

9/7/16

**TRUMBULL COUNTY  
DRUG AND ALCOHOL USE  
Policy and Procedure**

**SUBJECT: Policy on Drug and Alcohol Use**

**POLICY:** Drug use in the workplace is a danger to us all. It impairs the safety, health and welfare of all employees, promotes crime and lowers production and quality.

This policy applies to all full and part-time hourly and salaried employees.

In compliance with the Ohio Bureau of Workers' Compensation Drug Free Safety Program (DFSP), Trumbull County's view on substance use is as follows:

**STATEMENT OF POLICY**

Trumbull County (hereinafter referred to as the "County") will not condone and will not tolerate any of the following workplace related behaviors by its employees:

- A. The use of illegal drugs;
- B. The use of alcohol;
- C. The sale, purchase, manufacture, transfer, use or possession of any illicit drugs, or prescription drugs obtained without a prescription; or
- D. The employee's presence at work under the influence of any drug (legal or illegal) or alcohol to the extent that job performance or safety may be affected.

The purpose of this policy is to promote safety. Any employee or applicant whose position requires testing for specific drugs or alcohol, based on established thresholds, under any law, regulation, or policy; who violates this "Drug Free Safety Policy" (hereinafter referred to as the "Policy") or Collective Bargaining Agreement may be subject to discipline, up to and including termination of employment. The implementation of discipline or of sanctions shall be the sole discretion of the County in compliance with applicable policy or law, but shall not contradict any Collective Bargaining Agreement that may be in effect.

The County will appoint a Designated Employer Representative (DER) for the "Drug Free Safety Program". This individual may authorize other employees to receive drug and alcohol test results. All communications regarding the program must be done through the identified individual(s). Confidentiality will be maintained with no information being made available without a legitimate need to know.

Affected individuals (referred to as "employees" throughout this policy) include: all regular, full-time, part-time or temporary employees; all officers and managers; all sub-

contractors while performing work for the County on or off of County premises; and individuals seeking employment, where applicable.

An employee's violation of this Policy will not ordinarily be reported to any law enforcement agency with the exception that all reasonable and necessary measures will be taken to assure the safety and security of all employees and the County. Law enforcement may be called only as required by a regulatory body or criminal statute, or in conjunction with a referral for criminal prosecution.

## **TESTING FREQUENCIES AND PATTERNS**

General expectations of all drug and alcohol testing situations include: reporting at the designated testing location upon notification (within 2 hours if an off-site collection facility is used), providing the required specimen(s) within 2 hours, and full compliance with this policy and the procedures utilized by collections personnel and facilities. In all cases where employee safety may be an issue, the County will provide or secure transportation to the testing location.

Refusal to comply with the testing requirement, failure to provide the required valid specimen(s), or adulteration or substitution of the specimen(s) will be considered a refusal to test and will be interpreted the same as a positive test. Any such refusal subjects the individual to the full range of discipline, up to and including termination of employment or cancellation of an offer of employment.

### **A. Post-Offer, Pre-Employment or New Hire Drug Testing**

Effective immediately upon implementation of this Policy, all applicants are subject to post-offer, pre-employment or new hire drug testing that is conducted by a County-approved contractor. The County will decline to extend an offer of regular employment to any applicant with a verified positive test result to any illicit drug, or any refusal to test, and this applicant may not reapply for employment with the County for a period of six months.

The applicant will be given a copy of the County's "Drug Free Safety Policy" and the "Consent and Release Form". The interviewer will then give the applicant an opportunity to ask any questions he/she may have concerning the Policy or the Consent, and obtain the applicant's signature on the "Consent and Release Form".

### **B. Reasonable Suspicion Testing**

Reasonable suspicion testing will be performed when properly trained County management and/or supervision determines that an employee may be under the influence of an unacceptable substance (i.e., drugs and/or alcohol). This testing may be ordered at any time after this Policy has been in effect for thirty (30 ) days, and only after all participating County management and/or supervision have been trained. The suspicions

must be documented in writing within 24 hours of the event or prior to the release of the test findings, and will be provided to the County's Medical Review Officer (MRO) for consideration when reviewing test results. Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena which may include but are not limited to: direct observation of drug or alcohol use or possession; the physical symptoms of being under the influence of a drug or alcohol; the odor of alcohol or other prohibited substances;
2. An abnormal pattern of conduct or erratic behavior which may include repeated examples of deteriorating job performance, unexplained patterns of absenteeism, tardiness, recurrent accidents, repeated violations of established safety or work rules, etc., which are not attributable to other known factors;
3. Conviction of or plea (including no contest or *nolo contendere*) to a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, manufacture, use or trafficking. The employee is responsible for notification of the County within five (5) working days of any drug-related conviction or plea.
4. Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard. To prevent this, all supervisors will be trained in the recognition of drug and alcohol related signs and symptoms, and while testing may only be requested by at least one trained supervisor with the concurrence of a second individual (preferably a second trained supervisor) is required, except in the case of an immediate threat to the health and well-being of the Employee.

All employees are responsible for obtaining and providing a release to the County, prior to performing their regular job duties, if they are placed on any medication that may impair their normal functioning. The employee must ask the provider to clarify and provide documentation of any restrictions regarding their safety in performing their regular duties.

The first priority of the County is to remove the employee suspected of abusing controlled substances or alcohol from the work environment. This shall be done to prevent the employee from causing harm to himself or herself, other individuals in the workplace, or anyone else.

A trained supervisor or County official shall instruct the employee under suspicion to accompany him/her to a private area that is removed from the individual employee's co-workers, and any transportation required for testing will be the responsibility of the

County. If the employee is sent home, he/she must call someone for a ride or be driven home from the County property. If the employee attempts to drive self home, the police will be informed for the employee's, and others, protection.

The employee will be paid for the time off for a reasonable cause test, if the test is negative. The employee will not be paid if the test is positive, with the exception that Collective Bargaining Agreement language shall take precedence in such matters.

### C. Post Accident Testing

An accident, for the purposed of this policy, may include but is not limited to: an unplanned, unexpected, or unintended event that occurs during the employee's workday and in relation to the County's business. In addition to personnel, it may involve personal or business property/equipment or vehicles used in the performance of the employee's job.

Post accident drug and alcohol testing is mandatory in all cases for all individuals who may have caused or contributed to an "on-the-job" accident which meets any of the following criteria:

1. A fatality results from the accident;
  2. An employee is at fault in an employment-related accident that causes bodily injury requiring off-site medical treatment of the employee or another person;
  3. An employee is at fault in an employment related accident that results in significant property damage, exceeding \$1000.00; or
  4. An employee is cited in an employment related vehicular accident that results in damage that exceeds \$1000.00.
- \* Refusal to submit to a test does not impact the right of an employee to file a workers' compensation claim.

Specimen collection is to occur as soon as possible after a need has been determined, and any necessary medical attention has been rendered, in accordance with C-(1) through C-(4) above. Every reasonable effort shall be made to assure that the total elapsed time before a drug specimen has been collected does not exceed thirty-two (32) hours. Alcohol testing will be performed within eight (8) hours of the employment-related incident, or not performed, but documentation of the reason for non-testing is required.

Any employee at fault or cited in an employment related accident expressly grants unto the County, its officers and management, the right to request that attending medical personnel or collection personnel obtain appropriate specimens (breath/blood and/or urine) for the purpose of conducting alcohol and/or drug testing. Employees required to undergo post-accident testing expressly grant unto the Designated Employer Representative, access to any and all medical information that may be relevant in

conducting a complete and thorough investigation of the employment-related accident, to include but not limited to, a full medical report from the examining physician(s) or other healthcare providers.

The refusal of an employee to allow the collection of these specimens, any attempt to block the release of the results of any substance abuse tests taken, or failure to report a work- related accident, will be considered and managed the same as a refusal to test.

Employees are specifically required to timely file a “First Report of Injury” (FROI) with the County for any injury related to their employment in compliance with our on-the-job injury policy.

D. Follow-Up Testing

Effective immediately upon implementation of this policy, certain employees will be subject to follow-up testing prior to being permitted to return to work. Employees who test positive for prohibited substances will be subject to no-notice follow-up testing at any time for a period not exceeding two (2) years from the date of the initial positive test. A minimum of four follow-up tests will be required within the first year following the negative return-to-duty test. A positive result on any of these follow-up tests may result in the employee being immediately terminated from the County for cause.

Other employees that may be subject to this testing include those individuals who have self-reported a drug abuse problem, received substance abuse treatment and are released to return to work.

**DRUG TESTED / CUT OFF LEVELS**

The testing procedures will seek to identify the presence of the following controlled substances that may be present: (A negative screening test, EMIT or other form of immunoassay, is considered a negative test)

<b>Drug Class</b>	<b>Screening Test Level</b>	<b>Confirmation Test Level</b>	<b>Confirmation Method</b>
Amphetamines	500 ng/mL	250 ng/mL	GC/MS
Barbiturates	300 ng/mL	300 ng/mL	GC/MS
Benzodiazepines	300 ng/mL	300 ng/mL	GC/MS
Cocaine metabolites	150 ng/mL	100 ng/mL	GC/MS
Marijuana metabolites	50 ng/mL	15 ng/mL	GC/MS
Methadone	300 ng/mL	300 ng/mL	GC/MS
Opiates	2000 ng/mL	2000 ng/mL	GC/MS
Phencyclidine	25 ng/mL	25 ng/mL	GC/MS
Propoxyphene	300 ng/mL	300 ng/mL	GC/MS
MDMA/Ecstasy	500 ng/mL	250 ng/mL	GC/MS
6-Acetylmorphine	10 ng/mL	10 ng/mL	GC/MS
<b>Methaqualone</b>	<b>300 ng/mL</b>	<b>200 ng/mL</b>	<b>GC/MS</b>

<b>Drug Class</b>	<b>Screening Test Level</b>	<b>Confirmation Test Level</b>	<b>Confirmation Method</b>
<b>Expanded Opiates/Synthetic Narcotics</b>	<b>300 ng/mL</b>	<b>300 ng/mL</b>	<b>GC/MS</b>

These detection thresholds consistent with available technology have been established by the *Department of Health and Human Services (DHHS)* / the *Substance Abuse and Mental Health Services Administration (SAMHSA)* for each of the drug groups listed above. These detection thresholds will be used uniformly in the interpretation of all drug screens/drug confirmations, whether for a post-offer, pre-employment or new hire examination; random examination; post –accident examination, reasonable suspicion examination; or follow-up examination. Only Department of Health and Human Services, DHHS/SAMHSA, certified laboratories will be utilized for drug confirmations.

Alcohol testing will be conducted by the contractor utilizing only certified equipment and/or testing methods and personnel. Alcohol concentrations exceeding 0.02 gm% on the screening test will require a breath alcohol confirmation test. A breath alcohol confirmation result equal to or greater than 0.04 gm/210 liters of breath will be considered a verified positive result. In the event of an accident where an employee has a “whole blood” alcohol drawn at a medical treatment facility, a result equal to or greater than 0.04 gm% shall be considered to be a verified positive result.

The County also expressly reserves the right to add or delete substances on the list set forth in the “Drug Tested / Cut Off Levels” section of this Policy if mandated by changes in existing Federal, State, or local regulations or legislation.

An Individual who tests positive for drugs or self reports drug use:

- Must be evaluated by a substance abuse professional.
- Must comply with all treatment recommendations.
- Must undergo a “return to duty” drug test resulting in a negative test result prior to returning to the job.
- Must receive follow-up tests as determined by the treatment facility with no less than four (4) tests the first year.

An Individual who tests positive for alcohol or self reports suspected problems:

(Test results for alcohol 0.02 BAL or greater, but less than .04 BAL)

- Shall not be permitted to work until the employee’s next scheduled duty period, but not less than 24 hours following the test.

(Test results for alcohol 0.04 BAL or above)

- Must be evaluated by a substance abuse professional.

- Must comply with all treatment recommendations.
- Must undergo a “return to duty” alcohol test resulting in a test level of less than 0.02.
- Must be randomly tested as determined by the treatment facility with no less than four (4) random tests the first year.

NOTE: Employees using a prescribed medication that may impair the performance of job duties, either mental or motor functions, must have a “Fitness for Duty Slip” from their doctor showing that they are capable of performing their assigned tasks. For the safety of all employees, the County will consult with you and your physician to determine if a reassignment of duties is necessary. However, if a reassignment is not possible, you will be placed on a temporary medical leave until released as fit for duty by the prescribing physician. Reassignment of duties will not be done where it conflicts with a Collective Bargaining Agreement. The County will not condone the inappropriate and/or misuse of legal prescriptions or over the counter drugs.

**Effective September 8, 2016, Ohio’s medical marijuana law is in effect. Employees who are using marijuana with a valid prescription are not exempt from this policy in any way. The use of marijuana in any form, with or without a valid prescription, will be treated the same as the use of all other Schedule 1 controlled substances or illegal drugs. Employees using Schedule 1 controlled substances or illegal drugs, including marijuana with a valid prescription, are still subject to all provisions of this policy.**

## **SPECIMEN COLLECTION PROCEDURE**

The drug and alcohol testing for the County shall be done only by trained collection personnel who meet quality assurance and chain-of-custody standards for urine collection procedures, alcohol testing and strict confidentiality requirements.

Any individual subject to testing under this Policy shall be permitted to provide urine specimens in private, but subject to controls designed to minimize any invalidity in the testing process such as alteration or substitution of the specimen provided. In the event that the collector feels the collection process has been compromised, a witnessed void will be conducted utilizing a same gender witness. Alcohol testing will likewise be done in an area that affords the individual privacy. In all cases, there will only be one individual tested at a time.

### **A. Employee’s Rights Related to an Initial Positive Test Results:**

In the event that an employee tests positive for any drugs or alcohol as prohibited in this Policy, the employee will be given an opportunity to explain the findings to the Medical Review Officer (MRO) prior to the issuance of a report of a positive test result to the County.

Accordingly, upon receipt of a confirmed positive finding, the MRO shall contact, or attempt to contact, the employee by telephone or in person. If contact is made by the MRO, the MRO shall inform the employee of the positive findings and give the employee an opportunity to rebut or explain the findings.

The MRO can request information on recent medical history and on medication taken within the last thirty (30) days by the employee. In the event that the MRO finds support in the explanation offered by the employee, the employee may be asked to provide documentary evidence to support the employee's position (for example, the names of treating physicians, pharmacies where prescriptions have been filled, etc.) A failure on the part of the employee to provide such documentary evidence will result in the issuance of a positive report by the MRO with no attendant medical explanation. A medical disqualification of the employee will result.

If the employee fails to contact the MRO within three (3) days of having been instructed to do so, the MRO will issue a positive report to the County. Since no contact with employee was possible, no medical explanation can be provided and the employee shall forego the right to offer a defense to the positive test finding. A medical disqualification shall result, subject to re-test provisions set forth in the MRO's report.

B. Split Specimen:

An Employee wishing to request a re-test must do so within three (3) days of learning that the first test was positive. Employees will be required to pay for the cost of the re-test before the specimen is shipped to a different DHHS / SAMHSA -Certified Laboratory than the one that analyzed the first specimen. Our Medical Review Officer determines to which Lab the split specimen will be sent. If the result comes back negative, the Employer will reimburse the employee for the cost of the test that the employee paid prior to the test. The same paperwork and procedure protections used for the first test will be utilized for the split specimen. The Laboratory that collects the initial screen is responsible to split the specimen.

C. Report of Results:

All test results will be reported to the MRO prior to the results being issued to the County. The MRO will receive from the DHHS /SAMHSA testing laboratory a detailed report of the findings of the specimen. Each drug for which the individual was tested and alcohol will be listed along with the results of the testing. The County will receive a summary report, and this report will indicate that the employee passed or failed the drug/alcohol test.

All of the above procedures are intended to be consistent with the most current guidelines for the Medical Review Officer (MRO) that are published by the Federal Department of Health and Human Services.

D. Confidentiality:



All parties to this policy and program have only the interests of employees in mind and therefore encourage any employee with a substance abuse problem to come forward and voluntarily accept the County's assistance program in dealing with this illness. An employee assistance program will provide guidance and direction for you during your recovery period.

All actions taken under this policy and program will be confidential and disclosed only to those with a "need to know".

The program will be in compliance with all federal, state and local laws or regulations. An Employee's violation under the DFSP Policy shall not be reported to law enforcement officials unless required by a regulatory body or by criminal law provisions. Law enforcement authorities may be contacted and requested to come onto the County's premises, when appropriate, in conjunction with a referral for criminal prosecution.

When a test is required, the specimen will be identified by a code number -- not by name -- to insure confidentiality of the donor. Each specimen container will be properly labeled and made tamper proof. The donor must witness this procedure.

Unless an initial positive result is confirmed as positive, it shall be deemed negative and reported by the laboratory as such.

The handling and transportation of each specimen will be properly documented through strict chain of custody procedures.

The County will bear the cost of all testing procedures with the exception of a retest. An employee that tests positive for any drug as prohibited herein has the right to have a retest done on the original split specimen. This retest may be authorized by the MRO only with the employee's written request received within three days of their notification of a positive result. The employee is responsible for the prepaid expense at the provider's current rate, and the testing must be performed by a DHHS / SAMHSA certified laboratory. Retesting will not delay the report of the positive result to the County and the result of the retest will also be released to the County.

To protect the confidentiality of the employee, all records of drug and alcohol testing will be stored separate and apart from the employee's general personnel documents. Access to these records shall be limited to designated County officials. The information contained in these files shall be utilized only to properly administer this Policy and to provide to auditing or certifying agencies for review as may be required. Those designated County officials that shall have access to these records are charged with the responsibility of maintaining the confidentiality of these records. Any breach of confidentiality with regard to said records may be a terminable offense. Any employee tested under this Policy has the right to review and/or receive a copy of their test results.

E. Discipline:

1. Each employee will be required to sign a consent and chain of custody form, assuring proper documentation and accuracy. If an employee refuses to sign a consent form authorizing the test, employment by the County may be terminated.
2. No employee shall refuse to submit to a pre-employment, post-accident, reasonable suspicion, or follow-up test. Refusal may result in termination.
3. If the Employee fails to complete the requirements of the rehabilitation program and is removed from the program or fails any post rehabilitation or subsequent drug or alcohol test, the employee may be terminated.
4. Any employee attempting to manipulate the drug/alcohol testing process, such as trying to adulterate, modify or substitute a specimen will be discharged. The use of masking agents is prohibited and may result in termination.
5. Any employee convicted of violating a criminal drug statute must inform the DER of such conviction (including pleas of guilty and nolo-contendere) within five (5) days of the conviction occurring. Failure to inform the County subjects the employee to disciplinary action, up to an including termination for the first offense.
6. An individual that tests for alcohol between the .02 and <.04% Level will receive progressive discipline as follows:
  - First Offense – Will be off for 24 hours.
  - Second Offense – Will be suspended without pay for 3 days.
  - Third Offense – Will be terminated.

Note: progressive discipline as listed in any applicable Collective Bargaining Agreement shall supercede the above.
7. Failure to report use of a prescribed medication that impairs the safety of an individual and co-workers will be considered a positive test.

## **REHABILITATION**

The County will grant a one (1) time only paid (if accrued time is available) leave of absence so that an employee can participate in a medically recognized rehabilitation program. If the County is able to provide an Employee Assistance Program (EAP), we will assist the employee in obtaining information concerning providers of assistance services and will update this information as changes occur. The County will assist the employee in determining the coverage provided for these services by their insurance, as

applicable. In those cases where an employee successfully completes a mandated rehabilitation program, the County shall retain the right to perform no-notice follow-up drug or alcohol testing as recommended by the treating substance abuse professional and as agreed to in the employee's return-to-work agreement. In all cases, there will be at least 4 (four) follow-up tests in the first calendar year following their return to work. Any refusal by the employee to undergo required follow-up drug or alcohol testing will result in their immediate termination for cause.

## **TERMINATION NOTICES**

Generally, any release of information related to drug and alcohol testing and the results of that testing beyond the MRO or DER require the informed, written consent of the individual. In those cases where drug and alcohol testing results in the termination of an employee, all termination notices will list "misconduct" as the reason for termination. Termination shall be deemed "for cause", and may limit the individuals right to unemployment or workers' compensation eligibility. However, suspensions, leaves of absence, or terminations based on violations of this policy may require that this information be presented as evidence for the County in actions related to benefits payments without being considered a violation of confidentiality.

## **EDUCATION**

The County recognizes the pervasive nature of substance abuse in today's society and desires to provide its employees with information pertaining to this problem. As such, all employees will be required to participate in the County-sponsored education programs. These programs will be provided for all employees and attendance shall be mandatory. All training will be conducted by appropriately credentialed educators who will cover program, policy and practice considerations of Bureau of Workers' Compensation drug testing. In addition, as they become available, the County will endeavor to provide educational materials to its employees.

All employees will take part in the one (1) hour initial training, prior to program implementation or within four (4) weeks of hire on the policy, the disease model for alcohol and drugs, signs and symptoms of substance use/abuse, and the effects of commonly used drugs in the workplace. Additionally, all affected employees are required to attend one (1) hour annual refresher training provided by the County with no loss of pay.

All supervisors and designated union officials and stewards will receive an initial two (2) hours of informational, problem recognition, policy administration and skill building training, and will be included in the one (1) hour employee training. All supervisors and designated union officials and stewards will then receive two (2) hours of supervisor refresher/update training and participate in the one(1) hour employee annual refresher training.

## **ADMINISTRATION**

The Human Resources Director (or Designee) will be responsible for the administration and enforcement of this policy. As such, he/she will be the DER referenced in the policy. The DER will not be changed by the County without notice to all affected County employees.

**This New “Drug and Alcohol Free Safety” Policy was adopted by the Board of Commissioners on July 21, 2004, and is duly recorded in their Journal Volume 121, Page 10267.**