

## 7.16 USE OF ALCOHOL AND OTHER DRUGS BY EMPLOYEES

### Policy Objective

The District recognizes the importance of protecting the health, safety and well-being of all its employees and shall to the best of its ability do all it can to provide a safe workplace free of risks created by alcohol and drug abuse.

The District shall comply with applicable Federal Regulations governing workplace drug and alcohol abuse and misuse for Commercial Driver's License holders.

### Applicability

This policy applies to all District employees and to any future employees that the District hires. Also covered are employees performing DOT functions on a casual, intermittent, or occasional basis.

### Regulated Substances:

Controlled Substances including but not limited to:

Marijuana	Phencyclidine	Methamphetamine
Opiates	Oxycodone	Amphetamine
Cocaine	Methadone	Buprenorphine
Amphetamine	Morphine	Benzodiazepine
Fentanyl	Alcohol (Ethyl Glucuronide)	Methylenedioxy-Methamphetamine

### Alcohol:

No employee shall, nor shall any supervisor having knowledge of, permit an employee to:

- Report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
- Consume alcohol while on duty
- Report for duty within four hours of alcohol consumption
- Possess alcohol while on duty or operating a commercial motor vehicle or a District owned motor vehicle.
- Consume alcohol within eight hours of an accident (if required to be tested) or until testing is completed.

### Controlled Substances:

All employees must report any therapeutic drug use to his/her supervisor immediately.

No employee shall, nor shall any supervisor having knowledge of permit an employee to:

- Report for duty or remain on duty when using any controlled substance.  
\*Exception: If the use is pursuant to instructions of a physician who has provided written documentation that the substance does not

adversely affect the ability to safely operate a motor vehicle.

- Report for duty or remain on duty or perform a safety sensitive function after having tested positive for controlled substances.

### Hemp

Recently a number of products have appeared on the market, which are advertised as hemp products. The hemp contained in these products is *Cannabis Sativa*, or Marijuana. Consuming hemp food products is not a legitimate medical explanation for a prohibited substance or metabolite in an individual's specimen. The District will not accept an assertion of consumption of a hemp food product as a basis for verifying a marijuana test result.

### Adulteration

Adulteration is the tampering of a urine specimen in an attempt to mask any drug that may be otherwise detected. The incidence of adulteration in drug-free workplace programs is continuing to rise. The District will now have all specimens tested for adulteration.

If an employee's specimen is found to have been adulterated it will automatically be considered a positive test.

Adulteration and substitution are considered premeditated actions to deceive the employer, therefore are treated as a more severe violation of this policy than a positive test result. The consequence for adulteration or substitution will be termination.

### Dilute Specimens

Under the authority of the District, employees are required to provide a normal urine specimen for testing. If the drug screen test result is reported as dilute the employee must be tested again immediately. The employee will be required to re-test at their expense until a normal sample is given.

### Prescription Medication and Over the Counter Medication

- It is the responsibility of each employee to notify their supervisor when they are taking ANY prescription-or-over the counter medication that may create impairment.
- Employee MUST have a valid and current doctor's prescription and MUST be under the prescribing doctor's care if taking any type of prescription medicine that can create impairment.
- If an employee tests positive and cannot produce a prescription, the MRO will report a positive result to the employer. Consequences for a positive test apply.
- If an employee tests positive and a prescription exists, the MRO will report the result as negative, but will also report any safety concerns which will require further evaluation.

## **Required Testing Circumstances:**

### **Pre-employment, Temporary, Substitutes, and Volunteers:**

- All applicants for any position will be subject to a controlled substance and alcohol test.
- **Any applicants convicted of felony Driving Under the Influence (DUI) or drug felony charges will be ineligible for employment.**
- Once the test is completed and passed, they may be considered for employment.
- New employees will not be allowed to receive a contract until a negative controlled substance and alcohol test is verified.
- All employees performing DOT functions employed by the District to operate commercial motor vehicles or perform safety sensitive functions must have a verified negative controlled substance and alcohol test result prior to driving and/or performing a safety sensitive function.

### **Positive (Failed) Test Results:**

If the applicant fails a controlled substance or alcohol test they will not be considered for employment until;

- they obtain an evaluation of a substance abuse professional (SAP) and abide by their recommendations.
  - The proof of this documentation must be submitted to the human resource department and
  - They will be required to take a second pre-employment follow up test at the applicant's expense.
  - If the second pre-employment test is positive the applicant is ineligible for employment and may re-apply after four months.
  - If the controlled substance and alcohol test is negative, they will be considered for employment at that time.
  - Upon hire the individual will be subject to a minimum of 6 follow up tests per the Return to Duty Policy.
- If any of the follow up tests are positive, a recommendation for immediate termination of the employee will be made and the employee will not be eligible to reapply for employment for 4-month waiting period
  - Post-Accident testing:
    - District employees must report all accidents to his/her supervisor or designee immediately following the accident.
    - They shall provide copies of all requested documentation regarding the accident and any subsequent medical or legal records related to the

accident.

- All District employees operating under a CDL must be tested for alcohol and controlled substances, in accordance with Federal Regulations, as soon as possible following an accident involving –
  - the loss of life,
  - or if a citation for a moving violation was issued and one of the vehicles involved in the accident had to be towed,
  - or one of the people involved in the accident had to receive medical attention immediately away from the scene of the accident.
- The District will also require testing following any accident occurring on company time or
- on company property involving an injury that is reportable by the law to workmen's compensation,
- requires medical attention or
- results in property damage in the amount of \$500 or greater.
- The involved employee(s) must be transported by a supervisor or designee to the testing facility and will be tested for alcohol and controlled substances as soon as possible following the accident.
- Tests for alcohol should be performed within 2 hours and at least by 8 hours.
- A controlled substance test must be completed within 32 hours.
  - Due to these time frames the employee is not to consume any alcohol for 8 hours after an accident,
  - nor are they allowed to ingest any controlled substance for 32 hours,
  - with the expectation of those administered by a health care professional.

#### Random Testing

All District employees will be enrolled in the drug test program for random testing. This selection is done by a scientifically valid computer method. Once notified of selection, the employee will proceed immediately to the collection site for testing. Testing will be unannounced and spread throughout the year. Each employee has an equal chance of being selected for testing each time a selection is done.

All District employees operating under a CDL will be subject to random testing in accordance with Federal Regulations. An annual rate of 10% of those enrolled in the consortium will be tested for alcohol and 50% of those enrolled in the consortium will be tested for controlled substances.

Bus Drivers to include CDL and non-CDL will be held to a Zero-Tolerance expectation. A positive test will be recommended for termination by the Superintendent.

#### Positive Random Testing Results:

If an employee fails a random drug test the employee is subject to continued random drug test a minimum of every six months. ~~The test will be a hair follicle test. If an employee appeals a positive drug test, the employee must get~~

~~a hair follicle test within ten days.~~

If any of the random test results are positive, the positive employee agrees to obtain the service of a substance abuse professional (SAP) within ten (10) working days and abide by his or her recommendations at the employee's expense, to rehabilitate before resuming employment.

- When an employee tests positive during a random screening, the school district will notify Public Safety. In the event the employee is not a Tribal member, the Oglala Lakota County Sheriff will be called.
- The employee will not be allowed to return to duty until a return to duty compliance is issued by a (SAP) Substance Abuse Professional and a copy provided to Human Resources.
- The employee shall be placed on leave status for the period of 10 working days for the evaluation and rehabilitation process. Such leave may be paid leave, if the employee has leave, but will only be granted for the first verified positive result. **If the employee does not have leave, the employee will be in Leave Without Pay (LWOP).**
- An employee shall not delay participating in an assessment. Such assessments shall take place no later than 10 working days after receiving notice of positive. If an employee does not participate in an assessment within the time-line, such leave will be leave without pay.
- An employee shall not return to work unless he/she has fully complied with the SAP's recommendations. **An employee who requests additional time beyond the ten days will be placed on Leave Without Pay (LWOP) status. An employee who has been on leave greater than 30 days from the original test, will be recommended for termination.**
- Once advised by the SAP to return to work the employee must take a return to duty test.
- If the test is negative, employee may, upon approval from Human Resource Director return to his/her previous position.
- If an employee resigns without an SAP evaluation compliance, they are subject to SAP evaluation compliance and rehabilitation completion before re-applying to the District.
- **If an employee tests positive on two different random drug tests during the course of the year, it will be considered habitual, and the employee will be recommended for termination by the Superintendent.**
- If an employee refuses, fails to complete an assessment or fails to abide by the recommendations of an evaluation, it will be considered insubordination and the employee shall be recommended to the Board for termination of employment, and the employee shall not be eligible to be re-employed for a period of 12 months.
- **Any employee convicted of felony Driving Under the Influence (DUI) or drug felony charges during the contract year will be recommended for termination by the Superintendent.**

#### Refusal to Submit:

This refusal constitutes a positive test result. The employee is determined to have refused to submit to testing if:

- He/she refused to take the test.
- There is an inability to produce urine after 44 ounces of fluid are ingested and 3 hours have passed or cannot give enough breath sample with an absence of a valid medical explanation.
- He/she provides false information
- He/she fails to report within the required time period for testing.
- He/she tampers with the specimen in an attempt to mask any drugs that may be present.

#### Consequences:

Before an employee is allowed to return to their duties;

- The employee must undergo return to duty testing with a verified negative result
- and, if identified by the Substance Abuse Professional (SAP) as needing assistance in resolving misuse, must have been evaluated by the SAP for compliance with rehabilitation.
- The employee will then be subject to unannounced follow up testing
- Follow-up testing will be performed at a minimum of 6 tests in the first 12 months after completing treatment.
- Follow up testing may continue for up to 5 years.
- If employee tests positive during follow up testing or at any point thereafter, the Superintendent shall make an immediate recommendation for termination of employment, and shall not be eligible to be re-employed until the expiration of a 12-month waiting period.

#### Absent on the Random:

- If an employee is scheduled to work and are absent on the test date, he or she will be tested on another day.
- Employees are not to be notified until the morning of the test.

#### Reasonable Suspicion

All employees are required to submit for alcohol or controlled substance testing whenever there is reasonable suspicion that a prohibition of this policy has been violated. The supervisor will be authorized to determine, based on observations or behaviors, that alcohol or controlled substance testing be conducted. Such testing should occur as soon as possible. Up to 8 hours will be allowed to complete alcohol test. Controlled substance testing must take place as soon as possible and must be completed within 32 hours. A failed test may result in disciplinary action, including and up to termination

#### Return to Duty Testing:

If any of the return to duty tests are positive,

- the Superintendent shall make an immediate recommendation for termination of employment,
- and employee shall not be eligible to be re-employed until the expiration of a 12-month waiting period.
- If it is determined that an employee is in need of assistance in resolving misuse, the employee understands that they are subjected to unannounced follow-up testing as directed through a cooperative effort between the SAP and program supervisor.
- A minimum of 6 follow up tests must take place during the 12 consecutive months after treatment was completed.

#### Testing Procedures:

Testing shall be conducted in a manner to ensure adherence to standards of confidentiality, privacy, accuracy, and reliability as approved by the Department of Transportation and the Department of Health and Human Services.

All controlled substance testing for employees performing DOT functions, will be performed by a NIDA certified laboratory.

All controlled substance testing for Non-DOT employees will take place at their site.

#### Controlled Substance Testing:

- Urine will be the required substance and will be collected under controlled circumstances.
- For Employees performing DOT functions only, urine shall be divided into split specimens (2 containers) and each shall be labeled thoroughly to preserve identity.
- Specimens are transported to the testing lab.
- Specimens undergo testing by an initial screening procedure, which is followed by GC-MS confirmation testing if necessary.
- The urine is positive for a substance if the substance is present in an amount greater than the minimum threshold.
- A Medical Review Officer will contact the employee if there is a positive result, to verify the result.
- The Medical Review officer reports the result to the program supervisor.

#### Alcohol:

- A breath specimen is required to test for alcohol.
- A certified breath alcohol technician will conduct breath testing.
- Tester uses an approved Evidential Breath testing device.
- The initial test must give results of less than 0.02 or a retest (confirmation) test must be done following a 15-minute wait.

- If the confirmation reveals a concentration of greater than 0.02, the individual is in violation of this policy.
- Post-accident breath or blood testing may be conducted by Federal, State, or Local officials having independent authority.
- The Employee shall provide a copy of the results to the District.

#### Controlled Substances:

The employee is responsible to pay for all return to duty testing; all follow up testing and rehabilitation costs.

#### Breath Alcohol Testing:

- The employee is responsible to pay for all return duty testing;
- all follow up testing and rehabilitation costs.
- In the case of breath alcohol testing if the employee has an alcohol level of .02  
- .039 the employee will be removed from duty for a period of 24 hours.
- If the breath test result is greater than .039 the same consequence stated above for a positive drug result will apply.

#### Records:

- All records for employees performing DOT functions must be made available at the place of business within 2 days of a request by the FHA.
- Not all records must be kept on site· some may be the responsibility of the consortium or testing site.

#### Retention period:

The following records must be retained for 5 years:

- Verified positive results
- Alcohol results over 0.02
- Documentation of refusals
- Employee referrals to the SAP
- Annual management system information reports

The following results must be retained for 2 years:

- Records of negative drug and alcohol results less 0.02

The following results must be retained for 1 year:

- Records of negative drug and alcohol results less than 0.02

#### Types of Records:

##### Collections Processes:

- Log books (if used)
- Random selection documents
- Calibration documents (EBT)
- BAT training documents
- Reasonable suspicion documents



- Post-accident decision documents
- Documents verifying medical inability to provide adequate breath or urine
- MIS reports

#### Test Results:

- Employer's copy of alcohol test
- Employer's copy of controlled substance chain of custody
- Documents from MRO
- Documents related to refusal to submit
- Documents presented by employee to dispute refusal to submit

#### Evaluations:

- Determinations by the SAP of assistance needed to resolve misuse.
- Compliance with SAP

#### Education and Training:

- Materials on misuse awareness, including the policy
- Employee's signed receipt of education materials
- Documents of supervisor training to qualify for making reasonable suspicion of judgments.
- Agreements with collection site, labs, MRO, and consortium

#### Access to Records:

- The employee is entitled to a copy of his/her records
- Records are available for officials with regulatory authority of the NTSB
- Subsequent employers or others may have a copy of the records upon specific written request from the employee.

#### Training:

- Those designated to determine if reasonable suspicion exists must receive 60 minutes of alcohol and 60 minutes of controlled substance training, which covers the physical, speech, and performance indicators of misuse.
- Each covered employee must be provided materials (such as film or written) and the company policy and the name of the supervisor who can answer their questions about the material.
- Each employee must sign a certificate of receipt of the materials.

First Read: May 11, 2023

Second Read:

Approval: