



# DRUG-FREE WORKPLACE POLICY

PM-78-03

## Section: 78-00, EMPLOYEE CONDUCT

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### PURPOSE AND SCOPE

This policy is issued in support of the City of Memphis Government's commitment and responsibility to provide a drug-free workplace for City employees and a safe and an efficient workforce to serve the citizens of Memphis and in compliance with Public Law 100-690, "The Drug-Free Workplace Act of 1988", and "The Omnibus Transportation Employee Testing Act of 1991", (herein referred to as Department of Transportation DOT).

### **COVERED WORKERS**

Any individual who conducts business for the City, is applying for a position or is conducting business on the City's property is covered by our drug-free workplace policy. Specifically, this policy includes all full-time employees, part-time employees, off-site employees, contractors, volunteers, interns and applicants.

### **APPLICABILITY**

Our drug free workplace policy applies whenever anyone is representing or conducting business for the City. Therefore, this policy applies during all working hours, whenever conducting business or representing the City, while on call, paid standby, while on City property and at City-sponsored events.

#### I. SEARCHES

Employees entering the City's property consent to searches and inspections. If an individual is suspected of violating the drug-free workplace policy, he or she may be asked to submit to a search or inspection at any time. Searches can be conducted of pockets and clothing, lockers, wallets, purses, briefcases and lunchboxes, desks, and work stations and vehicles and equipment.

#### II. DRUG TESTING

All City of Memphis drug and alcohol test collections (DOT and NONDOT) must be performed in accordance with the Department of Transportation's Rules and Regulations 49 CFR part 40; 49 CFR part 382.



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To ensure the accuracy and fairness of our testing program, all testing will be conducted according to Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines where applicable and will include a screening test; a drug/alcohol confirmation test; the opportunity for a split sample; review by a Medical Review Officer, including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody.

All drug-testing information will be maintained in separate confidential records.

Upon determination that an employee should be screened, the employee shall be relieved of duty with pay and ordered to submit to drug/alcohol testing immediately. The Drug Testing Coordinator will arrange the testing in compliance with DOT Regulations, the Drug-Free Workplace Act, Division Policy, and/or the provisions of this policy.

### A. Collection Procedures and Work Status

1. If an employee is chosen for random or periodic follow-up testing, he/she shall remain on duty following the collection process.
2. If an employee is to be tested following an accident which involves and injury, the injured employee shall first be taken to a medical facility for immediate treatment of the injury. Specimens shall be collected at the treating facility or a designated collection site following treatment for the injury. The employee shall return to work upon the release of the treating professional.
3. If an employee is to be tested following a motor vehicle accident involving a City of Memphis vehicle and is not injured, the driver shall be tested immediately following the accident. He/she must remain on duty pending receipt of the test results, but will not be permitted to drive a City vehicle until negative test results are received. If the employee is injured, the employee should first be treated for the injury as outlined above.
4. If the employee is tested for reasonable suspicion, he/she shall remain off duty with pay until the test results are received. If the results are negative, the employee shall be returned to duty.
5. If any drug and/or alcohol test has a positive result or, if it is shown that the employee tampered with the sample, the employee shall be



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relieved of duty subject to disciplinary action up to and including termination.

6. Refusal to submit to substance abuse testing shall constitute gross insubordination which will subject the employee to forfeiture of On-the-Job injury benefits and to discipline up to and including termination. In the case of a pre-employment drug test, an applicant to whom a conditional offer of employment is extended is deemed to have declined the offer of employment upon refusal to submit to a drug test.

### III. Types of Testing:

Each employee, as a condition of employment, will be required to participate in pre-employment, pre-assignment, random, post-accident, reasonable suspicion, return-to-duty and follow-up testing upon selection or request of management:

Upon Reasonable Suspicion that an employee is either in possession of, using, or under the influence of drugs/alcohol. Documentation shall be detailed in writing concerning the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing and a copy of this documentation shall be given to the employee upon request. Observations which constitute reasonable suspicion should be "objective and articulable"; i.e., facts which can be stated clearly and specifically. Such observations may include, but are not limited to the following:

1. Odor of alcoholic beverages;
2. Erratic behavior or deterioration of personal hygiene;
3. A pattern of excessive absenteeism, abuse of sick leave, on-the-job injuries, or tardiness;
4. An arrest for drug-related or alcohol-related offenses;
5. Argumentative or aggressive behavior toward management and/or co-workers;
6. Drastic reduction in quality and/or quantity of work performed;
7. Unusual physical appearance indicative of disorientation or observed behavior indicating impaired motor skills; and
8. Possession of alcohol or drugs, drug paraphernalia, or alcohol beverage containers at work area or in vehicle.



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Non-suspicion, post-accident testing (not limited to motor vehicle accidents), which meets one of the following criteria:

1. Any type of workplace accident which is not explained or which is not reported at the time of its occurrence;
2. Any type of accident involving a fatality
3. Any bodily injury with immediate medical treatment away from the scene
4. Any damage to any motor vehicle requiring tow away
5. Any motor vehicle accident in which the driver of the vehicle has property damage and/or bodily injury;
6. An accident or injury which may have been caused by the apparent action or inaction of the employee. A citation issued to the driver within thirty-two hours of the occurrence of any incident shall be sufficient grounds for non-suspicion, post-accident testing.

#### IV. Drug Testing Guidelines:

All applicants and employees will be tested for Amphetamines, Marijuana (THC), Cocaine, Opioids/Opiates, Phencyclidine (PCP), Heroin MDMA and Alcohol.

Testing for Amphetamines, Marijuana (THC), Cocaine, Opioids/Opiates, Phencyclidine (PCP), Heroin and MDMA will be administered to all employees in all instances.

Alcohol testing will be administered as follows: Non-DOT Employees will be tested for the presence of alcohol in instances where there is a reasonable belief that said employee is under the influence of alcohol at work. DOT-Employees are subject to random, follow-up, post-accident, and reasonable suspicion alcohol testing in accordance with 49 C.F.R. §382.505.

Testing for the presence of alcohol may be conducted through an analysis of breath by a Blood Alcohol Technician (BAT). An employee with an alcohol level reading between 0.020-0.039 must be temporarily removed from duty for the remainder of his/her shift. The employee is prevented from performing any safety-sensitive function for at least 24 hours following the administration of any test. Any confirmation alcohol reading at or above 0.04 alcohol level, shall constitute a positive alcohol result and the employee will be removed from the workplace immediately. The employee will be subject



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to disciplinary action up to and including termination and possible forfeiture of OJI benefits. The employee cannot perform any workplace functions until they have been evaluated by a Substance Abuse Professional (SAP) and has passed a return-to-duty drug/alcohol test.

Testing for the presence of the metabolites of drugs may be conducted by an analysis of urine, hair.

Any results received as a positive dilute will be treated as a verified positive drug test. The employee or applicant will be subject to a retest if any results are received as a negative dilute.

An employee will be subject to the same consequences of a positive test if she/he:

- Is unable to provide sufficient quantities of breath, or urine to be tested without a valid medical explanation
- Tampers or attempts to adulterate the specimen
- Interferes with the collection procedure
- Fails to report to the collection site within a reasonable time after being directed by management
- Fails to remain at the collection site until the collection process is complete
- Has a test result reported by an MRO as adulterated or substituted
- Leaves the scene of an accident without a valid reason before the test has been conducted
- Substitutes the specimen with that from another person or sends an imposter
- Will not sign the required documents or refuses to cooperate in the testing process in such a way that prevents completion of the test.
- Does not permit the observation or monitoring of the drug test in the case of a direct observation test
- Fails or declines to take a second test the employer or collector has directed the employee to take

As an employee, you reserve the right to request your split specimen be tested. The Medical Review Officer will conduct an interview with the employee regarding a positive, invalid, adulterated, or substituted drug results. The MRO will notify the employee that he or she has 72 hours from the time of the notification request a test of the split specimen. If you have not requested a test of the split specimen within 72 hours, you must provide information documenting the circumstances that prevented you from



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making a timely request to the MRO. In the absence of such a request, the positive drug test result shall be considered uncontested.

As the employer, the City of Memphis is responsible for making sure that the request for the split specimen test is conducted in a timely manner. The City of Memphis reserves the right to seek payment or reimbursement of all or part of the cost of the split specimen test from the employee.

### V. CONSEQUENCES

One of the goals of our drug-free workplace program is to encourage employees to voluntarily seek help with alcohol and/or drug problems. If, however, an individual violates the policy, the consequences are serious.

If an applicant does not successfully pass a Pre-Employment drug test, the offer of employment will be withdrawn. The applicant may reapply after one (1) year and must successfully pass a pre-employment drug test. .

Eligible employees shall be referred to the Employee Assistance Program for counseling and rehabilitative services, but such referral will not substitute for the established disciplinary process.

Any NONDOT–Employee who tests positive for drug(s)/alcohol will be immediately removed from duty and shall be subject to disciplinary action up to and including termination. A manager must refer the employee to a Substance Abuse Professional (SAP) for assessment and recommendations. The employee is required to successfully complete recommended rehabilitation including continuous care. After passing a Return-to-Duty drug and alcohol test, the employee must sign a Return-to-Work Agreement subject to ongoing, unannounced, follow-up testing for a period of four (4) years. The employee will be terminated immediately if she/he tests positive a second time or violates the Return-to-Work Agreement.

Any DOT–Employee who tests positive for drug(s)/alcohol will be immediately removed from duty, and shall be subject to disciplinary action up to and including termination. A manager must refer the employee to a Substance Abuse Professional (SAP) for assessment and recommendations. The employee is required to successfully complete recommended rehabilitation including continuing care. After passing a



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Return-to-Duty drug and alcohol test, the employee must sign a Return-to-Work Agreement subject to ongoing, unannounced, follow-up testing for a period of one (1) to five (5) years, pursuant to SAP recommendation(s) or current Federal Guidelines. The employee will be terminated immediately if she/he tests positive a second time or violates the Return-to-Work Agreement.

An employee who is required to enter rehabilitation and who fails to successfully complete it and/or repeatedly violates the policy will be terminated from employment. Nothing in this policy prohibits the employee from being disciplined or discharged for other violations and /or performance problems.

An employee who is injured on duty and tests positive for controlled substance(s)/alcohol, or is otherwise found to be under the influence of controlled substance(s)/alcohol (except for the proper use of prescribed drugs) forfeits On-The-Job Injury (OJI) benefits in cases where the use of the substance was the cause of the injury.

### VI. RETURN TO WORK AGREEMENT

Following a violation of the drug-free workplace policy, an eligible employee may be offered an opportunity to participate in rehabilitation. In such cases, the employee must sign and abide by the terms set forth in a Return-to-Work Agreement as a condition of continued employment.

### VII. ASSISTANCE

The City recognizes that alcohol and drug abuse and addiction are treatable illnesses. The City also acknowledges that early intervention and support improve the success of rehabilitation. To support our employees, our drug-free workplace policy:

- Encourages employees to seek help if they are concerned that they or their family members may misuse drugs and/or alcohol.
- Encourages employees to utilize the services of qualified professionals in the community to assess the seriousness of the suspected misuse of drugs or alcohol and to identify appropriate resources for assistance.



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- Ensures the availability of a current list of qualified community professionals.
- Offers assistance to all employees and their family members who are experience circumstances involving the misuse of alcohol and/or drugs through the Employee Assistance Program (EAP).
- Allows the use of accrued paid leave while seeking treatment for alcohol and drug problems.

### VIII. CONFIDENTIALITY

All information received by the City through the drug-free workplace program is confidential. Access to this information is limited to parameters set by applicable Tennessee and federal laws. .

### IX. SHARED RESPONSIBILITY

A safe and productive drug-free workplace is achieved through cooperation and shared responsibility. Both employees and management have important roles to play.

All employees are required to not report to work or be subject to duty while their ability to perform job duties is impaired due to on or off duty use of alcohol or other drugs.

In addition, employees are encouraged to:

- Be concerned about working in a safe environment.
- Support fellow workers in seeking help.
- Use the Employee Assistance Program (EAP).
- Report dangerous behavior to their supervisor.
- Abide by the terms of this policy.
- Notify your supervisor of any criminal drug statute conviction.

Additional Responsibility of Employees in Positions Directly Affecting Public Safety:





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Employees in positions directly affecting public safety, to include active-duty police officers who interact with the public, active-duty firefighters tasked with suppression, paramedics and other emergency personnel whose positions directly affect public safety are required to notify the appropriate supervisor of the use of any prescription or non-prescription drug that may affect the employee's ability to safely perform essential job functions.

It is management's responsibility to:

- Inform employees of the drug-free workplace policy.
- Observe employee performance.
- Investigate reports of dangerous practices.
- Document negative changes and problems in performance.
- Counsel employees as to expected performance improvement.
- Refer employees to the Employee Assistance Program (EAP).
- Clearly state consequences of policy violations.
- If applicable, notify the Director of the Human Resources Division or designee of any employee criminal drug statute conviction.

## X. COMMUNICATION

Communicating our drug-free workplace policy to both management and employees is critical to our success. To ensure all employees are aware of their role in supporting our drug-free workplace program:

- The policy will be reviewed in orientation sessions with new employees.
- The policy and assistance programs will be reviewed at safety meetings.
- Posters and/or brochures will be available at all locations.
- Every supervisor will receive training to help him/her recognize and manage employees with alcohol and other drug problems.

### A. DRUG and ALCOHOL POLICY COMPLIANCE COORDINATOR

1. Schedule, monitor, and report drug/alcohol testing in compliance with Public Law 100-690, DOT drug use and alcohol misuse prevention rules, and the City's Drug-Free Workplace Policy.



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### B. DIVISION EMPLOYEE ASSISTANCE PROGRAM COORDINATOR/OJI COORDINATOR

1. Assist employees and management with referral and administration processes.
2. Serve as Division liaison with other components of the referral and/or testing processes.

### C. EMPLOYEE ASSISTANCE PROGRAM COUNSELOR

1. Provide appropriate assessment, counseling, and referral services to employees who seek assistance for substance abuse problems.
2. Provide consultation to management concerning intervention and procedures for referring and follow-up on employees with possible substance abuse problems.
3. Maintain appropriate communication with the Division EAP Coordinator, Drug and Alcohol Policy Compliance Coordinator, and other appropriate management personnel for referrals for substance abuse.
4. Immediately notify the Drug and Alcohol Policy Compliance Coordinator and/or the Division EAP Coordinator of known violations of the Substance Abuse Policy or other legal mandates and /or noncompliance with the EAP treatment plan for those problems.

### REFERENCE CORRESPONDING POLICIES

- PM-14-01 EMPLOYMENT POLICY AND PROCEDURES
- PM-14-15 MEDICAL EXAMINATIONS
- PM-38-02 GROUNDS FOR DISCIPLINARY ACTION
- PM-42-07 EMPLOYEE ASSISTANCE PROGRAM
- PM-46-08 ON-THE-JOB INJURY/ACCRUED LEAVE BENEFITS
- PM-74-02 ON-THE-JOB INJURY POLICY AND ADMINISTRATIVE PROCEDURES
- PM-78-01 EMPLOYEE CONDUCT



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### Definitions

Adulterated specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

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

Alcohol confirmation test. A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

Breathe Alcohol Technician (BAT). A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

Cancelled test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Chain of custody. The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

Designated Employer Representative (DER). An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part.

DOT/Covered employee: A person who *operates (i.e., drives)* a Commercial Motor Vehicle (CMV) with a gross vehicle weight rating (gvwr) of 26,001 or more pounds; or is designed to transport 16 or more occupants (to include the driver); or is of any size and is used in the transport of hazardous materials that require the vehicle to be placarded.

Drugs. The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.



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Drug Confirmation Test. A follow-up test received by an MRO from an approved laboratory, used to identify the presence of certain drugs in a specimen. .

Eligible Employees. Full-time employee who has been employed with City of Memphis for at least six (6) months; in addition, an eligible employee during his/her tenure has at no time received a positive, refusal; adulterated; and or substituted drug and/or alcohol screen. Nor at no time participated in the Return to Duty/2<sup>nd</sup> Chance Program.

Follow-Up. Employees are subject to unannounced follow-up testing following their return to active non-safety-sensitive and safety-sensitive service. All follow-up tests will be under direct observation.

Invalid drug test. The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Medical Review Officer (MRO). A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Negative Dilute specimen. A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Negative result. The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Pre-Assignment. When current employees transfer from a non-safety-sensitive function into a safety-sensitive position, they are required to submit to a drug test.

Pre-Employment. As a new hire, applicants are required to submit to a drug test.

Positive result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.



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Random. Depending on industry specific regulations, employees may be subject to unannounced drug & alcohol testing.

Rejected for testing. The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

Return-to-Duty. If an employee has violated the prohibited drug & alcohol policy and is an eligible employee, they are required to take a drug and/or alcohol test before returning to their non-safety-sensitive or safety-sensitive function. Return-to-duty tests must be under direct observation.

Safety-Sensitive. A Safety-Sensitive position means a position in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life threatening procedures, work with confidential information or documents pertaining to criminal investigations or work with controlled substances; or a position in which a momentary lapse in attention could result in injury or death to another person.

Specimen. Tissue, fluid or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites.

Split specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

Substance Abuse Professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Substituted specimen. A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Verified test. A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.