**Drugs and Alcohol (Medical Marijuana)**

**Background**

When considering whether to implement a drug and alcohol testing program, employers should be aware that, for most employers, testing is not required or regulated under the federal Drug-Free Workplace Act of 1988. The Drug-Free Workplace Act applies only to federal contractors and grantees.

The majority of employers are, however, subject to state and local statutes that limit or prohibit workplace testing. These employers may still test employees for a wide variety of substances, but only if the employers follow the state or local rules.

Employers not covered under the Drug-Free Workplace Act (or a state law mandating such a program) have more freedoms when creating drug-free workplace programs. There is no one “right” way to implement a drug-free workplace. An employer’s program should be designed to meet the particular needs of its workplace.

**Tips and Considerations**

What are the risks of drugs or alcohol on the job? There are several, including workers’ compensation claims for injuries, unemployment claims, lost work time, customer complaints or injuries, physical damage to facilities and equipment, liability for accidents caused by an intoxicated employee sent home, and theft. Also, don’t forget poor work performance, disruption, and lowered productivity in the employee’s department.

Here are some considerations regarding federal and state laws, as well as things to consider when drafting your drug and alcohol policies, as well as drug testing policy.

**Legal Points**

**• OSHA.** Does the Occupational Safety and Health Administration (OSHA) require a drug and alcohol policy for your workplace? Safety laws, such as the Occupational Safety and Health Act, require that employers maintain a workplace free of known hazards. If you know or have reason to believe that an employee is abusing drugs and poses a danger to others, you have an obligation to your other employees to discharge the employee, help place the employee in a rehabilitation program, or otherwise eliminate the hazard.

**• Drug-Free Workplace Act.** If you are a federal contractor or receive federal funds, you may be required to establish a policy to comply with the Drug-Free Workplace Act**• State laws**. Does your state require a drug testing policy? Does it restrict what can be in your policy? Does it regulate retesting?

**• ERISA and state insurance laws.** Benefit laws such as the Employee Retirement Income Security Act (ERISA ) and state insurance laws may restrict the ability to fire an employee who is diagnosed as a drug abuser. Under ERISA, if you discharge an employee whose treatment under your group medical plan would be quite expensive, you may be charged with a violation of the Act. State laws may require you to include drug or alcohol rehabilitation programs within your group medical plan. Finally, if the addiction is due to a work-related matter, such as job stress, the addict may have a claim for rehabilitation under workers’ compensation.

**• Disability.** Federal law and your state law may view the substance abuser as an individual with a disability. Accordingly, you may have an obligation to accommodate that person’s illness. Generally, substance abusers who are capable of performing their job without endangering themselves, others, or your property are viewed as people with a disability to whom you have a duty to accommodate reasonably. However, under some laws, a current abuser of drugs (as contrasted with a current abuser of alcohol) may not be protected as a person with a disability.

**• Liability for testing.** If the employee is injured during a medical exam, or if the medical exam failed to detect the presence of a disease, you may be liable for the negligence of the examiner. Accordingly, select with care the entity that will be providing you with medical services. Furthermore, consider retaining a physician who is independent of the testing facility to advise you on the appropriateness and accuracy of the testing in general.

**• Medical Marijuana.** Will your policy address medical marijuana? A growing number of states have enacted legislation that affords protections to qualifying individuals with debilitating medical conditions by allowing them to lawfully engage in the medical use of marijuana. Some states provide for employment protection for those who do utilize medical marijuana. However, under federal law, marijuana remains an illegal drug. Indeed, some employers may be mandated under state and federal law to maintain a drug-free workplace and may be permitted, under the Drug-Free Workplace Act to discipline employees who use medical marijuana in the workplace. Accordingly, some employers may choose to develop policies that account for employees’ use of medical marijuana, while some may choose to prohibit its use altogether.

**Policy Points**

**• Compliance with applicable law.** Your policy should state that it will be applied in accordance with governing laws. Such laws can include workers’ compensation statutes, specific drug-testing statutes, and the like.

**• Definitions.** You may want to include a definitions section in your policy. Such defined terms can include “illegal drugs,” “controlled substances,” “detectable levels of drugs,” “reasonable suspicion,” “under the influence,” “designer drugs,” “look-alike drugs,” “drug paraphernalia,” and the like.

**• Fitness for duty**. Coordinate your drug and alcohol policy with, or include, a fitness-for-duty policy. As an example, you can state that employees are expected to be in suitable mental and physical condition and able to perform their assigned duties satisfactorily.

**• Prohibition of the use of drugs or alcohol.** State your standard for the use of drugs or alcohol at work. For example, you may prohibit drivers from having any alcohol or drugs present in their system while at work, and prohibit them from consuming it for at least 8–14 hours prior to reporting to work. On the other hand, you may prohibit employee intoxication and permit an occasional beer at lunch.

**• Prohibition of possession of drugs and related paraphernalia.** Your policy needs to prohibit not only the use of drugs or alcohol, but also their possession, as well as possession of the related paraphernalia. As an example, once the drug has been consumed, it may be easier to discharge the employee for possession of the associated paraphernalia than to require a drug test to establish that the individual had the intoxicant in his or her system.

**• Sale of drugs or alcohol.** Prohibit the sale and purchase of alcohol, illegal drugs, prescription drugs, controlled substances, associated paraphernalia, or other intoxicants while on the job.

**• Searches.** To discover the unlawful possession of drugs on your premises, your policy will need to state that you retain the right to inspect or search personal belongings, automobiles, and the like.

**• Off-duty conduct.** If off-duty conduct of an employee may have an impact on your business, you can regulate it. For example, the airlines can enforce rules that prohibit pilots from consuming alcohol eight hours prior to flight time. You will need to be certain that there is a business necessity, such as safety, for restricting off-duty use of drugs or alcohol.

**• Company functions.** If you provide alcohol at a company function, address that issue. For example, your policy may permit the consumption of alcohol at a company social function, but prohibit someone from becoming intoxicated. On the other hand, if you forbid the consumption of alcohol and other intoxicants at company social functions, clearly state this standard.

**• Cooperation**. Unless applicable laws provide otherwise, you should make submission to a medical examination a condition of employment or continued employment.

**• Employee assistance plan.** You should state whether the company offers assistance, such as rehabilitation, to employees with a substance abuse problem. Keep in mind that applicable federal or state law may require you to offer rehabilitation or other benefits. You may want to require successful completion of a rehabilitation program for an employee who has violated your policy.

**• Rehabilitation**. You can offer rehabilitation as an alternative to discharge, with the provision that you will discharge an employee who is in rehabilitation and either performs his or her work poorly or fails to make progress in the rehabilitation program. You may also want to require rehabilitation as a condition of continued employment for an employee who has violated your policy.

**• Medical leave of absence.** As part of a rehabilitation program, you may require an employee to take a medical or personal leave of absence while undergoing treatment. The leave may be paid or unpaid.

**• Payment of wages and costs.** The employee should be paid for the time spent undergoing a medical examination. However, depending on state law, you do not need to pay the applicant. You may need to pay for the cost of the medical exam for both the employee and the applicant. By paying the employee for the time spent undergoing the drug screen, you are then able to take disciplinary action against the employee who fails to keep the appointment for the drug screen and does not have a reasonable excuse. Your policy should address what occurs when the employee fails to keep the appointment.

**• Criminal prosecution**. You will need to decide whether you will report to the police any unlawful substance you find in the possession of an employee. You should keep in mind that the failure to report a crime may be a crime.

**• Over-the-counter or prescribed medication.** State that employees who are taking an over-the-counter or prescribed medication may need to advise you of that fact, but not the condition for which the medication is being taken. For example, if an issue concerning an employee’s performance arises, the employee should be told that he or she needs to disclose any medication that may be affecting performance so that the manager can take that fact into consideration.

**• Medical Marijuana.** You will need to decide whether your company will enforce a zero-tolerance drug policy and discipline employees who fail drug tests as a result of marijuana use, even if they are medical marijuana patients. You will need to become familiar with the law in your state to determine whether you can legally discipline an employee for off-hours and off-site use or influence, when it is pursuant to a valid prescription (in medical marijuana states), or for off-hours and off-site recreational use (in recreational marijuana states),

**• Positive results.** Employees who test positive for intoxicants should be given notice.

**• Suspension.** As there are usually two drug screens (i.e., a preliminary test and a confirmation test), your policy should address what occurs during the time from the first preliminary positive results until the confirmation test. You may want to place the employee on suspension. That suspension may be with or without pay.

**Testing Considerations**

**• Consent and release forms.** Your policy ought to address whether you require employees to provide written consent and a release of any claims with respect to the administration of a drug screen. Additionally, when an employee violates your drug policy and is given a “last chance,” you may want to require the employee to sign a form acknowledging this and setting forth what will occur if the individual violates your policy, fails to complete a rehabilitation program, or has a positive result to a future drug screen.

**• Confidentiality.** The results of all medical tests should remain confidential. The results should be provided only to those persons who have a “need to know.”

**• When to test.** You will need to specify the circumstances under which you require employees to undergo medical testing to determine whether they are under the influence of alcohol or drugs. For example, you may require every employee to undergo such testing after an accident if there is a reasonable possibility that employee drug use could have contributed to the accident, or when two supervisors who have been trained to recognize the signs of intoxication believe an employee is under the influence. You may want to require random tests or you may want to require employees who have violated your drug policy to undergo random drug tests in the future. Your drug testing policy cannot deter or discourage any reasonable employee from reporting any work-related injury or illness.

**• Types of tests.** You will need to select from among the various types of tests that are available. You may require an employee first to give a urine sample and, if it is positive, require more medical testing. You may also decide to tell employees that you will accept blood samples, but that they must make the decision at the same time you are requiring the urine sample whether to provide you with a blood sample.

**• Observation.** Will you require the individual to be observed during the process of urination? You may want to limit such observation to those times when you have a reason to believe an employee may provide an adulterated sample if not monitored.

**• Who can require a test**. Your policy will need to state whether it takes only one manager or several managers plus the personnel department to make the decision to require the employee to take a medical test.

**• Positions tested.** Your policy should identify those job positions that are subject to drug screening and the type of drug screening. For example, you may require drivers to undergo a drug screen prior to driving. You may require production workers to undergo random drug screening. You may require other employees to undergo drug screening after an accident or based upon reasonable suspicion.

**• Who will do the testing.** State whether you will have a company physician or an outside medical laboratory conduct the testing. You will also need to ascertain whether you will allow the employee’s physician or a laboratory of the employee’s selection to conduct a retest.

**• Accuracy.** You should consider that there is a wide range of accuracy with respect to the tests that are being used for detecting alcohol and drugs. Obtain medical advice as to which tests are appropriate for which particular substance you suspect might be present, and whether you should take a urine or blood sample to obtain an accurate result.

**• Random testing.** You will need to consider whether you want to engage in random drug testing. Depending upon your business, you may even be required to do so by some applicable state or federal law. As you design your random-testing program, you will need to consider whether those individuals who are tested are then omitted from the pool from which individuals are selected or whether they remain in the pool. In other words, if the individual remains in the pool, he or she may be tested again even though other employees have never been tested at all.

**• Chain of custody.** In order to use the results of any sample of urine or blood, you will need to establish a procedure that ensures that the sample given is the sample tested. You may decide to require a sufficient amount of the sample in order to test only half of it, preserving the rest for a later test if the first one is challenged.

**• Interference with drug screen.** State what will occur if you believe an employee has intentionally interfered with a drug screen. For example, an employee may provide an adulterated sample, seek to substitute “clean” urine for his or her own urine, or engage in similar tactics

**• Retesting.** If the first test is positive, you will need to provide an opportunity for a reset. Normally, the first screening test, which is inexpensive, is not very reliable, and you will need to perform a second different, more expensive test to confirm the results.

**Sample Employee Acknowledgement Form**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, have read, understand and received a copy of the company’s policy on drugs, alcohol, and other prohibited articles, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and agree to abide by this policy as a condition of employment.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Date Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Social Security Number. Employee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Employer Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Witness Date

**Sample Notice of Positive Test for Intoxicants**

**For Employees Who Test Positive for Intoxicants**

To:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[name of employee]

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, you underwent a screening test for intoxicants.

We have received a positive, confirmatory result for your drug screen test. You tested positive for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. You may have already received a notice of the positive drug screen test from the medical review officer of the laboratory that conducted the test. You may request a confirmatory retest of the original urine sample at your expense.

You have 5 working days after notice of this positive test result to notify us in writing that you want to obtain a confirmatory retest. Within 3 days after receiving any such notice from you, we will notify the original testing laboratory that you have requested it to conduct a confirmatory retest.

The confirmatory retest will use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test will be taken.

You may consult with the medical review officer for technical information regarding prescription or nonprescription medication. The telephone number for contacting the medical review officer is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

In addition to requesting a confirmatory retest, you may submit information to explain the results or explain why the results do not violate company policy. You have 5 working days after this notice to do so. (OPTIONAL – If you are prescribed medical marijuana, you must provide the company with valid documentation). You are to submit this additional information to the medical review officer of the laboratory that conducted the test. That address (URL) is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This opportunity to submit information is in addition to any opportunity already provided by the laboratory and you may submit the same or additional information.

You have the right to request and receive a copy of the test result report.

If you do not provide additional information, if the additional information is not a satisfactory explanation, if you do not request a confirmatory retest, or if the confirmatory retest confirms the original positive test, then:

A. If you are an applicant, the conditional job offer will be withdrawn and your application will no longer be considered.

B. If you are an employee, you may be disciplined, which discipline may include discharge.

If your explanation or challenge of a positive drug test is unsatisfactory, a written explanation as to why it is unsatisfactory along with the report of the positive test results will be provided by the company.

(**Note:** In some states, you may have the right to contest the test result with the state Department of Labor.

If you choose to challenge the test result further, you must notify the laboratory to retain the specimen until the matter is resolved.

**For Employees Who Are Placed on Work Restrictions**

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of individual]

As a result of a medical examination conducted on \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name of physician] it was determined that you were not:

Physically able to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; accordingly, your work is restricted as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; *or*

Physically able to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; accordingly, you will be on a medical leave of absence until this restriction is lifted or until \_\_\_\_\_\_20\_\_\_, at which time you will have used all of the available medical time off and you will be removed from the payroll; *or*

Physically able to perform the essential duties of the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, even with reasonable accommodation; *or*

The accommodation created an undue burden on the company.

In particular, the medical examiner concluded that you would not be able to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

If you would like a copy of the written medical report, please contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, during the hours of \_\_\_\_\_\_ and \_\_\_\_\_\_. If you believe that the medical report is incorrect, and you can work:

Without the restriction *or*

Perform the essential functions of the position with reasonable accommodation, which accommodation does not create an undue hardship for ABC Company, please contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, during the hours of \_\_\_\_\_\_ and \_\_\_\_\_\_, during the next 10 business days. At that time, you should be prepared to discuss the restriction and any reasonable accommodation you propose and its cost.

If you do contest the results of this medical examination, you also may submit to ABC Company additional medical information indicating why the conclusions of this medical examination are incorrect. Again, please contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_, during the hours of \_\_\_\_\_\_ and \_\_\_\_\_\_, to do so.

If ABC Company does not hear from you during the next 10 business days, it will conclude that you agree with the results of this medical examination and understand that:

• You will be placed on restricted work as indicated above; *or*

• You will be placed on medical leave as indicated above; *or*

• The offer of employment has been withdrawn because you are not able to perform the essential functions of the position, even with reasonable accommodation;

• You will be released from the payroll.

If you have any questions concerning this matter, please contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_, during the hours of \_\_\_\_\_\_ and \_\_\_\_\_\_\_.

ABC Company

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CC: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**When an applicant or employee fails to consent to provide medical records, the following notice will be sent.**

TO:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[name of individual]

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, we requested a consent form from you to obtain your medical records from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in order to evaluate your ability to perform the essential functions of the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or whether you would require an accommodation, which accommodation could be reasonably accomplished without undue burden on the company.

To date, we have not received that consent form nor have we received copies of the records. Accordingly, we can only conclude that you are no longer interested in the position and have rejected this opportunity.

If our conclusion is wrong, please contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_. Otherwise, we will proceed based on the conclusion that you have rejected this job opportunity.

ABC Company

By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

cc:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_



**Subject: Drugs and Alcohol
Organization: Anonymous
Example of: Sample Policy**



To help ensure a safe, healthy, and productive drug-free work environment for the employees of the ABC Company, Inc., hereinafter referred to as “company,” and others on company property, to protect company property and assets, maintain favorable public image, and to assure efficient operations, the company has adopted a policy on drugs, alcohol, and other prohibited items.

It is the policy of the company to maintain its property and to provide a drug-free work environment that is both safe for our employees, including others having business with the company or on company property, and conducive to efficient and productive work standards. It is also the policy of the company to comply with state and federal laws.

This policy restricts certain items and substances from being brought on or being present on company property, including its parking areas and its vehicles, prohibits company employees and all others from reporting to work, working, or being present on company property, nondependent of whether on duty, from having detectable levels or identifiable trace quantities of certain drugs and other substances, and prohibits the unauthorized possession, by employees or others, of certain materials.

**Prohibited Items**

The use, possession, sale, manufacture, distribution, dispensation, concealment, receipt, transportation, or being under the influence of any of the following items or substances on company property (including the presence of detectable levels or identifiable trace quantities), by employees and all others, is prohibited:

• Illegal drugs, controlled substances, marijuana, intoxicants (legal or illegal), “look-alike” substances, designer drugs, counterfeit or synthetic drugs, inhalants, and any other drugs or substances that will, in any way, affect safety, work ability, alertness, coordination, judgment, response, or the safety of others on the job.

• Alcoholic beverages, except as specifically authorized by company management. (Note: Moderate use of alcohol at company-approved meetings, or in an appropriate social setting, is not prohibited by this policy.) Consuming alcoholic beverages while driving or driving any vehicle for company business while intoxicated is prohibited. The consumption of alcohol on company time or on company property is prohibited.

• Drug paraphernalia.

• Prescription drugs and over-the-counter medications, except under the following conditions:

**1.** The drugs have been prescribed by an authorized medical practitioner for current use (within the past 12 months) for the person in possession of the drugs.

**2.** The drugs/medications, both prescribed and over-the-counter, are limited to a 1-day supply, or must be kept in their original container and must be taken in accordance with the dosage recommendations and usage cautions and generally must not affect the person’s ability to perform work safely. (Note: This does not apply to medical marijuana. Even if an employee’s use is pursuant to a valid prescription, marijuana cannot be brought to the workplace.)

**3.** The company reserves the right to consult with a medical doctor to determine if a drug or medication, whether prescribed, produces hazardous or non-safe effects and may restrict the use of any such drug or medication accordingly on company property. The company also reserves the right to require an employee to undergo a fitness for duty medical examination by a physician of the company’s choosing. This may also include restricting or altering the individual’s work activity or presence at the worksite.

**Policy Enforcement**

Because of the importance of this policy, company reserves the right, at all times, while on company premises and property and when circumstances warrant, to have company supervisors and/or authorized search and inspection specialists, including scent-trained dogs, conduct searches and inspections of employees, or other persons, and their personal property and effects, to include, but not be limited to, lunch boxes, purses, briefcases, baggage, offices, desks, clothing, and vehicles (including trunks, glove compartments, etc.), for the purpose of determining if such employees or other persons are using, possessing, selling, manufacturing, distributing, dispensing, concealing, receiving, or transporting any of the prohibited items and substances contained in the policy.

The employee’s supervisor and a senior company officer have the right to conduct an on-the-spot search and inspection of employees, or others, and their personal property and effects, as described, if said supervisor has a reason to believe that employees, or others, are in direct violation of any part of this policy. All searches and inspections conducted by outside authorized specialists will be in the presence of a senior company officer.

All employees are expected to cooperate with any investigation regarding this policy. Failure to cooperate, providing false information, or omitting information may subject any employee to disciplinary action up to and including termination of employment.

A search and inspection, as defined herein, may also include and require employees and others present on company property to submit to a urine drug screen test and/or blood test or other examination. Tests/inspections may be required under the following circumstances:

**1.** During preemployment examinations.

**2.** When an employee’s supervisor has reason to believe that an employee on Company property is using or under the influence of prohibited drugs, alcohol, and substances, or that there has been a violation of this policy.

**3.** When an employee, or other person, is found in possession of suspected illegal or prohibited drugs and substances, or when any of these drugs and substances are found in an area controlled or used exclusively by said employee or other person.

**4.** When an employee returns to active employment after a leave of absence of 30 or more days.

**5.** Following an on-the-job injury requiring treatment from a physician or following a serious or potentially serious accident or incident, including near misses, when there is a reasonable basis for believing that drug or alcohol use by the involved employee(s) could have contributed to the incident. If it is impossible or impractical, because of the physical condition of the individual(s) involved in the accident, to give a urine and blood sample, and if in subsequent medical treatment of the person(s) blood will be drawn, then blood will be analyzed for drugs, alcohol, and other prohibited substances.

**6.** Randomly (periodically and unannounced). Random testing, other than to meet current specific job site requirements, will not commence until 30 days following the date of this policy; however, applicants for employment shall be subject to testing as of the date of this policy. The search, inspection, urine, and/or blood drug screening provisions herein will be performed with concern for the personal privacy of each employee, or other person, and will also apply to contract labor, when feasible.

All persons shall have the opportunity, prior to testing, to list all prescription and nonprescription drugs they have used in the last 30 days and to explain the circumstances surrounding the use of such drugs. All records containing medical information will be maintained in accordance with applicable law.

**Drugs Usually Tested for and Levels of Detection**

|  |
| --- |
|  |
| **Drug or Metabolite in Urine** | **Initial Test(Emit) (GC/MS)** | **Confirmation Test (GC/MS)** |
| Amphetamine(includes Methamphetamine) | 500 ng/ml | 200 ng/ml |
| Barbiturate | 300 ng/ml | 300 ng/ml |
| Benzodiazepine | 300 ng/ml | 300 ng/ml |
| Cannabinoid (Marijuana, hashish)(carboxy THC) | 20 ng/ml | 15 ng/ml |
| Methadone | 300 ng/ml | 150 ng/ml |
| Opiate: Morphine, Codeine | 300 ng/ml | 300 ng/ml |
| Methaqualone | 300 ng/ml | 300 ng/ml |
| Phencyclidine(PCP) | 25 ng/ml | 25 ng/ml |
| Ethanol (Enzyme Assay)(GC/FID) | .04/%w/volume | .04/%w/volume |

**Penalties for Violating Policy**

Any employee found in violation of this policy, or who refuses to submit to a search or urine and/or blood analysis, shall be removed from company property and be subject to disciplinary action up to and including termination of employment.

Any employee ordered to submit to a urine and/or blood test shall be informed of the reasons why he or she is being ordered to submit the specimen. Any employee failing after a 3-hour period to submit the specimen will be informed that this refusal constitutes failure to obey a direct order and that this is grounds for termination.

Any employee who, as a result of drug testing and screening, is found to have detectable levels or identifiable trace quantities of a prohibited drug or substance in his or her system, regardless of when or where the drug or substance entered that person’s system, without an explanation satisfactory to company, will be considered in violation of this policy, will be removed from company property, and will be subject to disciplinary action, up to and including termination of employment. Additionally, if employment is continued, such employees may be required to submit to random drug screens and/or to participate in and successfully complete a substance abuse program.

(Note: *For employers that allow the use of off-duty medical marijuana*. An exception will be made for individuals who test positive for off-duty marijuana use but have a valid prescription for medical marijuana consistent with state law. The use of marijuana for medical purposes will be considered an acceptable explanation or excuse for a confirmed positive laboratory test for marijuana in those states or cities that permit the use of medical marijuana under state law or ordinance. An employee will be required to provide a valid medical marijuana registry card (or in states that do not issue a card, valid medical documentation. Absent any of the foregoing required documentation, the result will be reported as verified positive.)

(Note: *For employers that have a zero tolerance policy.* Medical Marijuana not accepted as an explanation even where permitted by state law, regulation or ordinance. The use of marijuana for medical purposes, even if permitted by state law, regulation or ordinance, will not be considered an acceptable explanation for a confirmed positive laboratory report for marijuana and will be treated as a verified positive drug test for marijuana.

However, state law, regulations and ordinance requirements/limitations will be followed and a reasonable accommodation analysis will be conducted as applicable or as required by the federal Americans with Disabilities Act and any applicable state or local law.)

Preliminary findings of a policy violation may require that the employee be suspended, without pay, pending the results of a Company investigation. If said investigation clears the employee of any Policy violation, then said employee will be fully reinstated, including pay, to his or her job.

An employee, or anyone else, who in any way alters, tampers with, or substitutes a urine or blood specimen, will be considered a violator of this policy and the employee shall be discharged. A nonemployee shall be removed and barred from company premises.

The company may take into custody any illegal, unauthorized, or prohibited items or substances and may turn them over to the proper law enforcement agencies.

**Off-the-Job Drug and Alcohol Substance Use and Activity**

Employees who use drugs, alcohol, or chemical substances off-the-job run the risk of jeopardizing the safety of themselves, their family, the public, and the company. Whenever such usage adversely affects public trust in the company or otherwise interferes with the company’s ability to carry out its responsibilities, or increases potential liability for the company, the Company may be forced to take disciplinary action against the offending employee(s), up to and including termination of employment. Employees who are convicted or plead guilty or nolo contendere because of off-the-job activities (drug or alcohol related) may be considered in violation of this policy. In deciding what action to take, the company will consider the nature of the charges and other factors relative to the impact of the employee’s conviction or plea upon the conduct of the company’s business.

This policy supersedes any and all other company drug policies.

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Company president