

## DRUG AND ALCOHOL TESTING POLICY

12/30/94 (Amended and Revised by Executive Order 59 April 18, 2006)

### **CITY OF SAINT PAUL EMPLOYEE DRUG AND ALCOHOL TESTING POLICY FOR DRIVERS OF COMMERCIAL MOTOR VEHICLES**

Use of drugs and abuse of alcohol is a nation wide problem. Persons of every age, race, sex and ethnic group are affected. The use of drugs and abuse of alcohol poses risks to the health and safety of the abuser as well as to others. The City of Saint Paul believes that a working environment free of drug use and alcohol abuse is healthier, safer, more productive and a condition desired by most employees and their families.

The City of Saint Paul recognizes the need to confront the problems and risks associated with alcohol abuse and drug use in the workplace. Education serves an important role in the prevention of drug use and alcohol abuse. There is also a need to identify work performance problems related to drug use and alcohol abuse so that an employee may have the opportunity to seek treatment and be retained for continued employment based on satisfactory job performance.

This policy follows Federal mandates and establishes clear standards concerning drugs and alcohol, which drivers of commercial motor vehicles must meet. It also establishes a testing procedure to ensure that those standards are met. This drug-and-alcohol-testing policy is intended to conform to Federal Highway Administration (FHWA) regulations set forth in Title 49 of the Code of Federal Regulations (CFR) Parts: 382 "Controlled Substances and Alcohol Use and Testing"; 391 "Qualifications of Drivers"; 394 "Notification and Reporting Accidents"; and 40 "Procedures for Transportation Workplace Drug Testing Program".

#### A. DEFINITIONS

1. Confirmation test: For alcohol testing means a second test, following a screening test with a result of 0.02 or greater. For drug testing means a second test, independent of the screening test, that uses a method of analysis approved under FHWA guidelines as being reliable and accurate for providing specific data as to the drugs or their metabolites detected in an initial screening test.
2. Commercial Motor Vehicle means any vehicle that:
  - a. has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
  - b. has a gross vehicle weight rating of 26,001 or more pounds; or
  - c. is designed to transport 16 or more passengers, including the driver; or
  - d. is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which requires the motor vehicle to be placarded under Hazardous Materials Regulation.
3. Drug: Any substance (other than alcohol) that is a controlled substance as defined in CFR Parts 391 and 40.
4. Drug and alcohol testing, drug or alcohol testing, and drug or alcohol test: Analysis of a body component sample approved under FHWA guidelines, including breath and urine, for the purpose of measuring the presence or absence of drugs, alcohol or their metabolites in the sample tested.

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5. EBT (evidential breath testing device): An EBT approved by the National Highway Traffic Safety administration (NHTSA) for evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement".
6. Employee: A person, independent contractor or person working for an independent contractor who performs services for the City of Saint Paul for compensation, in whatever form, who are required to operate a CMV in the performance of their duties, but excluding all persons subject to the testing policy established under General Order 230.30 of the Saint Paul Police Department Manual.
7. Employer: The City of Saint Paul acting through a department head or any designee of the department head.
8. Impairment due to drug or alcohol use: A positive test result is regarded as impairment under this policy.
9. Initial screening test: A drug or alcohol test that uses a method of analysis approved by the FHWA as being capable of providing data as to general classes of drugs, alcohol or their metabolites.
10. Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by the employers drug testing program and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with employee's medical history and any other relevant biomedical information.
11. Positive test result: A finding of the presence of alcohol, drugs or their metabolites in the sample tested in levels at or above the threshold detection levels set by the FHWA. The presence of alcohol, drugs or their metabolites at or above the following levels, as may be amended by FHWA standards, shall be considered to be a positive test result:

Alcohol (EBT)	0.02	grams per 210 liters of breath
Amphetamines	500	nanograms per milliliter
Cocaine Metabolite	150	nanograms per milliliter
Opiates (Eff. 5/1/98 DOT change)		
Codeine, Morphine	2000	nanograms per milliliter
6 monoacetyl Morphine	3	nanograms per milliliter
PCP (Phencyclidine)	25	nanograms per milliliter
THC Metabolite		
(Delta-9-tetrahydrocannabinol-9-carboxylic acid)	15	nanograms per milliliter

12. Reasonable suspicion: A basis for forming a belief based on specific facts and rational inferences drawn from those facts. See Section E for determination factors.
13. Safety sensitive function(s): Means any on-duty time, includes all time from time employee begins work to time he/she is relieved from work and all responsibility for performing work to include; inspecting, servicing or conditioning any motor vehicle; time loading or unloading a vehicle, supervising or assisting in the loading or unloading.

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14. Valid medical reason: When meeting one of the following conditions:

- a. Based on a written prescription or an oral prescription reduced to writing that names the employee as the person for whose use it is intended; or
- b. The drug was prescribed, administered and dispensed in the course of professional practice by or under the direction and supervision of a physician; and
- c. The drug was used in accord with the terms of the prescription and the physician has advised the employee that the substance does not adversely affect the employee's ability to safely operate a CMV. Use of any over-the-counter medication, in accord with the terms of the product's directions for use, shall also constitute a valid medical reason. Except, on over-the-counter cough syrup without alcohol only shall constitute a valid medical reason.

Employee has an ongoing obligation to notify their immediate supervisor when taking prescription drugs or over the counter which may affect their ability to perform a safety sensitive position.

### B. DEPARTMENTAL WORK RULES

An employee, covered by this policy, may be subject to discipline, including the possibility of termination, for violation of the following work rules:

1. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
2. No employee shall use alcohol while performing safety-sensitive functions.
3. No employee shall perform safety sensitive functions within four hours after using alcohol.
4. An employee involved in a vehicular accident, as defined in Section D.4., while driving a CMV shall not use alcohol within eight hours following the accident, or until they have undergone a post-accident alcohol test, whichever occurs first.
5. No employee shall refuse to submit to a drug and/or alcohol test required under this policy.
6. No employee shall report for duty or remain on duty requiring the performance of safety sensitive functions when the employee uses any controlled substances, except pursuant to a valid medical reason, as described in Section A.14.
7. No employee shall report for duty, remain on duty or perform a safety-sensitive function, if the employee tests positive for controlled substances.

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8. An employee's use possession, sale or transfer of alcohol during working hours or while the employee is on the employer's premises, or operating the employer's vehicle, machinery or equipment is prohibited, with the following exceptions:
  - a. possession of alcohol while being transported in an employee's personal vehicle, with a clear lack of intent to use in violation of the policy. No open bottle/can is a clear indication of lack of intent; or
  - b. possession, sale or transfer of alcohol is part of the employee's job duties.
9. No employee, while on duty, shall engage, attempt to engage, or conspire to engage in conduct which would violate any law or ordinance concerning drugs or alcohol.
10. No employee shall use, possess, manufacture, sell or transfer drugs or drug paraphernalia while the employee is working, on the employer's premises, or operating the employer's vehicle, machinery or equipment, except pursuant to a valid medical reason.
11. An employee shall notify his/her immediate supervisor when taking prescription or non-prescription medications that may lead to impairment, defined in Section A.8 of this document. In the event there is a question regarding the effects of the type and/or prescribed dosage of said medication, clearance from a qualified physician may be required.
12. An employee has no right or expectation of privacy with regard to city vehicles, city property and city equipment (lockers, desks, etc.).

### C. PERSONS SUBJECT TO TESTING

Under FHWA's regulations the following employees are subject to testing under applicable sections of this policy: any person who operates a commercial motor vehicle (CMV), as defined by FHWA. The employer will request or require an employee to undergo drug or alcohol testing only under the circumstances described in this policy.

### D. CIRCUMSTANCES FOR DRUG OR ALCOHOL TESTING

1. Pre-employment: All individuals whom the employer intends to hire or use, on a permanent or temporary basis, as commercial motor vehicle drivers must be tested.
2. Random: The employer must conduct unannounced testing based on a random selection of employees, in accordance with federal regulations. Selection is currently being conducted by the MRO, United Labs, Inc
3. Reasonable Suspicion: The employer may request or require an employee to undergo drug and/or alcohol testing if the employer or any supervisor of the employee trained in the detection of probable drug or alcohol use directly observes an employee whose conduct or appearance is indicative of use of alcohol or controlled substance, see Section E.
4. Post Accident: Following an accident involving a CMV, where there is loss of life or when employee receives a citation under State or local law for a moving violation arising from the accident and if any person immediately receives medical treatment away from the scene of the accident or if a vehicle incurs disabling damage requiring it to be transported by tow truck or other motor vehicle, the employee shall undergo drug and alcohol testing.

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5. Return-to-duty: Where an employee has: had a test result of 0.04 or greater for alcohol; or had a positive drug test result; or been found to have violated Departmental Work Rules, defined in Sections B.1 through B.7, then the employee shall not return to work until after undergoing return-to-duty tests indicating an alcohol concentration of less than 0.02 and a verified negative result for controlled substances.
6. Follow-up: Following a determination by a substance abuse professional that an employee is in need of assistance in resolving problems with alcohol abuse and/or controlled substances use, after engaging in conduct prohibited by DOT regulations, an employee shall be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the substance abuse professional. At least 6 follow-up tests will be conducted within the first 12 months upon return to duty and follow-up testing shall not exceed 60 months from the date of employee's return to duty.

An employee shall be compensated for all time spent providing a breath sample or urine specimen, including travel time to and from collection site, in order to comply with random, reasonable suspicion, post accident, or follow up testing.

### E. DETERMINATION OF IMPAIRMENT OR BEING UNDER THE INFLUENCE DUE TO USAGE OF ALCOHOL OR DRUGS

As indicated in Section D.3 above, before an employer can request or require an employee to undergo drug and/or alcohol testing, the employer must have a reasonable suspicion that the employee is impaired due to drug or alcohol usage or is under the influence of drugs or alcohol. In general, a reasonable suspicion of impairment or being under the influence exists when the employee displays characteristics of intoxication through words or actions, and may be coupled with observable incompetent or inefficient job performance. The definition of impaired job performance is set forth in Section A.8 of this policy.

Relevant observations of the employee's words and conduct that alone or in combination may indicate intoxication include, but are not limited, to the following:

- |                              |  |
|------------------------------|--|
| 1. slurred of speech         | 8. mood swings                                   |
| 2. disorientation            | 9. inattentiveness                               |
| 3. odor of alcohol on breath | 10. excitement                                   |
| 4. unsteady gait or balance  | 11. irritability                                 |
| 5. glassy eyes               | 12. aggressiveness                               |
| 6. drowsiness                | 13. intoxicated behavior without odor of alcohol |
| 7. euphoria                  | 14. impaired job performance                     |

All personnel involved in the determination of reasonable suspicion must immediately document any and all information received, observations, and actions taken. All such reports must be forwarded to the Office of Human Resources.

Further, supervisors of employees covered by this policy shall, as mandated by FHWA, annually attend training on the determination of reasonable suspicion factors, a minimum of one hour on alcohol misuse and one hour on controlled substances use, to cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.

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### F. PROCEDURE FOR TESTING

1. Notification form: Before requesting an employee to undergo drug or alcohol testing, the employer shall provide the employee with a form on which the employee will:
  - a. acknowledge that the employee has seen a copy of the employer's drug and alcohol testing policy;
  - b. indicate consent to undergo the drug and/or alcohol testing; and
  - c. bring proof of identification (driver's license) to collection/test sites.
2. Collection facility consent form: The employee must also indicate consent to undergo the drug and alcohol testing on any consent forms provided by the collection facility taking the sample or breath alcohol technician (BAT).
3. Test sample (drug): The test sample shall be obtained in a private setting, and the procedure for taking the sample shall ensure privacy to employees to the extent practicable, consistent with the prevention of tampering with the sample, and shall conform with applicable FHWA rules. All test samples shall be obtained by or under the direct supervision of a health care professional.
4. Identification of samples: Each sample shall be sealed into a suitable container free of any contamination that could affect test results, immediately label with a specimen identification number, initialed by the employee, and dated by the person witnessing the sample.
5. Chain of custody: The employer shall maintain a written record of the chain of custody of the sample, ensure proper handling thereof, and comply with the rules adopted by the FHWA pertaining to chain of custody.
6. Laboratory: All drug testing shall use the services of a testing laboratory certified by the Substance Abuse & Mental Health Services Administration (SAMHSA), formerly NIDA, of the Department of Health and Human Services (DHHS). However, no test shall be conducted by a testing laboratory owned and operated by the City of Saint Paul.
7. Methods of analysis: The testing laboratory shall use methods of analysis and procedures to ensure reliable drug and alcohol testing result, including standards for initial screening tests and confirmatory tests. For a positive alcohol test result using an EBT, a confirmation test shall be conducted no sooner than fifteen minutes after the initial test. In all other cases, the method of analysis shall use immuno-chemical technology or chromatography/mass spectrometry. Except where gas chromatography/mass spectrometry is not the scientifically-accepted method of choice, the test must be confirmed by a method using some form of chromatography.
8. Retention and storage: Retention and storage procedures shall comply with the rules adopted by the FHWA. All samples, except breath samples, from an initial screening test, that produced a positive-test result shall be retained and properly stored for at least six (6) months.
9. MRO's employee contact: On a confirmed positive drug test MRO shall make a reasonable attempt to contact employee to confirm circumstances and verify claims of prescribed medication. If MRO is unable to contact employee, the MRO shall contact the employer's DOT representative who will direct the employee to contact the MRO.

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10. MRO report: The MRO shall prepare a written report indicating the drugs or their metabolites tested for, the types of tests conducted, and whether the test produced negative or positive test results. The MRO shall disclose the results to the employer within three (3) working days after obtaining the final test result.
11. The employer shall, within three (3) working days after receipt of test result report from MRO, notify the employee of the results of random, reasonable suspicion, post-accident, return-to-duty and follow-up tests for controlled substances if the test results are verified positive. The employer shall also inform the employee which controlled substances were verified positive.

### G. RIGHTS OF EMPLOYEES

1. The right to request and receive from the employer a copy of the test result report.
2. Within seventy-two hours (72) after notice from the MRO of a positive drug test result, the right to request, in writing to the MRO, a confirmatory retest of the original sample at the employee's expense at the original testing laboratory or another DHHS-certified testing laboratory. In the event of a negative test result on requested retest the costs for retest will then be borne by the employer.
3. If employee has not contacted the MRO within the seventy-two hours, as specified in Section G.2, the employee may present to the MRO information documenting that a serious illness, injury or other circumstances unavoidable prevented employee from timely contacting the MRO. If the MRO concludes there is a legitimate explanation for failure to contact the MRO within 72 hours, the MRO may direct the retest as detailed in Section G.2.
4. The right not be discharged, disciplined, discriminated, or requested or required to undergo rehabilitation on the basis of a positive test result from initial screening test that has not been verified by a confirmatory test.
5. The right of employee who has been suspended without pay to be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
6. The right not to be discharged, disciplined, discriminated, or required to be rehabilitated on the basis of medical history information revealed to the employer concerning the reliability of, or explanation for, a positive test result unless the employee was under an affirmative duty to provide the information before, upon, or after hire.
7. The right of access to information in the subject's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process, and conclusions drawn and actions taken based on the reports or acquired information.
8. The right of an employee who had made a timely request for a confirmatory retest to suffer no adverse personnel action if the confirmatory retest does not confirm the result of the original confirmatory test, using drug or alcohol threshold detection levels as established for a confirmatory retest by FHWA regulations.

### H. ACTION AFTER TEST

The employer will not discharge, discipline, discriminate, or request or require rehabilitation of an employee solely on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. Where there has been a positive test result in a confirmatory test and in any confirmatory retest, the employer will do the following unless the employee has furnished a valid medical reason for the positive test result:

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1. For alcohol test result indicating an alcohol content of 0.02 or greater but less than 0.04 the employee shall be removed from duty for twenty-four hours following administration of the test. For a first or second offense the employee would be permitted to use accumulated vacation, accumulated compensatory time or non pay for the hours of work missed. For a third offense the employee shall be suspended without pay for one day and referred to the employee assistance provider.
2. For an alcohol test result indicating an alcohol content of 0.04 or greater, or a positive drug test, or violation of Departmental Work Rules, defined in Sections B.1 through B.7, the employee will be:
  - a. Removed from duty; and for a first positive test or work rule violation conducted under this policy, the employee shall be suspended without pay for ten (10) days, for a second positive test or work rule violation the employee shall be discharged from employment; and
  - b. Following a positive test or work rule violation under this policy, referred for an evaluation by a substance abuse professional. If that evaluation determines that the employee has a chemical dependency or abuse problem, the employer will give the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate as determined by the employer after consultation with substance abuse professional. The employee shall sign a release permitting the employer to monitor participation and compliance with counseling or a rehabilitation program; and
  - c. Employees shall not be allowed to return to duty until they have:
    - 1) been evaluated by a DOT qualified substance abuse professional;
    - 2) completed any recommended treatment;
    - 3) taken a return to duty test with a negative drug test result and/or an alcohol test result indicating an alcohol content of less than 0.02 (During the time between a positive drug and/or alcohol test or refusal and a negative return to duty test, the employee will be placed on leave status. Such leave shall not exceed 120 calendar days. While on leave, the employee may use accrued vacation and/or compensatory time prior to the use of any other leave. Once the vacation and/or compensatory time is exhausted, the employee will either be placed on voluntary leave or leave without pay status at the discretion of the department involved. Accrued sick leave and/ or family medical leave may also be used during this leave period for inpatient treatment of diagnosed chemical dependency.); and
  - d. The employer may discharge or recommend that the employee be discharged from employment if the employee:
    - 1) refuses to participate in a recommended counseling or rehabilitation program; or
    - 2) fails to successfully complete the program, as evidenced by withdrawal from the program before its completion; or
    - 3) is unable to perform the duties of the job in question because of a positive test result on any subsequent return-to-duty or follow-up testing after completion of the program; or
    - 4) fails to successfully obtain a negative return-to-duty test within 120 days of the positive test, or

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- 5) refuses to submit to an alcohol or controlled substances test. Refusal to submit means:
    - a) Failure to provide adequate breath or urine for alcohol testing and controlled substances testing without a valid medical explanation after the employee has received notice of the requirement for such testing; and/or
    - b) Engaging in conduct that clearly obstructs the testing process including but not limited to, not proceeding immediately to the collection site when notified or failure to sign any consent, verification or chain of custody forms when requested; or
  - 6) presents a direct threat to property or the safety of others, or is otherwise considered unable to perform in good faith.
- e. Violations of this policy which are more than ten years old shall not count as violations under Section H, 2, a.
3. Other misconduct: Nothing in this policy limits the right of the employer to discipline or discharge an employee on grounds other than a positive-test result in a confirmatory test.

### I. DATA PRIVACY

The purpose of collecting a body component sample of breath or urine is to test that sample for the presence of drugs or alcohol. A sample provided for drug or alcohol testing will not be tested for any other purpose. The name, initials and social security number of the person providing the sample are requested so that the sample can be identified accurately but confidentially. Information about medications and other information relevant to the reliability of, or explanation for, a positive test result is requested to ensure that the test is reliable and to determine whether there is a valid medical reason for any identified drug or alcohol in the sample.

All data collected, including that the notification form and the test report, is intended for use in determining the suitability of the employee for employment. The employee may refuse to supply the requested data; however, refusal to supply the requested data may affect the employee's employment status. The employer will not disclose the test result reports and other information acquired in the drug or alcohol testing process to another employer or to a third party, individual, governmental agency, or private organization without the written consent of the employee tested, unless required by law or court order.

### J. APPEALS PROCEDURES

1. Appeals of disciplinary actions taken pursuant to the drug and alcohol testing policy shall be as set forth in the City of Saint Paul's Civil Service Rules.
2. An employee who is covered by a collective bargaining agreement may elect to seek relief under the terms of that agreement by contacting the appropriate bargaining unit and initiating grievance procedures in lieu of taking an appeal to the Civil Service Commission.

### **IF YOU HAVE FURTHER QUESTIONS REGARDING THIS POLICY, PLEASE CONTACT:**

Human Resources  
(651) 266-6500