

DRUG AND ALCOHOL TESTING PROGRAM

I. Purpose

To establish a drug and alcohol testing program for employees in positions that are represented by the CSEA.

II. Definitions

Alcohol

The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

Breath Alcohol Technician (BAT)

A qualified individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device. The confirming testing device must utilize infrared technology or a blood test.

BAC

Blood Alcohol Concentration (BAC) is the content of alcohol in an individual's blood based on the breathalyzer test or blood test.

Confirmation Test

For alcohol testing, a second test following a screening test with a result of greater than .02, that provides quantitative data of alcohol concentration. For controlled substance testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Medical Review Officer (MRO)

A licensed physician responsible for receiving laboratory results generated by the County drug test program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate employee's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Prohibited Conduct

Conduct which is prohibited is described in Section VI of this policy.

Refusal to Submit

An employee who (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received a notice of the requirement for the breath testing; (2) fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; (3) engages in conduct that clearly obstructs the testing process; or (4) otherwise refuses to submit, will be classified as having refused to submit to an alcohol or drug test.

Screening Test

In alcohol testing, means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system. In drug testing, an immunoassay procedure to eliminate “negative” urine specimens from further consideration.

Substance Abuse Professional

A substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of an clinical experience in the diagnosis and treatment of alcohol and drugs-related disorders.

III. Testing

There are several occasions when an employee will be subject to drug and alcohol screening tests pursuant to this policy.

a. Reasonable Suspicion Testing

Reasonable suspicion testing is alcohol and drug testing that the County may conduct when it has reasonable suspicion to believe that an employee has engaged in conduct prohibited by this policy. Reasonable suspicion must be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an employee by a County official who has received required training to recognize probable alcohol or drug use.

The County will, if possible, administer a reasonable suspicion alcohol and/or drug test within 2 hours of the reasonable suspicion determination, but in no event more than six (6) hours following the determination. In the event that these time periods are not met, the County will prepare and maintain on file a record stating the reasons the alcohol and/or drug test was not promptly administered.

The County will not permit any employee to report for duty or remain on duty while the employee is under the influence of, or impaired by, alcohol as shown by the behavioral, speech, and performance indicators of alcohol misuse, until an alcohol test is administered and the employee’s blood alcohol concentration measures less than .02 or 24 hours have elapsed following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated.

A written record shall be made of observations leading to reasonable suspicion, signed by the supervisor or person who made the observations, within twenty-four

confirmatory test (infra-red breathalyzer or blood test) will be performed at that facility. The completed confirmatory test result is the final test result for purposes of this policy. The County requires that the cost for the confirmatory test will be the employee's responsibility if the employee elects to have the test and such test confirms a positive test result. If the employee is ultimately exonerated based on the results from the confirmatory test, the County shall reimburse the employee for his/her costs for the confirmatory test. If the final test result reveals a BAC greater than .02 but less than .04 the employee will not be permitted to work for 24 hours. The employee will be eligible to use leave accruals (but not sick leave) during this 24 hours.

If the BAC is .04 or greater, the employee will not be permitted to work until the Substance Abuse Professional (SAP) verifies the employee is capable of returning. During this period, the employee is eligible to use leave accruals and compensatory time but sick leave may only be used for any periods of disability as determined by the SAP after the date of the positive test.

Any leave accruals or compensatory time forfeited/used (except sick leave) because of a positive alcohol test shall be considered part of any disciplinary penalty if one is imposed later.

c. Tested Drugs:

A Federal Department of Health and Human Services certified laboratory will perform drug testing on urine samples provided by employees. The drugs for which tests will be conducted and the initial and confirmatory positive/negative test results are (however, testing for Marijuana metabolites / THC will only be conducted in those circumstances permissible under New York law):

Type of Drug or Metabolite	Initial Test	Confirmation Test
(1) Marijuana metabolites (i) Delta-9-tetrahydrocannabinol -9-carboxylic acid (THC)	50 300	15 150
(2) Cocaine metabolites (Benzoylecgonine)	300	150
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines (i) Amphetamine (ii) Methamphetamine	1000	500 500 (Specimen must also contain amphetamine at a concentration of greater than or equal to 200 mb/ml)
(5) Opiate metabolites (i) Codeine (ii) Morphine	2000	2000 2000

(iii) 6-acetylmorphine

10

Test for 6-A.M. in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 mg/mg

The County will contract with a laboratory certified by the United States Department of Health and Human Services to insure that the collection, shipment, testing and chain of custody procedures insure the integrity of the testing process.

The split sample urine testing will be utilized. This method requires that the urine specimen be divided into two samples providing one sample for preliminary screening and initial confirmation, and a second sample for the second test if needed at a later date. The County requires that the cost for testing this split sample will be the employee's responsibility if the employee elects to have the second sample tested and such test confirms a positive test result. If the employee is ultimately exonerated based on the results from the second sample, the County shall reimburse the employee for his/her costs for the second test.

The Medical Review officer (MRO) will conduct a final review of all positive test results to assess possible medical explanations for the positive test results.

Information concerning testing results reported to County by the MRO shall be consistent with 49 CFR Part 40 § 40.131 and § 40.163 and as may be amended.

d. Disclosure of Test Results:

The County shall maintain records in a secure manner so that disclosure of information to unauthorized persons does not occur. County shall not release the tested drug and alcohol testing records of an employee except:

- i. to his/her designee upon written request;
- ii. to the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee and arising from the results of mandatory testing pursuant to this policy.

e. Uncompleted Testing:

If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable.

f. Records Retention/Test Results:

- i. Records Retention: The County shall maintain records of its alcohol and drug abuse program in a secure location with controlled access. The County shall maintain the following records for five years: (1) records of alcohol test results indicating a BAC of .02 or greater; (2) records of verified positive drug test results; (3) documentation of refusals to take required alcohol and/or drug tests; Records related to the alcohol and drug collection process and training shall be maintained for a minimum of two years. Records of negative and canceled drug test results and alcohol tests with concentration of less than .02 shall be maintained for one year.
- ii. Test Results: The County shall notify an employee of the results of reasonable suspicion drug tests if the test results are verified positive and which tested drug(s) were verified as positive.

V. Refusal to Submit to Testing

An employee shall not refuse to submit to a reasonable suspicion alcohol or drug test required under this policy, a return to duty alcohol or drug test, or a follow-up alcohol or drug test required under this policy. Any employee shall not be permitted to return to duty subsequent to a refusal to submit to a test required under the policy until the employee is evaluated by a Substance Abuse Professional and completes a substance abuse program designed by a Substance Abuse Professional, if any, and undergoes a return to duty alcohol test revealing a BAC of less than .02 and a drug test with a verified negative result. A refusal to submit to testing is the equivalent of an alcohol test revealing a BAC of .02 or greater or a drug test with a positive result. A refusal to be tested shall be defined as a refusal by an employee to complete and sign the breath alcohol testing form or to complete the drug screening chain of custody form, to provide breath, to provide an adequate amount of breath, to provide an adequate amount of urine or otherwise to cooperate with the testing process in a way that prevents the complete of the test. The BAT or collector shall record such refusal in the remarks section of the form. The testing process shall then be terminated and the BAT or collector shall immediately notify the County.

VI. Prohibited Conduct

1. No employee shall work or report to work in violation of this policy.
2. No employee shall use, possess, distribute or dispense alcohol or prohibited drugs (which includes but is not limited to cannabis) under this policy while on duty outside the scope of his/her job duties, including while on County property or work sites.
3. No employee shall refuse to submit to a required alcohol or drug test conducted pursuant to this policy.

4. No employee shall report for duty or remain on duty if the employee tests positive for tested alcohol or drugs as defined by the policy.

VII. Referral, Evaluation and Treatment

1. The County shall make available to employees through the County's Employee Assistance Program information regarding the resources available for evaluating and resolving problems associated with the misuse of alcohol and use of drugs, including the names, addresses, and telephone numbers of Substance Abuse Professionals and counseling and treatment programs.
2. An employee who engages in conduct prohibited by this policy shall be evaluated by a Substance Abuse Professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug use. The costs associated with this evaluation are the responsibility of the employee and may be covered by the employee's health benefits plan, subject to the plan's conditions and limitations.
3. Before an employee returns to duty after engaging in conduct prohibited by this Policy, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than .02 if the conduct involved alcohol, or a drug test with a verified negative result if the conduct involved drugs.
4. Employees identified by an SAP as needing assistance in resolving problems associated with alcohol misuse or drug use shall:
 - a. be evaluated by a Substance Abuse Professional to determine if the employee has properly followed any rehabilitation program prescribed under paragraph 2 of this section;
 - b. shall be subject to unannounced follow-up alcohol and drug tests administered by the County following the employee's return to duty. The number and frequency of the follow-up tests shall be as directed by the Substance Abuse Professional, and consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty. The County may direct the employee to undergo return-to-duty and follow-up testing for both alcohol and drugs, if the Substance Abuse Professional determines that return-to-duty and follow-up testing for both alcohol and drugs is necessary for that employee. Such testing shall be in conformance with this policy. Follow-up testing shall not exceed sixty (60) months from the date of the employee's return to duty. The Substance Abuse Professional may terminate the requirement at any time after the first six (6) tests have been administered, if the Substance Abuse Professional determines that such testing is no longer necessary.

- c. The evaluation and rehabilitation shall be provided by:
 - 1) a Substance Abuse Professional approved by the County; or
 - 2) a Substance Abuse Professional selected by the employee. The employee shall be required to submit to the County a written verification from the Substance Abuse Professional that they meet the qualifications as set forth in Section II – Substance Abuse Professional of this policy prior to receiving the evaluation and rehabilitation.
- d. A Substance Abuse Professional who determines that an employee requires assistance in resolving problems with alcohol misuse or drug use shall not refer the employee to the Substance Abuse Professional's own private practice, or to a person or organization from which the Substance Abuse Professional receives remuneration or in which the Substance Abuse Professional has a financial interest.
- e. Costs associated with evaluation and treatment shall be the responsibility of the employee and may be covered by the employee's health benefits plan, subject to the plan's conditions and limitations.

VIII. Consequences for Covered Members

Members found to have violated prohibited conduct under this policy will be subject to disciplinary action, up to and including discharge. Any disciplinary action initiated will be administered in accordance with the provisions of the applicable collective bargaining agreement.

Under those circumstances where an employee reports to duty while voluntarily on-call, he/she will not be subject to discipline for testing positive for alcohol use provided he/she has disclosed to his/her supervisor prior to commencing duty that he/she had consumed alcohol.

Members found to have a BAC of .04 or above or a positive drug test shall be required to be evaluated by a Substance Abuse Professional and to complete any treatment determined to be necessary by the Substance Abuse Professional before any return-to-duty can be considered.

No employee shall report for or be on duty if such employee has engaged in conduct prohibited by this policy.

IX. Member Notification

The County shall provide a copy of this policy to each employee. Each employee is required to sign a statement certifying that he/she has received this information. The County shall maintain the original signed certification as a permanent part of the personnel file. The County will provide a copy of the certification to the employee upon request. Prior to the implementation of

this policy, the County will provide approximately one hour of in-service training on this policy.
New employees, including lateral transfers, shall receive approximately one hour of in-service training on this policy during orientation.