

**POLICY: 6.1**  
**TITLE: DRUG-FREE WORKPLACE POLICY**

**I. GENERAL**

It is the policy of Metropolitan Government to maintain a workplace that is free from the effects of drug and alcohol abuse. To ensure that employees comply with this policy, Metropolitan Government will pursue all reasonable and lawful means to enforce this policy. All employees are included under this policy. Police Department employees are subject to the department's General Duty Order. Specifically, it is the policy of the Civil Service Commission that:

- A. It is prohibited for any employee to sell, distribute, use, or possess illegal controlled substances on or off duty.
- B. It is prohibited for any employee to use alcohol or legal drugs in a manner that might interfere with the employee's performance of duties.
- C. This policy authorizes testing of an employee:
  - for Pre-employment and/or Pre-appointment to a position designated as Public Health and Safety (PHS) and those required to hold a Commercial Driver's License;
  - when selected randomly as defined by this policy;
  - who has been involved in a critical incident as defined by this policy;
  - when there exists a reasonable suspicion that the employee has engaged or is engaging in prohibited conduct under this policy; or
  - who is returning to duty and requires follow-up testing as defined by this policy.
- D. In accordance with the Drug-Free Workplace Act of 1988, employees must notify the Appointing Authority of any criminal drug statute conviction occurring in the workplace within five workdays after the conviction.
- E. An employee must notify the Appointing Authority of any drug and/or alcohol related arrest or citation that occurred on or off duty immediately upon returning to work. After evaluating the specific facts of the employee's arrest, charge, or citation, the Appointing Authority may restrict an employee from performing safety sensitive duties, including driving.

Any employee found in violation of these provisions may be subject to disciplinary action in accordance with the Civil Service Rules.

## **II. PERSONS TO BE TESTED**

All employees covered under this policy are subject to Reasonable Suspicion and/or Critical Incident testing for controlled substances and alcohol.

### **A. CDL Positions**

Employees in safety-sensitive positions that require a Commercial Driver's License (CDL) are also subject to random testing for controlled substances and alcohol. This testing is in accordance with the Omnibus Transportation Employee Act of 1991 and meets the requirements established by the U.S. Department of Transportation (DOT).

### **B. Public Health & Safety Positions**

Employees in Public Health and Safety (PHS) sensitive positions that are responsible for the health, safety and welfare of the general public and their fellow employees are also subject to random testing for controlled substances and alcohol. They have an obligation to work free of impaired judgment or physical ability so as to avoid injury to themselves, other employees or the public, and to maintain credibility and the trust of the public.

Public Health and Safety sensitive category employees are broadly defined as:

- Non-CDL Drivers;
- Water Treatment Personnel;
- Hazardous Duty Workers;
- Security, Police & Related Law Enforcement;
- Fire, EMS & Related Support Personnel; and
- Care Givers.

## **III. TESTS REQUIRED**

Test for alcohol and controlled substances are required for the circumstances listed below.

### **A. Pre-employment / Pre-appointment**

Employees and applicants required to hold a CDL or in a PHS position will be tested after a provisional offer of employment has been made but prior to performing job duties. Tests must also be completed before an employee is promoted, transferred or assigned to a CDL or PHS position, and upon return to

work when an employee has been on leave or otherwise not performing the required duties of these positions for a period of six months or longer.

## **B. Critical Incident**

Alcohol and controlled substances tests will be conducted after an accident involving an employee, which results in: (1) a fatality; (2) bodily injury which requires immediate medical treatment away from the scene of the accident, or (3) where one or more vehicles incur disabling damage requiring the vehicle to be towed away from the scene and the employee receives a citation under state or local law for a violation arising from the accident.

Tests should be done as soon as practical after the accident. Alcohol tests should be administered within two hours following the accident. Controlled substance tests should be administered within 32 hours following the accident.

If tests required by this section are not administered within these time limits, the department shall cease attempts to administer the tests, and shall prepare and maintain a record stating the reasons the test was not promptly administered. A copy of this record shall be sent to the Drug Free Workplace Administrator.

Recognizing the limitations inherent in the preceding paragraph, a driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the department to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain emergency assistance.

Any employee commissioned to carry a firearm shall be required to submit to drug testing after any discharge of the firearm involving death or personal injury, and shall be required to report to the collection site as soon as possible following the incident or as directed by the Appointing Authority or his/her designee.

An employee may be ordered to test at any time force is used that is reasonably calculated to produce death or serious bodily injury.

## **C. Reasonable Suspicion**

An employee is subject to reasonable suspicion testing when after review of the specific facts and circumstances in a particular employee's case, a trained supervisor concludes that there exists a reasonable suspicion that an employee has engaged or is engaging in conduct prohibited under this policy.

Trained supervisors must document these conclusions on the approved reasonable suspicion form. The Appointing Authority or his/her designee will review this documentation and any other pertinent information. If the designated authority agrees with the documented findings of the trained supervisor, the employee shall submit to a controlled substances and alcohol test.

No employee shall be allowed to drive or perform any health or safety function when suspected of being impaired until a test reports that the employee is qualified to work.

#### **D. Random**

Employees in CDL and PHS positions are subject to drug and alcohol tests which are ordered on a random, unannounced basis.

Random selection is done with a statistically valid method. An employee's name remains in the pool after being tested each time selections are made in order to ensure that every employee shall have an equal chance of being tested each time. When randomly selected, the employee will be notified by his/her supervisor to report immediately for a controlled substances and/or alcohol test.

#### **E. Return to Duty and Follow-up Testing**

Return to Duty – An employee who has tested positive under this policy, and who is allowed to return to work, is subject to further testing under the terms of the employee's Return-to-Work Agreement. Specifically, the employee shall present negative test result(s) before returning to work, and shall be subject to follow-up testing.

Follow-up – Following a determination that an employee is in need of assistance in resolving problems associated with the use of alcohol or controlled substances, the employee is subject to unannounced testing under the terms set by the employee's Return-to-Work Agreement.

There must be at least six (6) unannounced tests within the first twelve (12) months after an employee returns to work. The length of time an employee is subject to follow-up testing, and the number of tests required beyond the minimum six tests required is determined by a Certified Substance Abuse Professional (SAP) and shall not exceed sixty months.

#### **IV. MEDICATION**

Employees are required to immediately report to their supervisor the use of prescription or over-the-counter medications that could impair the employee's ability to perform his/her duties safely. Supervisors are responsible for documenting such reports and immediately notifying the department Safety

Coordinator and/or the department Human Resources coordinator. Supervisors shall ensure appropriate safety precautions are taken.

The Civil Service Medical Examiner may be consulted when medical expertise is required, including a fitness for duty evaluation.

## **V. HOW TESTS WILL BE DONE**

### **A. Alcohol**

Alcohol is defined as any food, beverage, mixture or preparation, including any medication, containing ethyl alcohol. Testing for the use of alcohol will be done using approved screening or evidential breath testing (EBT) devices approved by the federal government. Testing requirements for alcohol is in compliance with U.S. Department of Transportation regulations. A screening test will be conducted first and a result of 0.040 g/dL or greater is considered positive. Although not considered a positive test, a CDL holder or an employee in a PHS position shall be removed from driving and/or performing a PHS function with an alcohol concentration of 0.020 to 0.039 g/dL, and is subject to retesting and possible referral to a substance Abuse Professional (SAP) for assessment. Metro Government reserves the right to order a blood test by gas chromatography as additional confirmation in extraordinary circumstances.

### **B. Controlled Substances**

Testing for the illegal use of controlled substances will be done by urinalysis. Pre-appointment and Random testing for controlled substances will be performed in compliance with U.S. Department of Transportation regulations to the maximum extent that they can apply. A Reasonable Suspicion test will check for the presence of controlled substances and/ or drugs and their metabolites deemed illegal as pursuant to State statutes. Testing may be requested for other substances if there is reason to believe they are used.

Samples will be given at a collection site designated or approved by Metro Government or may be done on-site according to established procedures. If an initial screening test is positive for a controlled substance or metabolite, a second confirmatory test is performed using gas chromatography/mass spectrometry (GS/MS) analysis. If the resulting confirmatory test reveals the presence of a controlled substance and/or illegal drug metabolite at or above the defined thresholds, it will be considered a positive test. A donor who provides a specimen that tests positive is administratively defined as being under the influence of drugs for the purposes of this policy.

### **C. Testing Procedures**

An employee or applicant will be given a written order to report to a collection site for testing. The employee will then report to the collection site immediately with proof of identification.

A breath alcohol test (BAT) will be conducted at the site and/or when ordered, the employee will give a urine sample for controlled substances. The urine sample will be split in case of the possibility of retest. All test and laboratory procedures, including the chain of custody procedures, are available for review in the Department of Human Resources.

### **VI. NOTIFICATION OF RESULTS AND ROLE OF THE MRO**

All controlled substances tests are reviewed and interpreted by a physician designated as the Medical Review Officer (MRO) before they are reported to the employer. If the laboratory reports a confirmed positive result to the MRO, the MRO contacts the employee or applicant to determine if there is an alternative medical explanation for the substances found in the urine specimen. If the employee provides appropriate justification and the MRO determines that it is a legitimate medical use of the prohibited substances, the result is reported as negative to the employer, although the employee may not be medically qualified to perform normal functions. In this instance, the MRO will advise the employee that pursuant to this policy, employees are required to report to their supervisor when taking medication that could impair ability to perform.

In an effort to protect the safety of an employee and the public, the MRO will notify the Program Administrator and/or the Appointing Authority of a particular employee in circumstances where there is a delay in the completion of the MRO review of a PHS drug test that may cause a safety risk.

For CDL positions, controlled substance test results shall be reported to the Program Administrator and/or the Appointing Authority of a particular employee as permitted by DOT regulations.

Upon notification of confirmed positive results, or those results identified with Safety Concerns, the department shall 1) remove the employee from all duties with potential safety risks and 2) coordinate with the Civil Service Medical Examiner's office in obtaining a Fit-for-Duty medical review.

## **VII. CONSEQUENCES OF A POSITIVE TEST**

### **A. Refusal to Test**

Willful refusal to submit to a test, or any attempts to tamper with a test, is in violation of this policy and will be treated as a positive test. Refusal to submit may include failure to provide an adequate breath or urine sample for testing, unless medical reasons are confirmed.

### **B. Removal from Normal Duties**

An employee who tests positive for controlled substances or alcohol is in violation of this policy and shall be removed from performing normal duties pending further action. An employee who is ordered to test based on reasonable suspicion shall be removed from any duties in which the employee might pose a possible safety risk until such time that negative test results are confirmed.

### **C. Removal from Register or List**

Employees and applicants who have a confirmed positive pre-employment or pre-appointment test result for controlled substances or alcohol or refuse to test will be denied appointment and removed from the register or list.

### **D. Rehabilitation and/or Disciplinary Action**

Employees who test positive on any test for controlled substances or alcohol, including pre-appointment tests, shall be subject to an evaluation by a Certified Substance Abuse Professional (SAP), which may include referral for additional rehabilitation.

Disciplinary action, up to and including termination, is at the discretion of the Appointing Authority. The Appointing Authority may take into account factors such as the circumstances, which led to testing, the employee's work history, job performance, and past corrective or disciplinary action.

Those employees who have not gained Civil Service status who have shown a positive test result for drugs or alcohol shall be entitled to an informal hearing before the Appointing Authority or his designee but shall not be entitled to any appeal rights to the Civil Service Commission.

Disciplinary action based on a violation of the Metropolitan Government's Drug Free Workplace policy is not automatically suspended by an employee's participation in an Employee Assistance Program and disciplinary action may be imposed upon the employee if the Appointing Authority find such action warranted.

## **VIII. RE-TEST PROVISION**

Breath alcohol tests are conducted and confirmed while the employee or applicant is present, eliminating the need for a re-test. For controlled substances, the MRO will offer to an employee or applicant who has a confirmed positive test result that the split sample be tested at a separate laboratory with federal certification. The employee must respond to the MRO within seventy-two (72) hours of the MRO's offer. Any action required by this policy, as the result of a positive test is not stayed pending the result of a test on the split sample.

The employee's department will pay all costs associated with the re-testing of the split sample. Should the split sample also test positive, the employee's department may recuperate, from the employee, the cost of the re-test, including shipping and handling, transportation, testing, and MRO assessment.

## **IX. RETURN TO WORK AND FOLLOW-UP**

If allowed to return to work, the employee must complete the following requirements:

1. Sign a return-to-work agreement,
2. Provide a written statement from the certified substance abuse professional that they may return to work,
3. Submit to a return-to-work test with confirmed negative results prior to returning to work, and
4. Comply with the terms of the Return-to-Work Agreement

Failure to comply with the Return-to-Work Agreement will subject an employee to disciplinary action.

## **X. OPERATING METRO VEHICLE**

An employee shall not be allowed to operate a Metro vehicle following a positive test for a minimum period of ninety (90) calendar days after presenting a negative Return-To-Work test.

Any employee whose driver's license is suspended due to a DUI conviction, even if the employee is granted a restricted license, shall not be allowed to operate a Metro vehicle. A Return-To-Work Agreement is also required in such cases. If the employee is required to hold a CDL, or if driving is an essential function of the position, or if the employee is in a PHS position, nothing in this policy shall prevent appropriate disciplinary action from taking place.

## **XI. CONFIDENTIALITY**

Controlled substances and alcohol testing results and records shall be maintained under strict confidentiality, to the extent allowed by law, by Metropolitan Government, the company contracted to administer the testing program, the testing laboratory, and the Medical Review Officer. Statistical records are maintained for required reports.

Employees involved in testing and the administration of this policy shall observe strict confidentiality of an employee's test results and treatment. Any employee who violates this requirement for confidentiality will be subject to disciplinary action.

## **XII. TRAINING**

Information Program – A program will be presented for all employees covered by this policy to help them understand the policy and Metro's program on substance abuse. Employees shall attend this training every four years. This will include training on the provisions of the policy, information about controlled substances and alcohol use, and treatment resources, which are available. The policy will be made known to all new employees and the information will be incorporated in new employee orientation.

Supervisors – Supervisors shall attend a program of training every four years. This program will be designed to teach supervisors how to identify and document substance abuse among employees, and to familiarize them with the controlled substances testing program, provisions of this policy, and related laws.

Program Administrator – The administrator for this program serves as the liaison with the contracted company who manages testing and reporting, and with the departments and agencies that are covered under this policy. There is also an administrator designated for each department.

## **XIII. CONFLICT WITH OTHER LAWS OR COURT ACTION**

If any provision of this policy, or the application thereof, to any person or circumstance is held to be invalid, the invalidation shall not affect any other provisions or the application of this policy and the provisions of this policy are declared to be severable.

## **XIV. REVISIONS**

This policy may be revised to reflect changes in state and federal laws without further approval and re-issuance of the full policy. No substantive changes under local authority shall be made without further approval.

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