

### UNIFIED PERSONNEL BOARD POLICY #15 **Drug-Free Workplace Program**

#### **I. Purpose**

As a part of its commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug-free working environment, the Pinellas County Unified Personnel System ("the County") has established this Drug-Free Workplace Program relating to the abuse of drugs, including alcohol and controlled substances, by its employees. Drug 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 a decline in the quality of products and services provided. This program is established in part to detect and remove abusers of drugs from the workplace, to prevent the use and/or presence of these substances in the workplace, and to assist employees in overcoming any dependence on drugs in accordance with the following guidelines.

This program is intended to conform to the requirements of the Florida's Workers' Compensation Law, Fla. Stat. § 440.101-.102, and rules promulgated pursuant thereto, hereinafter "FWCL", and the Federal Drug-Free Workplace Act of 1988, 41 U.S.C. § 8101-8106. The FWCL provides in part that an employee who is injured in the course and scope of employment and tests positive on a drug test may be terminated and may forfeit eligibility for medical and indemnity benefits under the FWCL. It is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs in their possession or system. Refusal to take a drug test will result in the employee forfeiting eligibility for medical and indemnity benefits under the FWCL and the employee being subject to dismissal or other discipline. The County group medical plan excludes benefits for job related injuries. Therefore, if Workers' Compensation benefits are forfeited pursuant to this Drug-Free Workplace Program, the employee injured on the job will be without any County provided medical benefits.

The Federal Drug-Free Workplace Act requires recipients of federal grants to provide a drug-free workplace by: publishing a policy statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, providing this policy statement to each employee engaged in the performance of such grant, notifying employees engaged in the performance of such grant of the condition of employment to abide by the terms of the policy and notify their employer within 5 calendar days of a conviction for a criminal drug statute conviction for a violation occurring in the workplace, notifying the granting agency within 10 calendar days after receiving notice from a convicted employee, and imposing sanctions on the convicted employee.

To the extent that the FWCL or the implementing rules are amended, or other statutes and rules requiring drug testing are determined to be applicable to the County employees, the County's program will be amended to the extent required by such, without the necessity of further general notice.

The County's Drug-Free Workplace Program has been prepared so as not to conflict with public policy and, further, not to be discriminatory or abusive. A drug-free workplace should be the goal of every employee and employer in America. Drug testing is only one of the several steps that must be taken to achieve this objective. When incorporated into a comprehensive antidrug effort, testing can go a long way in combating drug abuse in the workplace.

A copy of the County's Drug-Free Workplace Program will also be posted in appropriate and conspicuous locations on the County's premises and copies of the program will be made available for inspection during regular business hours at the County.

## **II. Scope**

All County employees are covered by the County's Drug-Free Workplace Program and, as a condition of employment, are required to abide by the terms of this program. Any employee in doubt as to the requirements or procedures applicable to their situation may contact Human Resources for information.

## **III. Definitions**

The definitions of words and terms as set forth in the FWCL and Federal Drug-Free Workplace Act shall apply to the words and phrases used in the County's Drug-Free Workplace Program unless the context clearly indicates otherwise.

- A. This program defines "drug" as: alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in this paragraph. The County may test an employee for any or all such drugs.
- B. This program defines "mandatory-testing position" as: a job assignment that requires the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with detainees in the correctional system, work with confidential information or documents pertaining to criminal investigation, work with controlled substances, or a job assignment that requires an employee security background check, pursuant to s.110.1127, or a job assignment in which a momentary lapse in attention could result in injury or death to another person. A list of those job classifications determined to be mandatory-testing will be compiled, kept on file, and periodically updated by the Human Resources Department.

- C. This program defines “special-risk position” as: a position that is required to be filled by a person who is certified under chapter 633 or chapter 943. A list of those job classifications determined to be “special-risk” will be compiled, kept on file, and periodically updated by the Human Resources Department.
- D. This program defines “controlled substance” as a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulations at 21 CFR 1308.11 through 1308.15.

#### **IV. Prohibitions and Responsibilities**

- A. Using, consuming, possessing, purchasing, selling, soliciting, distributing, manufacturing, or being impaired or under the influence of controlled substances or drugs on County owned or leased property, while at work, while on duty, during duty hours, while conducting the County’s business, or while operating the County’s vehicles or machinery is a violation of the County’s Drug-Free Workplace Program.

The prohibition of possession or consumption of alcohol upon the County’s property or on duty does not, however, apply to those assignments, premises, or events at which consumption of alcohol is authorized by management. Such authorization does not encourage, sanction, or authorize any individual to consume alcohol in excess to a point of being intoxicated. Therefore, any employee at an event, who in the sole opinion of the management becomes intoxicated may be subject to discipline, must refrain from further consumption of alcohol and, upon request by management must leave the function. Failure to comply with the request constitutes a violation of this program.

- B. Off-duty use of drugs or controlled substances may adversely affect an employee’s job performance or adversely affect or threaten to adversely affect other interests of the County, including but not limited to the employee’s relationship to their job, fellow workers’ reputations, or goodwill in the community. Disciplinary action up to and including dismissal may be imposed on this basis.
- C. An employee whom management reasonably suspects is impaired or under the influence of drugs or controlled substances will be removed immediately from the workplace and will be tested for drugs. In response to a positive drug test, the County will take further action (i.e., further testing, referral to counseling, and/or disciplinary action including dismissal) based on medical information, work history, and other relevant factors. The determination of appropriate action in each case rests solely with the County.
- D. An employee who has a positive confirmed drug test or otherwise violates the County’s Drug-Free Workplace Program may be allowed a one-time

opportunity to participate in an Alcohol/Drug Rehabilitation Program or the County's Employee Assistance Program (EAP) or other approved program as determined by the County, in lieu of being immediately dismissed based upon such failure. However, allowing the employee to participate in such program in lieu of being dismissed is conditioned upon the employee's meeting the requirements set forth in the program. Furthermore, such an opportunity will not be available to an employee who has previously participated in an Alcohol/Drug Rehabilitation Program, the County's EAP, or other approved, similar program, as an alternative to dismissal. Employees allowed the rehabilitation opportunity described herein may still receive disciplinary action short of dismissal in addition to required participation in the rehabilitation program. Participation in a treatment program, be it entirely voluntary or pursuant to this section, will not excuse additional violations of the County's Drug-Free Program, work rule violations, improper conduct, or poor performance, and an employee may be disciplined or dismissed for such offenses or failure to perform requirements of the treatment program. As to certain departments or employee groups, the County may approve further limits on, or elimination of, the rehabilitation opportunity described above.

- E. An employee's lawful use and possession of legally prescribed drugs or controlled substances does not violate the County's Drug-Free Workplace Program when the employee complies with this section.

Improper use of a legally prescribed drug or controlled substance is prohibited on County owned or leased property, while at work, while on duty, during duty hours, while conducting the County's business, or while operating the County's vehicles or machinery. Improper use includes but is not limited to: using for non-medical purposes, using more than the recommended or prescribed amount, or experiencing side effects or impairment that negatively influence work performance, behavior, or safety. Employees are responsible for knowing the potential effects of their legally prescribed drug or controlled substance.

If an employee is legally prescribed a drug or controlled substance that might negatively influence work performance, behavior, or safety, they must notify their supervisor of the possible impairment before reporting to work impaired or under the influence of such drug or controlled substance. If the County determines that the employee cannot safely perform essential job functions, with or without reasonable accommodations, the County will place the employee in an appropriate leave status during the period of impairment.

An employee must keep their legally prescribed drugs and controlled substances in the original container if they are possessed on or within County owned or leased property.

The following prohibitions are in effect at all times when an employee is on County owned or leased property, while at work, while on duty, during work hours, while conducting the County's business, or while operating the County's vehicles or machinery:

1. No employee may consume or use medical marijuana.
  2. No employee may possess, purchase, sell, solicit, distribute, or manufacture medical marijuana or associated paraphernalia.
  3. No employee may be impaired or under the influence of medical marijuana.
- F. A positive confirmed drug test, refusal to submit to a drug test, or attempt to tamper with a drug test, is a violation of the County's Drug-Free Workplace Program.
- G. Employees arrested for a drug offense or drug-related incident, as indicated on the arrest report, must notify their supervisor as soon as feasible, but in any event no later than the next business day after the arrest. Failure to comply with this notification requirement is a violation of the County's Drug-Free Workplace Program.
- H. Any employee convicted of a drug statute violation that occurred in the workplace must report it to their supervisor, in writing, no later than 5 calendar days after such conviction. Failure to comply with this notification requirement is a violation of the County's Drug-Free Workplace Program. If an employee works under a federal grant and is convicted of a drug statute violation that occurred in the workplace, the County will notify the granting agency within 10 calendar days after receiving notice of the conviction from an employee or otherwise receiving actual notice of such conviction. The County will commence disciplinary proceedings within 5 calendar days after receiving such notice and appropriate disciplinary action will be determined within 30 calendar days thereafter.
- I. Any violation of the County's Drug-Free Workplace Program can subject an employee to dismissal or other disciplinary action.

## **V. Testing**

- A. Testing of Job Applicants for Mandatory-Testing or Special-Risk Positions
1. Prior to employment, job applicants for mandatory-testing or special-risk positions, whether temporary or permanent, will be tested for the presence of drugs.
  2. Any job applicant for a mandatory-testing or special-risk position who refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the

preemployment confirmatory drug test will not be hired and in most cases will be ineligible for hire for a period of at least 2 years.

3. Employees who are not in a mandatory-testing or special-risk position and are selected for a mandatory-testing or special-risk position may not assume the duties of that position, or have the position transfer be made effective, until they have successfully completed a drug test. Failure to successfully complete the drug test when first scheduled will be cause to withdraw the conditional offer of the position and may subject the employee to discipline, up to and including termination. Employees receiving a conditional offer of a position designated as mandatory-testing or special-risk shall report for drug testing within 48 hours of the time they are instructed by Human Resources to do so.

B. Reasonable Suspicion Testing

1. "Reasonable suspicion testing" means drug testing based on a belief that an employee is using or has used drugs or controlled substances in violation of the County's Drug-Free Workplace Program, drawn from specific, objective and articulable facts and reasonable inferences drawn from those facts in light of experience. The department head or designee shall require an employee to undergo drug testing if there is reasonable suspicion that the employee is in violation of the program. Circumstances which constitute a basis for determining "reasonable suspicion" may include but are not limited to:
  - a. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being impaired or under the influence of a drug or controlled substance.
  - b. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
  - c. A report of drug or controlled substance use, provided by a reliable and credible source.
  - d. Evidence that an individual has tampered with a drug test during their employment with the current employer.
  - e. Information that an employee has caused, contributed to, or been involved in an accident while at work.
  - f. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or controlled substances while

working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

2. If drug testing is conducted based on reasonable suspicion, the County must promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing utilizing the Reasonable Suspicion Checklist and any other appropriate documentation. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential and exempt from the provisions of Fla. Stat. § 119.07(1) and § 24(a), Art. I of the State Constitution.
3. An employee suspected of being impaired or under the influence shall never be permitted to drive a vehicle or operate equipment during any duty shift during the period of suspicion. A supervisor should arrange to transport the employee to/from the collection site and accompany the employee. The Department Director has discretion to place the employee on administrative leave pending receipt of the drug test results or until disciplinary action is taken based on the facts and circumstances of the situation.
4. Employees whose positions with the County require them to have a commercial driver license, will be required to submit to drug testing, including random testing, in accordance with the Pinellas County Alcohol and Controlled Substance Testing Policy for Commercial Motor Vehicle Drivers. Subsequent additional testing may be done under the provisions of the County's Drug-Free Workplace Program when warranted.

C. Follow-up Testing

If the employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a 2-year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested. The County may dismiss an employee based on a positive confirmed follow-up drug test result.

D. Routine Fitness-for-Duty

An employee shall submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is

routinely scheduled for all members of an employment classification or group.

**E. Additional Testing**

Additional testing may also be conducted:

1. As required by applicable state or federal laws, rules, or regulations; and/or
2. To the extent that such testing is not prohibited by applicable state or federal laws.

**F. Refusal to Test**

Employees who refuse to submit to a drug test administered in accordance with this program may forfeit their eligibility for all Workers' Compensation medical and indemnity benefits and will be subject to dismissal or other discipline.

**VI. Testing Procedure**

**A. Tested Substances**

The County may test for any or all of the following drugs or their metabolites:

1. Alcohol
2. Amphetamines (commonly referred to as Binhetamine, Desoxyn, Dexedrine)
3. Cannabinoids (commonly referred to as marijuana, hashish)
4. Cocaine
5. Phencyclidine (commonly referred to as PCP)
6. Methaqualone (commonly referred to as Quaalude, Parest, Sopor)
7. Opiates (commonly referred to as opium, heroin, morphine, codeine)
8. Barbiturates (commonly referred to as Phenobarbital, Tuinal, Amytal)
9. Benzodiazepines (commonly referred to as Ativan, Azene, Clonopin, Dalmane, Diazepam, Halcion, Librium, Poxipam, Restoril, Serax, Tranxene, Valium, Vertron, Xanax)
10. Methadone (commonly referred to as Dolophine, Methadose)
11. Propoxyphene (commonly referred to as Darvocet, Darvon N, Dolene)



B. Consent Required

Job applicants for mandatory-testing and special-risk positions and current employees required to test under reasonable suspicion, follow-up, or other testing will be asked to sign a Consent To Testing form. Refusal to execute the consent form constitutes a refusal to be tested, and will subject the employee/applicant to dismissal/failure to hire.

C. Designated Laboratory

Because of the potential adverse consequences of positive test results on employees, the County will employ a very accurate testing program. Specimen samples will be analyzed by a highly qualified, independent laboratory which has been selected by the County and certified by the appropriate regulatory agency.

The laboratory used to analyze initial or confirmation specimens will be licensed or certified by the appropriate regulatory agencies to perform such tests.

The name and address of the certified laboratory currently used by the County is on file with the County Human Resources Department.

D. Notification of Prescription Drug Use

Applicants and employees will be given an opportunity, prior to and after testing, on a confidential basis, to provide any information to the Medical Review Officer (MRO) they consider relevant to the test including identification of currently or recently used prescription and non-prescription medications or other relevant medical information on a Drug Use Information Form. This program also provides notice of the most common medication by brand name or common name, as well as the chemical name which may alter or affect a drug test.

The Medical Review Officer will provide confidential assistance to the employee or job applicant for the purpose of interpreting any positive confirmed test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

E. Testing of Injured Employees

An employee injured at work and required to be tested, under reasonable suspicion, will be taken to a medical facility for immediate treatment of injury. If the injured employee is not at a designated collection site, the employee will be transported to one as soon as it is medically feasible and specimens will be obtained. If it is not medically feasible to move the

injured employee, specimens will be obtained at the treating facility under the procedures set forth in this program and transported to an approved testing laboratory. No specimen will be taken prior to the administration of emergency medical care. An injured employee must authorize release to the County of the result of any tests conducted for the purpose of showing the presence of drugs.

**F. Cost of Testing**

The County must pay the cost of initial and confirmation drug tests, which it requires of employees and job applicants. An employee or job applicant must pay the cost of any additional drug test not required by the County.

**G. Collection Site**

1. The County will utilize a collection site designated by an approved laboratory which has all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, chain of custody procedures, temporary storage, and shipping or transportation of urine and blood specimens to an approved drug testing laboratory. The County may also utilize a medical facility which meets the applicable requirements as a collection site.
2. Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen, and transportation of the specimen to the laboratory as applicable will meet FWCL guidelines.

**H. Time to Report for Testing**

Upon notification by management representatives that a drug test is required, the employee will report to the test site as designated by management no later than 4 hours after notification, sign the appropriate consent forms, and submit to the test.

**VII. Test Results**

- A. Every specimen that produces a positive, confirmed test result shall be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 210 days after the result of the test was mailed or otherwise delivered to the Medical Review Officer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have

a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, which is licensed and approved by the Agency for Health Care Administration, and is chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory that performed the test for the employer is responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

- B. The Medical Review Officer shall notify the employee or job applicant of a confirmed positive test result within 3 calendar days of receipt of the test result from the laboratory and provide an opportunity for the employee or job applicant to discuss the positive test result and any prescribed or over-the-counter medication that could have caused the positive test result with the Medical Review Officer within 5 calendar days of notification. If the employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the County.
- C. Within 5 working days after receipt of a positive confirmed test result from the Medical Review Officer, the County shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. The County shall provide to the employee or job applicant, upon request, a copy of the test results.
- D. Within 5 working days after receipt of a positive confirmed test result, an employee or job applicant may submit information to the County explaining or contesting the test result and explaining why the result does not constitute a violation of the County's Drug-Free Workplace Program.
- E. If the employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the County, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, will be provided by the County to the employee or job applicant; and all such documentation shall be kept confidential and exempt from the provisions of Fla. Stat. § 119.07(1) and § 24(a), Art. I of the State Constitution.
- F. The County may not dismiss, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a Medical Review Officer.
- G. Employees may challenge employment decisions made pursuant to this program as may be authorized by County Personnel Rules and Policies, or applicable court.

## **VIII. Employee Assistance Program (EAP)**

- A. The County regards its employees as its most important asset. Accordingly, the County maintains an EAP which provides help to employees who suffer from alcohol or drug abuse and other personal or emotional problems. Employees with such problems should seek confidential assistance from the EAP or other community resources before drug or alcohol problems lead to disciplinary action. Look for contact information on the EAP and other community resources on the Human Resources website.
- B. However, use of the EAP or other community resources will not shield the employee from appropriate disciplinary action for violations of the County's Drug-Free Workplace Program if such violations come to the County's attention through other means, including, but not limited to, reports from employees or outsiders, direct observation, or drug testing.
- C. Employees referred to the EAP as a result of a first violation of the County's Program may, at the County's discretion, be allowed to continue their employment with the County provided they contact the EAP and strictly adhere to all the terms of treatment and counseling.
- D. If an employee in a mandatory-testing position enters an EAP or drug rehabilitation program, the employee must be assigned to a position other than a mandatory-testing position or, if such position is not available, the employee must be placed on leave while the employee is participating in the program. However, the employee shall be entitled to use any accumulated annual leave before leave without pay is ordered.
- E. An employee in a special-risk position may be discharged or disciplined for the first positive confirmed test result if the drug confirmed is an illicit drug under s.893.03. A special-risk employee who is participating in an EAP or drug rehabilitation program may not be allowed to continue to work in any special-risk or mandatory-testing positions but may be assigned to a position other than a mandatory-testing position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave before leave without pay is ordered.
- F. Participation in any evaluation, treatment, or counseling program will be at the employee's expense unless participation in that particular program is required by the County, or unless the employee is entitled to such benefits under the terms of the County's group health plan or by other available benefits.
- G. The County will not discharge, discipline, or discriminate against an employee solely based upon that employee voluntarily seeking treatment,

while under the employ of the County, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program. Unless otherwise provided by a collective bargaining agreement, the County may select the employee assistance program or drug rehabilitation program if the County pays the cost of the employee's participation in the program.

## **IX. Confidentiality**

- A. Except as otherwise provided by the FWCL, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential and exempt from the provisions of Fla. Stat. § 119.07(1) and § 24(a), Art. I of the State Constitution, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the FWCL or in determining compensability under Chapter 440, Fla. Stat.
- B. The County, laboratories, medical review officers, employee assistance programs, drug rehabilitation programs, and their agents may not release any information concerning drug test results obtained pursuant to the County's Drug-Free Workplace Program without a written consent form signed voluntarily by the person tested, unless such release is compelled by an administrative law judge, a hearing officer, or a court of competent jurisdiction pursuant to an appeal taken under the FWCL or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:
  - 1. The name of the person who is authorized to obtain the information.
  - 2. The purpose of the disclosure.
  - 3. The precise information to be disclosed.
  - 4. The duration of the consent.
  - 5. The signature of the person authorizing release of the information.
- C. The FWCL does not prohibit the County, an agent of the County, or laboratory conducting a drug test from having access to employee drug test information or using such information when consulting with legal counsel in connection with actions brought under or related to the FWCL or when the information is relevant to its defense in a civil or administrative matter.

## **X. Records and Training**

The County will maintain a current resource file of providers of employee assistance including alcohol and drug abuse programs, mental health providers, and various other persons, entities or organizations designed to assist employees with personal or behavioral problems. The County will inform employees and new hires about various employee assistance programs that the employer may have available. The information shall be made available at a reasonable time convenient to the County in a manner that permits discreet review by the employee.