

# Board of County Commissioners

## Leon County, Florida

### Policy No. 96-8

Title: Drug and Alcohol Testing

Date Adopted: September 8, 2009

Effective Date: September 8, 2009

Reference: Florida Workers Compensation Law; Federal Omnibus Transportation Employee Testing Act of 1991

Policies Superseded Policy 94-10, Drug & Alcohol Testing, adopted December 13, 1994; Policy No. 96-8, Drug and Alcohol Testing, adopted April 9, 1996

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It is the policy of the Board of County Commissioners of Leon County, Florida, that a work environment, which is free from the influence of alcohol and controlled illegal substances, is maintained.

#### **1. PURPOSE**

As a part of the County's commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug-free community, the Board of County Commissioners has established this policy on the use of alcohol and drugs by its employees. This policy is set up pursuant to the Drug-free workplace program under Florida's Workers Compensation Law and the Federal Omnibus Transportation Employee Testing Act of 1991.

Substance abuse, while at work or otherwise, seriously endangers the safety of employees as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and decline in quality of products and services provided. Although the County does not have reason to believe that employees are abusing alcohol or drugs, the only effective means of avoiding potential problems is a comprehensive policy directed against alcohol and drug abuse by employees.

The application of this policy to off-duty problems is intended to be corrective rather than punitive. Under this policy, employees found to have an off-duty alcohol or drug abuse problem that impacts work performance may be given an opportunity for rehabilitation before disciplinary action is imposed.

## 2. APPLICABILITY

- a. All Board employees covered under the County's Worker's Compensation coverage shall be subject to Reasonable Suspicion and Return to Duty alcohol and drug testing, and may be subject to Post Accident alcohol and drug testing.
- b. All job applicants not presently employed by the Board employees who transfer to a safety-sensitive (driver) positions, shall be subject to Pre-Employment Drug Testing. "Safety sensitive position", as defined by F.S. 440.102(1)(o), means with respect to a public employer, a position in which a drug 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 with controlled substances; a position subject to s110.1127; or a position in which a momentary lapse in attention could result in injury or death of another person.
- c. Drivers/operators of commercial motor vehicles with a gross vehicle weight of 26,001 pounds or more and requires A, B, or C class commercial drivers license (CDL) shall be subject to Random, Reasonable Suspicion and Return to Duty alcohol and drug testing and may be subject to Post Accident alcohol and drug testing.
- d. All employees who are required to supervise employees who operate commercial motor vehicles and drivers/operators of commercial motor vehicles who are required by law or County Policy to possess a CDL shall be subject to Random, Reasonable Suspicion and Return to Duty alcohol and drug testing and may be subject to Post Accident alcohol and drug testing.
- e. All employees who have access to, or are engaged in, the acquisition, distribution, inventory or administration of controlled substances, and all employees who are required to supervise those employees, shall be subject to Random, Reasonable Suspicion and Return to Duty drug testing and may be subject to Post Accident alcohol and drug testing.

## 3. PROHIBITED BEHAVIOR

It is a violation of this drug-free workplace policy to use, possess, sell, trade, and/or offer for sale alcohol, illegal drugs or intoxicants on County property or during the scope and performance of one's job.

#### 4. ALCOHOL AND DRUG TESTING CATEGORIES

Alcohol and drug testing is required for the following:

- a. **Pre-employment.** The County requires that drug tests shall be conducted before applicants are hired, or after an offer to hire but before safety-sensitive functions are performed for the first time. Testing is also required when employees transfer to a safety-sensitive (driver) position. All offers of employment or transfer to a safety-sensitive position shall be subject to a negative drug test result under this category.
- b. **Post-accident.** The County shall requires that alcohol and drug tests be conducted within four (4) hours of an accident on drivers whose performance could have contributed to the accident (as documented by law enforcement or in the event of a single vehicle accident) when one or more of the following is a result of the accident:
  1. If the accident involved the loss of human life (regardless of fault); or
  2. Bodily injury to any person who, as a result of the injury, receives medical treatment beyond basic first aid; or
  3. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle; or
  4. Damage to heavy equipment, due to negligence or abuse that requires repair to maintain the operational functionality of the equipment or property.
- c. **Reasonable suspicion.** The County requires that alcohol and/or drug tests shall be conducted when a supervisor or County official has a reasonable suspicion that an employee has violated the County's drug and alcohol testing policy. For the purpose of this policy, a reasonable suspicion exists when a supervisor's suspicion is based upon specific, objective facts derived from the surrounding circumstances from which it is reasonable to infer that further investigation is warranted, provided that no such test shall be required, whenever reasonably possible, unless two persons (the second person must be in supervisory capacity) corroborate the reasonable suspicion and document it in writing.

**Random.** The County requires that alcohol and drug tests shall be conducted on a random unannounced basis just before, during or just after performance of safety-sensitive functions. Random testing applies only to employees identified under Section 2(c), (d) and (e).

- d. **Return-to-duty and follow-up.** The County requires that alcohol and/or drug tests shall be conducted, in compliance with the recommendation of a substance abuse professional, when an individual who has violated alcohol and drug conduct standards returns to duty. Follow-up tests are unannounced, and at least six (6) tests may be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty.

**5. ALCOHOL PROHIBITION:**

Because alcohol is a legal substance, the rules define specific prohibited alcohol-related conduct. The use or possession of alcohol while on duty is strictly prohibited for all County employees. This prohibition is consistent with Personnel Policies and Procedures Sections 2.11 and 10.05. Performance of safety-sensitive functions is prohibited:

- a. while having a breath alcohol concentration of 0.02 percent or greater as indicated by an alcohol breath test.
- b. while using alcohol.
- c. within four hours after using alcohol.

If a driver involved in an accident with a County vehicle refuses to submit to a post-accident alcohol test or consumes alcohol prior to taking the post-accident test, the employee is subject to severe disciplinary action (suspension or termination) which is to be determined by the employee's supervisor and the Human Resources Director.

**6. APPLICATION OF RANDOM ALCOHOL TESTING:**

Random alcohol testing of employees identified in Section 2(c), (d) and (e) may be conducted just before, during, or just after a driver's performance of safety-sensitive duties. The driver is randomly selected for testing from a "pool" of drivers subject to testing. The testing dates and times are unannounced and are with unpredictable frequency throughout the year. Each year, the number of random test conducted by the employer will be consistent with the percentage outlined by Federal Highway Administration (FHWA) regulations for safety sensitive drivers.

**7. PERFORMANCE AND CONFIRMATION OF ALCOHOL TESTING:**

The following rules apply to all employees required to undergo alcohol testing and require breath testing using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). The NHTSA periodically publishes a list of approved devices in the *Federal Register*. Two breath tests are required to determine if an employee has a prohibited alcohol concentration level.

A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a “negative” test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. The employee being tested and the individual (called a breath alcohol technician [BAT] conducting the breath test completes the alcohol testing form to ensure that the results are properly recorded.

The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure reliability of the results. The confirmation test results determine any actions to be taken. Testing procedures that ensure accuracy, reliability and confidentiality of test results are outlined in the Omnibus Transportation Employee Testing Act of 1991, Part 40 rule. The procedures include training and proficiency requirements for the breath alcohol technicians (BAT), quality assurance plans for the breath testing devices (including calibration requirements for a suitable test location), and protection of employee test records.

Post accident tests conducted at the County’s testing facility or another approved testing site and by law enforcement personnel will be acceptable. Any individual who conducts the testing must be trained to operate the EBT and be proficient in the breath testing procedures.

**8. CONSEQUENCES OF A POSITIVE ALCOHOL TEST:**

Employees who engage in prohibited alcohol conduct must be immediately removed for job duties. Employees who have engaged in alcohol misuse cannot return to job duties until they have been evaluated by a substance abuse professional and have complied with any treatment recommendations to assist them with an alcohol problem. To further safeguard transportation safety, drivers who have any alcohol concentration (defined as 0.02 or greater) when tested just before, during or just after performing safety-sensitive functions must also be removed from performing such duties for 24 hours. If a driver’s behavior or appearance suggests alcohol misuse, a “reasonable suspicion” alcohol test must be conducted. If a breath test cannot be administered, the driver must be removed from performing safety-sensitive duties for at least 24 hours. A violation of these employer-based testing rules is not placed on, nor does it affect, the driver’s CDL record. Any subsequent positive alcohol test will result in disciplinary action up to and including termination.

**9. DRUG TESTING:**

The Omnibus Transportation Employee Testing Act of 1991, Part 40 rule sets forth the procedures for drug testing in the FHWA industries. These procedures shall apply to all employees required to be tested for illegal drug use. Drug testing is conducted by analyzing an employee’s urine specimen. The analysis is performed at laboratories certified and monitored by the Department of Health and Human Services (DHHS). There are over 90 DHHS-certified drug-testing laboratories located throughout the United States. The list of DHHS approved laboratories is published in the *Federal Register*.

The employee provides a urine specimen in a location that affords privacy and the “collector” seals and labels the specimen and accompanying paperwork for shipment to a drug-testing laboratory. The specimen collection procedures and chain of custody ensure that the specimen’s security, proper identification, and integrity are not compromised. Each urine specimen is subdivided into two bottles labeled as a “primary” and a “split” specimen. Both bottles are sent to the laboratory. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee has 72 hours to request a split specimen be sent to another DHHS certified laboratory for analysis. This split specimen procedure essentially provides the employee with an opportunity for a “second opinion.”

#### **10. TYPES OF DRUGS PROHIBITED:**

Any unauthorized use of the controlled substances is prohibited. Unprescribed use of controlled substances by safety-sensitive drivers is prohibited on or off duty. The FHWA has some additional rules that prohibit the use of legally prescribed controlled substances (such as barbiturates, amphetamines, morphine, etc.) by safety-sensitive drivers. If using an over-the counter or prescription drug which is in any way influencing the employee’s ability to perform his or her job (i.e. causing drowsiness, slowing reaction times, distorting perception, etc.), s/he must notify his/her supervisor of such drug use no later than the beginning of the first workday affected by the prescribed drug and she/he must request temporary reassignment or leave as appropriate. Under no circumstances shall an employee work in a physical or mental condition, which increases risk to life, limb, or property.

All urine specimens are analyzed for the following drugs:

- a. Marijuana (THC metabolite)
- b. Cocaine
- c. Amphetamines
- d. Opiates (including heroin)
- e. Phencyclidine (PCP)

The testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications or preparations are not reported as positive results.

#### **11. INTERPRETATION OF THE LABORATORY RESULTS:**

All drug test results are reviewed and interpreted by a physician (Medical Review Officer [MRO]) before they are reported to the employer. If the laboratory reports a positive result to the MRO, the MRO contacts the employee (in person or by telephone) and conducts an interview to determine if there is an alternative medical explanation for the drugs found in the employee’s urine specimen. For all the drugs except PCP, some limited, legitimate medical uses may explain the positive test results.

If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the County.

**12. CONSEQUENCES OF A POSITIVE DRUG TEST:**

As with an alcohol misuse violation, an employee must be removed from job duties if he/she has a positive drug test result. The removal cannot take place until the MRO has interviewed the employee and determined that the positive drug test resulted from the unauthorized use of a controlled substance, unless it is clearly observable that the employee is physically or mentally incapable of performing the duties and responsibilities of their position. An employee cannot be returned to job duties until he/she has been evaluated by a substance abuse professional or MRO, has complied with recommended rehabilitation, and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the employee's continued abstinence from drug use may be required. Any subsequent positive drug test will result in disciplinary action up to and including termination.

An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates the specimen, substitutes the specimen with that from another person or sends an imposter, will not sign the required forms or refuses to cooperate in the testing process in such a way that prevents completion of the test.

**13. RANDOM DRUG TESTING:**

The County is responsible for conducting random, unannounced drug tests on employees identified in Section 2(c), (d), and (e). The total number conducted each year will be consistent with the percentage outlined by Federal Highway Administration (FHSA) regulations for safety-sensitive drivers. Some drivers may be tested more than once a year; some may not be tested at all depending on the random selection. Random testing for drugs does not have to be conducted in immediate time proximity to performing safety-sensitive functions. Once notified of selection for testing, however, a driver must proceed to a designated collection site to accomplish the urine specimen collection. The random drug-testing rate would be determined annually based upon the random positive rate for the FHWA industry.

**14. INFORMATION AND TRAINING:**

The Human Resources Division will provide information on drug and alcohol use and treatment resources to all County employees including the availability of the Employee Assistance Program.

The Risk Management Program shall conduct an ongoing drug-free awareness program to inform employees about the County's alcohol and drug policy; the dangers of drugs/alcohol abuse; penalties for the use, sale possession or manufacture of drugs/alcohol at work; and the availability of drug /alcohol counseling.

**15. DRUG AND ALCOHOL REHABILITATION:**

Employees who violate the alcohol or drug abuse rules will be referred to a substance abuse professional for evaluation. Initial screening for treatment or rehabilitation will be provided by the County's Employee Assistance Program (EAP).

The County is not required under these rules to provide rehabilitation, pay for treatment, or reinstate the employee in his/her position. If the County decides to allow an employee to return to job duties, the Human Resources Director must ensure that the employee:

- a. has been evaluated by the substance abuse professional;
- b. has complied with recommended treatment;
- c. has taken a return-to-duty alcohol test (with a result less than 0.02); and/or drug test; and
- d. is subject to unannounced follow-up tests.

County employees may seek assistance on their own initiative. Provided no alcohol or drug misuse occurs in the workplace, there are no penalties for doing so and no requirement to report treatment or rehabilitation activities to the County. The County's Employee Assistance Program (EAP) is available to assist employees with alcohol and drug problems. An employee seeking assistance may contact his or her supervisor, the Human Resources Division's EAP Coordinator or the EAP provider directly. An employee may also seek assistance through his or her health benefit plan.

**16. CONFIDENTIAL RECORDS:**

Employee alcohol and drug testing results and records are maintained, subject to the provisions of Chapter 119 of the Florida Statutes, by the County, the drug testing laboratory, and the medical review officer. They cannot be released to others without the written consent of the employee. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation, or administrative proceedings arising from a positive alcohol or drug test. Statistical records and reports are maintained by the County and the drug and alcohol testing laboratories. This information is aggregated data and is used to monitor compliance with the rules and to assess the effectiveness of the drug and alcohol testing programs.

**17. COMMUNICATION OF POLICY TO APPLICANTS/EMPLOYEES:**

All County employees will receive a copy of this policy.

- a. The Human Resources Division shall be responsible for communicating this policy and providing copies of the policy to newly hired employees.
- b. All County departments and divisions shall be required to prominently display this policy and any related information material on all employee bulletin boards.

**18. REFUSAL TO COOPERATE WITH ALCOHOL/DRUG TEST:**

An applicant's tampering with the drug test or failing to submit to the required pre-employment drug test shall be considered as a request for withdrawal from consideration for the position for which she/he applied.

An employee's tampering with the alcohol/drug test or failing to submit to an alcohol/drug test shall be considered insubordination and shall be grounds for dismissal.

As an applicant or employee, you have refused to take a drug test if you:

- a. Fail to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer, and in no instance shall exceed four (4) hours;
- b. Fail to remain at the testing site until the testing process is complete;
- c. Fail to provide a urine specimen for any drug test required by this policy or DOT agency regulations;
- d. In the case of a directly observed or monitored collection in a drug test, fail to permit the required medical evaluation, that there was no adequate medical explanation for the failure; or
- e. Fail or decline to take a second test the employer or collector has directed you take.

**19. CONSEQUENCES OF VIOLATION OF POLICY:**

An employee found to be in violation of any provision of this policy shall be subject to disciplinary action up to and including dismissal. Conditions, which may warrant the retention of said employee, may include, but not be limited to, the nature of job, length of service, quality of job performance, and nature of offense.

**20. RIGHT TO APPEAL:**

An employee who feels he/she has not been treated fairly with regard to this policy may file a grievance pursuant to the County's Personnel Policies and Procedures.