint or full control, including all City vehicles, equipment, offices, desks, and lockers. Such searches shall be for reasonable suspicion and should be conducted by two supervisors.

The affected employee is entitled to have a witness present at the time of the search, and, if applicable, the employee's elected union officer shall be notified prior to the search being conducted.

Managers or supervisors will not physically search an employee's person or any personal property on the employee's person and shall notify the HR Director, who will be responsible for notifying the Police department in the event that there is reasonable suspicion to believe that an employee may have a controlled substance in his or her possession or in an area jointly or fully controlled by the City. No police employee will be required to perform a search in violation of any employee's civil rights.

Responsibilities

Employee: To comply with the policy and procedures as outlined herein.

Supervisors: To monitor the workplace and ensure the City's compliance with this policy.

Human Resources: To contract with appropriate resources to administer the drug testing and Employee Assistance program.