

TOWN OF CONCORD
Personnel Policy and Procedure #42

Drug and Alcohol Testing
of Employees in Safety-Sensitive Positions

Date Issued: April 17, 1997

I. PURPOSE:

The purpose of this policy is to outline the responsibilities of employees, supervisors and managers with regard to drug and alcohol testing of employees in safety-sensitive positions in accordance with U.S. Department of Transportation regulations, issued under the Omnibus Transportation Employee Testing Act of 1991.

The overall goal of the Federal Regulations is to significantly reduce the risk of alcohol and drug-related accidents. The Town of Concord considers the testing program a vital part of its ongoing responsibility to promote a safe, drug and alcohol free, work environment for its employees, and to protect the citizens of Concord. To promote such an environment, the Town intends to provide a comprehensive training and education program for its employees, offer help to employees for alcohol and drug problems through the Employee Assistance Program, detect and deter drug and alcohol misuse, and enforce this policy pursuant to disciplinary action and consequences set forth under the federal regulations.

The Town of Concord is committed to the treatment and rehabilitation of employees with drug and alcohol misuse problems, and encourages employees to come forward voluntarily to seek assistance for those problems. If at any time an employee volunteers to enter a chemical dependency program, he/she will enter without disciplinary action's being taken against him/her solely as a result of seeking treatment.

II. APPLICABILITY:

This policy applies to all safety-sensitive employees of the Town.

III. DEFINITIONS:

Words or phrases used in this Policy are defined in 49 CFR 382.107 or, if not defined in that Section, 49 CFR 40.3, 40.73, 386.2 and 390.5.

Safety-sensitive -- For the purposes of this policy, safety-sensitive shall refer to all employees required by the Town to obtain and retain a Commercial Drivers License.

IV. POLICY REGARDING DRUG AND ALCOHOL TESTING:

- A. It is the policy of the Town of Concord to comply fully with the regulations mandating pre-use, random, reasonable suspicion and post-accident drug and alcohol testing in accordance with regulations issued by the U.S. Department of Transportation. This policy contains the requirements of the regulations, except where indicated that a particular provision is based on the authority of the Town.

- B. The performance of safety-sensitive functions is prohibited by employees having an alcohol concentration of 0.04 percent or greater as indicated by an alcohol breath test; by employees using alcohol or within four hours after using alcohol; and by employees in the possession of any medication containing alcohol unless the package seal is unbroken. In addition to the preceding requirements of Federal law, pursuant to its authority, the Town prohibits the performance of any safety-sensitive function by an employee with an alcohol concentration of 0.02 percent or greater.
- C. Use of controlled substances by drivers covered by the Policy is prohibited, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers must provide the Town Personnel Department with written notice from a physician of any therapeutic use of controlled substances.
- D. A driver is considered to be performing a safety-sensitive function at the following times:
 - a. All time on Town property, public property, or other property waiting to be dispatched or drive.
 - b. All time inspecting, servicing, or conditioning any commercial motor vehicle (CMV) at any time.
 - c. All driving time.
 - d. All time other than driving time in or upon any CMV.
 - e. 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 receipts for shipments loaded or unloaded.
 - f. All time spent performing driver requirements relating to accidents;
 - g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

V. PROCEDURES:

A. Types of Tests

To the extent practicable, all tests will be conducted during employees' normally scheduled work hours. The Town will pay for all required tests. The following tests are required:

1. Pre-employment (Pre-use) -- All applicants for employment in positions requiring Commercial Drivers License (pre-employment), or candidates for transfer or promotion to such a position (pre-use) are subject to tests for improper use of alcohol or controlled substances. One or both of these tests will not be administered if the conditions set forth in 49 CFR 382.301 are met.
2. Post-Accident -- conducted after accidents on drivers in Town vehicles whose performance could have contributed to the accident, as determined by a citation for a moving traffic violation, and for all fatal accidents even if the driver is not cited for a moving traffic violation. An accident is defined as an incident involving a commercial motor vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle being required to be towed from the scene. Alcohol tests should be conducted within 2 hours, but in no case more than 8 hours after the accident. Employees must refrain from all alcohol use until the test is complete. Post-accident drug tests must be conducted within 32 hours.

3. Reasonable Suspicion -- conducted when a trained supervisor or manager observes behavior or appearance that is characteristic of alcohol or drug use. If a driver's behavior or appearance suggests alcohol or drug use, a reasonable suspicion test must be conducted. If a test cannot be administered, the driver must be removed from performing safety-sensitive duties for at least 24 hours. Testing for alcohol abuse must be based upon suspicion which arises just before, during or just after the time when the employee is performing safety-sensitive duties. Testing for substance abuse may occur at any time upon suspicion. Reasonable suspicion testing may only be conducted after consultation with the Personnel Department or Town Manager's Office.
4. Random -- conducted on a random, unannounced basis just before, during or after performance of safety-sensitive functions for alcohol or at any time for drugs. Each year, the number of random alcohol tests conducted by the Town must equal at least 25% of all the safety-sensitive drivers. Random drug tests conducted by the Town must equal at least 50% of all safety-sensitive drivers.
5. Return to Duty and Follow-up -- conducted when an individual who has violated the prohibitions set forth in Section IV B and/or C, or who has been identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use returns to performing safety-sensitive duties. Follow-up tests are unannounced and at least six (6) tests must be conducted in the first twelve (12) months after a driver returns to duty. Follow-up testing may be extended for up to sixty (60) months following the return to duty.

The Town will not pay for the testing of a former employee, for the follow-up testing of any new employee due to a violation as defined by the Department of Transportation while that individual was employed by another employer, or for a second sample test requested by the employee whose result is positive.

B. Conducting Tests

1. Alcohol

DOT rules require breath testing using evidential breath testing (EBT) devices. Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second, confirmation test must be conducted.

2. Drugs

- a. Drug testing is conducted by analyzing a driver's urine specimen, and must be conducted through a U.S. Department of Health and Human Services (DHHS) certified facility. Specimen collection procedures and chain of custody requirements ensure that the specimen's security, proper identification and integrity are not compromised.
- b. DOT rules require a split specimen procedure. Each urine specimen is subdivided into two bottles labeled as primary and split. Both bottles are sent to the laboratory. Only the primary specimen is opened and used for the urinalysis. The split specimen remains sealed at the laboratory. If the analysis of the primary specimen confirms the presence of illegal controlled substances, the driver has 72 hours to request that the split specimen be sent to another DHHS certified laboratory for analysis.
- c. All urine specimens are analyzed for the following drugs:

Marijuana (THC metabolite)
Cocaine
Amphetamines

Opiates (including heroin)
Phencyclidine (PCP)

- d. Testing is conducted using a two-stage process. First, a screening test is performed. If the test is positive for one or more of the drugs, a confirmation test is performed for each identified drug.
- e. All drug tests are reviewed and interpreted by a physician designated as a Medical Review Officer (MRO) before they are reported to the employer. If the laboratory reports a positive result to the MRO, the MRO will contact the driver and conduct an interview to determine if there is an alternative medical explanation for the drugs found in the urine specimen. For all the drugs listed above, except PCP, there are some limited, legitimate medical uses that may explain a positive test result. If the MRO determines that the drug use is legitimate, the test will be reported to the Town as a negative result.

3. Refusal to submit to an Alcohol and Drug Test and the Consequences

Refusal to submit to an alcohol or controlled substances test means that a driver (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or (3) engages in conduct that clearly obstructs the testing process.

Employees who refuse to submit to an alcohol or drug test are not allowed to perform safety-sensitive functions. Pursuant to the Town's authority, employees who refuse to submit to a test will be subject to discipline, up to and including discharge.

VI. CONSEQUENCES OF ALCOHOL/DRUG USE:

- A. Safety sensitive employees who have any alcohol concentration (defined as 0.02 or greater) who are tested just before, during or just after performing safety-sensitive functions must be removed from performing such duties for 24 hours.

Pursuant to the Town's authority, disciplinary action may be imposed upon an employee whose alcohol test reveals an alcohol concentration of 0.02 or greater, but less than 0.04.

- B. Drivers who test positive for drugs or who have an alcohol concentration of 0.04 or greater must be immediately removed from performing safety-sensitive functions.

Pursuant to the Town's authority, drivers with such results who are serving a probationary period will be terminated immediately. Non-probationary drivers who are not terminated will be required to comply with Section C below. Non-probationary drivers who fail to complete the requirements of Section C will be terminated.

- C. Drivers who engage in prohibited alcohol or drug conduct who wish to continue employment with the Town of Concord must be evaluated by a substance abuse professional and comply with any treatment recommendations to assist them with an alcohol or drug problem. Employees who are terminated will be given a referral and the opportunity for an evaluation. The payment for any recommended treatment will be strictly at the expense of the employee (or his/her health insurance program, if applicable), except as provided in Section VII. below. Employees will be placed on non-occupational sick leave or leave without pay status during the treatment period, whichever is appropriate, subject to any discipline imposed by the Town.

- D. Drivers who are not terminated and who have been evaluated by a substance abuse professional, who comply with any recommended treatment, who have taken return to duty tests with a result less than 0.02 alcohol concentration and negative result for controlled substances, and who are then subject to unannounced follow-up tests at the employees' expense, may return to work, subject to any discipline imposed by the Town.

VII. TREATMENT:

The Town will provide any driver found to have engaged in any prohibited conduct relating to alcohol or controlled substances with information of the available resources for evaluating and treating the problem; including the names, addresses and telephone numbers of substance abuse professionals (SAPs), counseling centers and treatment programs. The employee will also be given information regarding the Town's Employee Assistance Program. Such employees must be evaluated by a SAP, who will determine what assistance, if any the employee needs.

The Town will pay for up to three (3) visits to a SAP, in accordance with the Employee Assistance Program through Concord Family Services. Any additional visits must be paid for by the employee or through the employee's health insurance plan, if applicable. Please refer to Section XII for more information on the Employee Assistance Program.

If a SAP determines that an employee needs additional assistance, the employee must be re-evaluated by the SAP to determine if the employee has followed the prescribed rehabilitation program, and the employee must submit to follow-up testing as described in Section V.A.5.

The Town holds no obligation to an employee who refuses to submit to a test, or to an applicant who is found to have a controlled substance in his/her system.

VIII. INFORMATION/TRAINING:

- A. All current and new employees will receive written information about the testing requirements and how and where they may receive assistance for alcohol or drug misuse. All employees must receive a copy of this policy and sign the Confirmation of Receipt (Attachment 1).
- B. All supervisory and management personnel in departments with safety-sensitive positions must attend at least two hours of training on alcohol misuse and drug use symptoms and indicators used in making determinations for reasonable suspicion testing.

Supervisors and managers will be instructed on the detection of abuse problems and the enforcement of the testing policy. Periodic, on-going training will also occur after implementation of the policy.

- C. This policy will be posted on employee bulletin boards and will be available to all employees.
- D. Educational information will be made available periodically which will focus on the potentially dangerous effects of drug and alcohol use and abuse, the procedures associated with pre-employment drug screening and "reasonable suspicion" testing, the effects on job performance measured in loss of productivity, and the potential safety hazards presented to the individual employee, other employees and the public.
- E. All recruitment advertising for safety-sensitive positions will include the statement " Drug/alcohol screening is a condition of employment" at the bottom of the advertisement/posting with the EEO statement.
- F. All final candidates for employment will be given a copy of this policy, and be given the opportunity to read the policy in its entirety.

IX. RECORD KEEPING:

- A. The Town is required to keep detailed records of its alcohol and drug misuse prevention program.
- B. Driver alcohol and drug testing records are confidential to the extent required by law. Test results and other confidential information may only be released to the employee (upon written request), the employer, the substance abuse professional, the MRO, and any fact finder in a proceeding resulting from or in connection with the testing program. Any other release of this information may only be made with the driver's consent, or in response to a court order. See Section X.D below.

X. PRE-EMPLOYMENT REFERENCES:

- A. The Town must obtain and review the following information from each employer that the prospective driver worked for, in a safety-sensitive position, during the previous two years: information about a test in which the employee's blood alcohol was 0.04 or greater; information about a positive drug test; and information about any refusal to participate in the alcohol and drug testing program.
- B. The prospective employee must provide the former employer with a written release allowing the release of this information or he/she will not be hired.
- C. If the previous employer indicates that a positive result was received, or that the employee refused to participate when selected for an alcohol or drug test, the applicant may not be appointed unless he/she has already consulted with a substance abuse professional, already received recommended treatment, and subsequently tested negative in a return to duty test for the former employer.
- D. The Town of Concord must provide the same information to subsequent employers of current Town employees when provided with a written release.

XI. EFFECT OF ALCOHOL AND SUBSTANCE ABUSE:

A. Signs and Symptoms

The following signs are indicators of alcohol or other substance abuse problems; however, any or all of these signs can be attributed to other problems or conditions. This list should help trained supervisors in determining reasonable suspicion or in alerting other employees to a co-worker's need of assistance. The proper diagnosis of substance abuse can only be made by a medical doctor or other certified health care professional.

1. Job Performance

- excessive absence or tardiness, frequent illness
- repeated errors, below average work performance
- complaints from co-workers
- easily distracted, difficulty following directions, poor attention to detail
- frequent trips away from work area
- visited regularly by other employees or visitors
- excessive secretive telephone calls
- long rest room breaks
- changes in usual work habits, drop in efficiency
- accident prone
- poor physical appearance

- wearing sunglasses at inappropriate times
- dramatic mood swings
- excessive conflict in work relationships

2. Physiological

- bloodshot eyes, excessive perspiration
- habitual talking, hyperactivity, slurred speech
- tendency toward violence
- problems with coordination
- chronic nasal problems, excessive weight loss

3. Drug Paraphernalia

- hand-rolled cigarettes, cigarette paper
- roach clips, plastic baggies, glassine envelopes
- bent spoons, razor spoons, short straws

B. Other Effects of Alcohol and Controlled Substances

Alcohol or controlled substance misuse is a serious problem with potential devastating effects. Substance abuse may be detrimental to an individual's health, personal or social life and work. Often substance abuse leads to further problems such as financial difficulty and the involvement in illegal activities. Substance abusers endanger not only themselves, but often their co-workers, friends, family, the public, and Town operations. Below are some of the behaviors and problems associated with alcohol and drug use, abuse and withdrawal.

1. Alcohol

If abused, alcohol may cause increased blood pressure, heart rate and temperature. It may lead to marked sleep disorders. Over time, it may cause organ disease, most predominantly liver disease, including liver cancer. Alcohol abusers may experience blackouts, disorientation, hallucinations, and poor judgment. Physical addiction to alcohol is likely and people who misuse alcohol often suffer from a lack of social control and alienation of their co-workers, friends and family. Slurred speech, poor muscle coordination, staggering and sleepiness are potential effects that can be extremely dangerous for employees performing safety-sensitive functions.

2. Cocaine

Cocaine may cause a marked decrease in productivity. The user may be easily distracted, jittery, aggressive, tired, demanding and subject to mood swings. Cocaine may cause paranoia, severe weight loss, financial problems, seizures, anxiety, suicidal depression cardiac disturbances, brain damage, dysphoria or an irregular heartbeat. The user may also suffer from the associated dangers of IV use or overdosing.

3. Marijuana

Marijuana causes slowed movements and reaction time, dilated pupils, slowed speech, poor judgment, frequent day dreaming, and poor problem-solving ability. The smoke may cause damage to pulmonary systems. Memory deficits, sweats, lung cancer and sleep disturbance may result. Females may also experience decreased fertility. The drug may be mixed with other drugs or harmful ingredients.

4. Opiates

The opiate user is often lethargic, day dreaming, not moving, or nodding out. Frequently, the user has a vacant stare or a silly grin. The user risks the associated dangers of IV use,

overdose, financial problems, weight loss and depression. Opiates may cause a persistent runny nose, teary eyes, dilated and reactive pupils, gastrointestinal disturbance, low back pain, leg cramps, flu symptoms and physical addiction.

5. Amphetamines

Users are often self-assured, cocky, jittery, easily distracted, unproductive, aggressive, demanding, talkative, irritable, and subject to mood swings, sleepiness and anxiety. Amphetamines may cause paranoia, severe weight loss, financial problems, psychosis, cardiac disturbance, seizures, suicidal depression, brain damage, liver and kidney damage, exaggerated sleeping and eating, a very slow pulse and mental confusion. Amphetamine users also risk overdosing and the dangers associated with IV use.

6. PCP

PCP use may cause an extreme fluctuation of mood and behavior from loving to hostile, a dazed and vacant appearance, responses to hallucinations that can appear crazed and slurred speech. The user may be uncoordinated or agitated and suffer from flashbacks or loss of control of thought processes, which significantly impairs judgment. Responses to hallucinations may lead to suicide or homicide. There is a possible risk of chromosome damage and heavy users may experience recurring thought disorders or brain damage.

XII. FINDING HELP:

A. Responsibilities in Identifying the Problem

1. Supervisors

As alcohol and substance abuse is a serious and potentially life-threatening problem, it is the responsibility of the supervisor to request that a drug and/or alcohol test be administered if reasonable suspicion exists. By ignoring signs of a problem, the supervisor is putting the lives of the public, of the co-workers of the employee and of the employee him/herself in danger.

2. Co-Workers

Any other employee with a concern regarding possible evidence of alcohol or drug abuse by a co-worker should see a trained supervisor immediately. Such matters should be conducted privately and with extreme attention and respect paid to the confidentiality of the employee in question.

3. Self-Identification

As the main purpose of this policy and the drug and alcohol testing is to deter drivers from performing safety-sensitive functions while unfit to do so, the Town will allow a driver to decline from performing or continuing to perform the function if the driver knows he/she may be impaired by alcohol or controlled substances, without disciplinary punishment. Any driver who does so will be unable to work again for the remainder of that workday and will lose the pay for the remainder of that workday.

A driver will be referred to a SAP and disciplinary action may be taken if a driver removes him/herself from his/her duties more than once during their employment with the Town. A driver who voluntarily dismisses him/herself from duty after being notified of selection for drug or alcohol testing will be subject to the requirements and disciplinary action accorded to those drivers whose tests indicate alcohol or controlled substance use.

B. Employee Assistance Program

Employees needing help dealing with alcohol or other substance abuse problems are encouraged to use the Town's Employee Assistance Program, support services provided under their medical plan, or any other support services available.

The Town will pay for up to three (3) visits to a SAP or other counselor at Concord Family Service due to alcohol and/or drug abuse.

All information regarding participating in the Employee Assistance Program is strictly confidential. The program is available to employees, as well as their spouses, dependents up to age 19, or 23 if enrolled in school, and retirees. The Employee Assistance Program is also available to individuals seeking counseling for other personal and family problems.

Also see Section VII on Treatment.

XIII. EMPLOYEE RIGHTS AND RESPONSIBILITIES:

A. Employee Rights

An employee with a test result showing a breath alcohol concentration of 0.02 or greater or a positive test result for controlled substances must be notified by the Medical Review Officer (MRO) immediately. The MRO is not responsible for discussing the results with employees who decline the opportunity to speak with the MRO or who are contacted but do not respond within five (5) days of the initial contact.

An employee whose urine sample has tested positive for a controlled substance has the option, within 72 hours of being notified of the test result, of having the second portion of the split sample tested at another approved laboratory. If the test results for the second sample are negative, or if the second portion is not available for testing, the official test results will be negative, the employee will be subject to no disciplinary action, and the Town will pay for the second test. If the results of the second test are positive, the employee will be subject to disciplinary action as explained in the previous sections, and the employee will be required to pay for the second test.

Employees may receive copies of the official testing forms.

Employees will be paid for on-duty time while traveling to and from a testing site and while the test is being administered for any random testing, post-accident testing, follow-up testing or reasonable testing required in accordance with this policy.

B. Employee Responsibilities

Under the Federal Drug-Free Work Place Act, within five (5) days of a conviction, an employee is required to notify his/her department head of any criminal drug violations that he/she committed in the workplace.

Employees must make sure the Personnel Department has the employee's current home address and telephone number on file.

It is the employee's responsibility to notify his/her supervisor immediately in the event of ANY accident in which he/she was driving a Town-owned commercial motor vehicle, or during which the employee was conducting Town business.

Employees are required to sign a statement certifying that they have received a copy of this policy.

Any employee with a question regarding alcohol and drug testing regulations, the Town's policy, or employees' responsibilities should contact the Personnel Administrator as soon as possible.

All employees are also required to read and comply with the Drug-Free Workplace Policy (PPP #35).

XIV. QUESTIONS:

Questions about this policy should be referred to the employee's Supervisor, Department Head, and/or the Personnel Administrator.

Approved by:

Personnel Board Chair: Jamel A. Sattanzell, Chair, Personnel Board

Town Manager: Christopher Welch, Town Mgr

TOWN OF CONCORD
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ATTACHMENT A

DRUG AND ALCOHOL TESTING
Employee Confirmation of Receipt

I hereby certify that I was given a copy of the Town of Concord Drug and Alcohol Testing Policy, and have been given an opportunity to ask questions of my supervisor about the content of the policy.

Employee's Name

Department

Employee's Signature

Date