

CITY OF MINNEAPOLIS
REASONABLE SUSPICION DRUG AND ALCOHOL TESTING POLICY
 (Links to [Procedures](#) and [Notification and Consent Form](#)) (Last Updated **July 20, 2009**)

Applies to: Classified, appointed, politically appointed or temporary employees under the jurisdiction of the Mayor and City Council. Labor agreements reached under the Public Employment Labor Relations Act (“PELRA”) and Minn. Stat. § 181.955 subd. 1 between the City of Minneapolis and exclusive employee representatives will supersede this Policy. This policy does not apply to employees subject to testing pursuant to federal regulations that specifically preempt state regulation of drug and alcohol testing. This policy does not apply to Elected Officials, Student Interns and Summer Youth Workers.

Synopsis: Establishes policy, roles and responsibilities for conducting drug & alcohol testing on individuals suspected of being under the influence of alcohol or using controlled substances without legitimate medical explanation.

Council Approval Date: October 1997 (Current Policy)

Effective Date: TBD

Links to Related Laws: [Minnesota Statutes 152.02](#); [Minnesota Statutes Sec. 181.950 through 957](#); [Drug-Free Workplace Act of 1988](#)

Administering Departments: Human Resources and Finance **Contact:** Charles J. Bernardy and Ellen Velasco-Thompson **Phone Numbers:** (612) 673-3103 and (612) 673-3994

1. **POLICY STATEMENT** - Abuse of drugs and alcohol is a nationwide problem. It affects persons of every age, race, sex and ethnic group. It poses risks to the health and safety of employees of the City of Minneapolis and to the public. To reduce those risks, the City has adopted this policy concerning drugs and alcohol in the workplace. This policy establishes standards concerning drugs and alcohol which all employees must meet and it establishes a testing procedure to ensure that those standards are met.

This drug and alcohol testing policy is intended to conform to the provisions of the Minnesota *Drug and Alcohol Testing in the Workplace Act* (Minnesota Statutes §181.950 through 181.957), as well as the requirements of the federal *Drug-Free Workplace Act of 1988* (Public Law 100-690, Title V, Subtitle D) and related federal regulations. Nothing in this policy shall be construed as a limitation upon the Employer's obligation to comply with the provisions of the *Omnibus Transportation Employee Testing Act of 1991*.

The Human Resources Director is directed to develop and maintain procedures for the implementation and ongoing maintenance of this policy and to establish testing procedures to ensure that the standards listed in this policy are met.

2. **ROLES AND RESPONSIBILITIES**

Role	Responsibility
Employees	To comply with the City of Minneapolis Reasonable Suspicion Drug and Alcohol Testing Policy.
Management	Understand and comply with this policy with respect to the individuals covered by this policy.
Human Resources	1. Develop, implement, manage and update the policy. 2. Establish, manage and modify procedures necessary to carry out and comply with the policy in accordance with applicable laws, City ordinances, policies and rules.
Risk Management (Finance)	1. Administer and manage the contract with the Medical Review Officer (MRO). 2. Work with MRO to resolve issues related to the delivery of testing services.
Medical Review Officer/Third Party Clinic	Deliver services and conduct Drug and Alcohol Tests in accordance with state and federal Laws and as described in the contract between the Medical Review Officer/Third Party Clinic and the City of Minneapolis Finance Department.
Minnesota Licensed Alcohol and Drug Counselor (LADC)	Evaluates employees who have violated the Reasonable Suspicion Drug & Alcohol Testing Policy and makes recommendations concerning education, treatment, follow-up testing and aftercare.

3. WORK RULES

- A. No employee shall be under the influence of any drug or alcohol while the employee is working or while the employee is on or near the Employer's premises or operating the Employer's vehicle, machinery, or equipment, except pursuant to a legitimate medical reason or when approved by the Employer as a proper law enforcement activity.
- B. No employee shall use, possess, sell or transfer drugs, alcohol or drug paraphernalia while the employee is working or while the employee is on or near the Employer's premises or operating the Employer's vehicle, machinery or equipment, except pursuant to a legitimate medical reason or when approved by the Employer as a proper law enforcement activity.
- C. No employee, while on duty, shall engage or attempt to engage or conspire to engage in conduct which would violate any law or ordinance concerning drugs or alcohol, regardless of whether a criminal conviction results from the conduct.
- D. As a condition of employment, no employee shall engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the Employer's workplace.
- E. As a condition of employment, every employee must notify the Employer of any criminal drug statute conviction no later than five (5) days after such conviction.
- F. Any employee who receives a criminal drug statute conviction, if not discharged from employment, must within thirty (30) days satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency.
- G. The Employer shall notify the granting agency within ten (10) days after receiving notice of a criminal drug statute conviction from an employee or otherwise receiving actual notice of such conviction.

4. PERSONS SUBJECT TO TESTING

Unless otherwise specified, all employees are subject to testing under applicable sections of this policy. However, no person will be tested for drugs or alcohol under this policy without the person's consent. The Employer will request or require an individual to undergo drug or alcohol testing only under the circumstances described in this policy.

5. CIRCUMSTANCES FOR DRUG OR ALCOHOL TESTING

The Employer may request or require an employee to undergo drug and alcohol testing if the Employer or any supervisor of the employee has a reasonable suspicion related to the performance of the job that the employee:

- A. Is under the influence of drugs or alcohol while the employee is working or while the employee is on or near the Employer's premises or operating the Employer's vehicle, machinery, or equipment; or
- B. Has used, possessed, sold, purchased or transferred drugs, alcohol or drug paraphernalia while the employee was working or while the employee was on or near the Employer's premises or operating the Employer's vehicle, machinery or equipment; or
- C. Has sustained a personal injury as that term is defined in *Minnesota Statutes* §176.011, Subd. 16, or has caused another person to die or sustain a personal injury; or
- D. Was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident resulting in property damage or personal injury.

Whenever it is possible and practical to do so, more than one Agent of the Employer shall be involved in reasonable suspicion determinations under this policy.

6. REFUSAL TO UNDERGO TESTING

- A. **Right to Refuse** - Employees have the right to refuse to undergo drug and alcohol testing. If an employee refuses to undergo drug or alcohol testing requested or required by the Employer, no such test shall be given.
- B. **Consequences of Refusal** - If any employee refuses to undergo drug or alcohol testing requested or required by the Employer, the Employer may subject the employee to disciplinary action up to and including discharge from employment.
- C. **Refusal on Religious Grounds** - No employee who refuses to undergo drug or alcohol testing of a blood sample upon religious grounds shall be deemed to have refused unless the employee also refuses to undergo alternative drug or alcohol testing methods.
- D. **Failure to Provide a Valid Sample with a Certified Result** – Includes but is not limited to: 1) failing to provide a valid sample that can be used to detect the presence of drugs and alcohol or their metabolites; 2) providing false information in connection with a test; 3) attempting to falsify test results through tampering, contamination, adulteration, or substitution; 4) failing to provide a specimen without a legitimate medical explanation; and 5) demonstrating behavior which is obstructive, uncooperative, or verbally offensive, resulting in the inability to conduct the test.

Failure to provide a valid sample with a certified result will be treated as a refusal to undergo drug and alcohol testing under this policy and may subject the employee to disciplinary action including discharge.

7. PROCEDURE FOR TESTING

- A. **Notification Form** - Before requesting an employee to undergo drug or alcohol testing, the Employer shall provide the individual with a form on which to (1) acknowledge that the individual has seen a copy of the Employer's *Drug and Alcohol Testing Policy*, and (2) indicate consent to undergo the drug and alcohol testing.
- B. **Testing** - Testing will be performed in accordance with the Minnesota Drug and Alcohol Testing in the Workplace Act.

8. RIGHTS OF EMPLOYEES

Within three (3) working days after receipt of the test result report from the Medical Review Officer, the Employer shall inform in writing an employee who has undergone drug or alcohol testing of:

- A. A negative test result on an initial screening test or of a negative or positive test result on a confirmatory test;
- B. The right to request and receive from the Employer a copy of the test result report;
- C. The right to request within five (5) working days after notice of a positive test result a confirmatory retest of the original sample at the employee's expense at the original testing laboratory or another licensed testing laboratory;
- D. The right to submit information to the Employer's Medical Review Officer within three (3) working days after notice of a positive test result to explain that result; indicate any over the counter or prescription medications that the employee is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result;
- E. The right of an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the Employer not to be discharged unless the employee has been

determined by a Minnesota Licensed Alcohol and Drug Counselor (LADC) or a physician trained in the diagnosis and treatment of chemical dependency to be chemically dependent and the Employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Employer after consultation with a Minnesota LADC or a physician trained in the diagnosis and treatment of chemical dependency, and the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion;

- F. The right to not be discharged, disciplined, discriminated against, or requested or required to undergo rehabilitation on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test;
- G. The right, if suspended without pay, to be reinstated with backpay if the outcome of the confirmatory test or requested confirmatory retest is negative;
- H. The right to not be discharged, disciplined, discriminated against, or required to be rehabilitated on the basis of medical history information revealed to the Employer concerning the reliability of, or explanation for, a positive test result unless the employee was under an affirmative duty to provide the information before, upon, or after hire;
- I. The right to review all information relating to positive test result reports and other information acquired in the drug and alcohol testing process, and conclusions drawn from and actions taken based on the reports or acquired information;
- J. The right to suffer no adverse personnel action if a properly requested confirmatory retest does not confirm the result of an original confirmatory test using the same drug or alcohol threshold detection levels as used in the original confirmatory test.

9. ACTION AFTER TEST

The Employer will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee solely on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. Where there has been a positive test result in a confirmatory test and in any confirmatory retest (if the employee requested one), the Employer will do the following unless the employee has furnished a legitimate medical reason for the positive test result:

- A. **First Offense** - The employee will be referred for an evaluation by an LADC or a physician trained in the diagnosis and treatment of chemical dependency. If that evaluation determines that the employee has a chemical dependency or abuse problem, the Employer will give the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Employer after consultation with an LADC or a physician trained in the diagnosis and treatment of chemical dependency. If the employee either refuses to participate in the counseling or rehabilitation program or fails to successfully complete the program, as evidenced by withdrawal or discharge from the program before its completion, the Employer may discharge the employee from employment.
- B. **Second Offense** - Where an employee tests positive, and the employee has previously received one program of treatment required by the Employer, the Employer may discharge the employee from employment.
- C. **Suspensions and Transfers** - Notwithstanding any other provisions herein, the Employer may temporarily suspend the tested employee, place the employee on investigatory leave or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory

retest.

- D. **Other Misconduct** - Nothing in this policy limits the right of the Employer to discipline or discharge an employee on grounds other than a positive test result in a confirmatory test, subject to the requirements of law, the rules of the Civil Service Commission, and the terms of any applicable collective bargaining agreement. For example, if evidence other than a positive test result indicates that an employee engaged in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the Employer's workplace, the employee may receive a warning, a written reprimand, a suspension without pay for a period not to exceed ninety (90) calendar days, a demotion, or a discharge from employment, depending upon the circumstances, and subject to the above requirements.
- E. **Other Consequences** – Other actions may be taken pursuant to Civil Service Rules, collective bargaining agreements or laws.
- F. **Treatment Program Testing**–The Employer may request or require an employee to undergo drug and alcohol testing if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

10. DATA PRIVACY

The purpose of collecting a body component sample is to test that sample for the presence of drugs or alcohol or their metabolites. A sample provided for drug or alcohol testing will not be tested for any other purpose. The name, initials and social security number of the person providing the sample are requested so that the sample can be identified accurately but confidentially. Information about medications and other information relevant to the reliability of, or explanation for, a positive test result is requested to ensure that the test is reliable and to determine whether there is a legitimate medical reason for any drug or alcohol in the sample. All data collected, including that in the notification form and the test report, is intended for use in determining the suitability of the employee for employment. The employee may refuse to supply the requested data; however, refusal to supply the requested data may affect the person's employment status. The Employer will not disclose the test result reports and other information acquired in the drug or alcohol testing process to another employer or to a third party individual, governmental agency, or private organization without the written consent of the person tested, unless permitted by law or court order.

11. APPEAL PROCEDURES

Employees in the classified service have the following appeal rights:

- A. Concerning disciplinary actions taken pursuant to this drug and alcohol testing policy, available appeal procedures are as follows:
 - 1) Non-Veterans on Probation: An employee who has not completed the probationary period and who is not a Veteran has no right of appeal to the Civil Service Commission.
 - 2) Non-Veterans After Probation: An employee who has completed the probationary period and who is not a Veteran has a right to appeal to the Civil Service Commission only a suspension of over thirty (30) days, a permanent demotion (including salary decreases), or a discharge, if the employee submits a notice of appeal within ten (10) calendar days of the date of mailing by the Employer of notice of the disciplinary action.
 - 3) Veterans: An employee who is a Veteran has a right to appeal to the Civil Service Commission a permanent demotion (including salary decreases), or a discharge, if the employee submits a notice of appeal within sixty (60) calendar days of the date of mailing by the Employer of notice of the disciplinary action.

action, regardless of status with respect to the probationary period. An employee who is a Veteran has a right to appeal to the Civil Service Commission a suspension of over thirty (30) days if the employee submits a notice of appeal within ten (10) calendar days of the date of mailing by the Employer of notice of the disciplinary action. An employee who is a Veteran may have additional rights under the Veterans Preference Act, *Minnesota Statutes* §197.46.

- B. All notices of appeal must be submitted in writing to the Minneapolis Civil Service Commission, 250 South 4th Street - Room #100, Minneapolis, MN 55415-1339.
- C. An employee who is covered by a collective bargaining agreement may elect to seek relief under the terms of that agreement by contacting the appropriate Union and initiating grievance procedures in lieu of taking an appeal to the Civil Service Commission.

Employees not in the classified service have no appeal rights under this policy including filing an appeal with the Civil Service Commission.

12. EMPLOYEE ASSISTANCE

Drug and alcohol counseling, rehabilitation, and employee assistance are available from or through the Employer's employee assistance program provider(s) (E.A.P.). Independent contractors and employees of independent contractors are excluded from receiving these services under this policy.

13. DISTRIBUTION

Each employee engaged in the performance of any federal grant or contract shall be given a copy of this policy.

14. DEFINITIONS

- A. **Confirmatory Test** and **Confirmatory Retest** mean a drug or alcohol test that uses a method of analysis allowed by the *Minnesota Drug and Alcohol Testing in the Workplace Act* to be used for such purposes.
- B. **Drug** means a controlled substance as defined in *Minnesota Statutes* §152.01, Subd. 4.
- C. **Drug and Alcohol Testing**, **Drug or Alcohol Testing**, and **Drug or Alcohol Test** mean analysis of a body component sample approved according to the standards established by the *Minnesota Drug and Alcohol Testing in the Workplace Act*, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
- D. **Drug Paraphernalia** has the meaning defined in *Minnesota Statutes* §152.01, Subd. 18.
- E. **Employee** for the purposes of this policy means a person, independent contractor, or person working for an independent contractor who performs services for the City of Minneapolis for compensation, in whatever form, including any employee directly engaged in the performance of work pursuant to the provisions of any federal grant or contract. For the purposes of this policy, employee does not mean Elected Officials, Student Interns and Summer Youth Workers.
- F. **Employer** means the City of Minneapolis acting through a department head or any designee of the department head.
- G. **Initial Screening Test** means a drug or alcohol test which uses a method of analysis allowed by the *Minnesota Drug and Alcohol Testing in the Workplace Act* to be used for such purposes.
- H. **Positive Test Result** means a finding of the presence of alcohol, drugs or their metabolites in the sample tested in levels at or above the threshold detection levels as determined by the City of Minneapolis in accordance with the

[Minnesota Drug and Alcohol Testing in the Workplace Act.](#)

- I. **Reasonable Suspicion** means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
- J. **Under the Influence** means having the presence of a drug or alcohol at or above the level of a positive test result.
- K. **Legitimate Medical Reason** means (1) a written prescription, or an oral prescription reduced to writing, which satisfies the requisites of *Minnesota Statutes* §152.11, and names the employee as the person for whose use it is intended; and (2) a drug prescribed, administered and dispensed in the course of professional practice by or under the direction and supervision of a licensed doctor, as described in *Minnesota Statutes* §152.12; and (3) a drug used in accord with the terms of the prescription. Use of any over-the-counter medication in accord with the terms of the product's directions for use shall also constitute a *legitimate medical reason*.
- L. **Criminal Drug Statute** means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.
- M. **Drug-Free Workplace** means a site for the performance of work done in connection with any federal grant or contract at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.
- N. **Controlled Substance** means a drug, substance, or immediate precursor in Schedules I through V of [Minnesota Statute § 152.02](#).
- O. **Conviction** - means a finding of guilt (including a plea of nolo contendere (no contest)) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug statutes.
- P. **Federal Agency** or **Agency** means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch or any independent regulatory agency.
- Q. **Grant** means an award of financial assistance - including a cooperative agreement - in the form of money, or property in lieu of money, by a federal agency directly to a grantee. The term *grant* includes block grant and entitlement grant programs. The term does not include any benefits to veterans or their families.
- R. **Grantee** means a person who applies for or receives a grant directly from a federal agency. The place of performance of a grant is wherever activity under the grant occurs.
- S. **Individual** means a grantee/contractor who is a natural person. This wording emphasizes that an individual differs both from an organization made up of more than one individual and from corporations, which can be regarded as a single "person" for some legal purposes.
- T. **Medical Review Officer** means a physician certified by a recognized certifying authority who reviews forensic testing results to determine if a legitimate medical reason exists for a laboratory result.
- U. **Valid Sample with a Certified Result** means a body component sample that may be measured for the presence or absence of drugs, alcohol or their metabolites.

**CITY OF MINNEAPOLIS
NOTIFICATION AND CONSENT FORM FOR DRUG AND ALCOHOL TESTING
(REASONABLE SUSPICION)
AND DATA PRACTICES ADVISORY**

I acknowledge that I have seen and read the City of Minneapolis *Drug and Alcohol Testing Policy*. I hereby consent to undergo drug and/or alcohol testing pursuant to said policy, and I authorize the City of Minneapolis through its agents and employees to collect a sample from me for those purposes.

I understand that the procedure employed in this process will ensure the integrity of the sample and is designed to comply with medicolegal requirements.

I understand that the results of this drug and alcohol testing may be discussed with and/or made available to my employer, the City of Minneapolis. I further understand that the results of this testing may affect my employment status as described in the policy.

The purpose of collecting a sample is to test that sample for the presence of drugs and alcohol. A sample provided for drug and alcohol testing will not be tested for any other purpose. The name, initials and social security number of the person providing the sample may be requested so that the sample can be identified accurately but confidentially. Information about medications and other information relevant to the reliability of, or explanation for, a positive test result will be requested by the Medical Review Officer (MRO) to ensure that the test is reliable and to determine whether there is a legitimate medical reason for any drug, alcohol, or their metabolites in the sample.

The MRO may only disclose to the City of Minneapolis test result data regarding presence or absence of drugs, alcohol, or their metabolites, in a sample tested. The City of Minneapolis or laboratory may not disclose the test result reports and other information acquired in the drug testing process to another employer or to a third party individual, governmental agency, or private organization without the written consent of the person tested, unless permitted by law or court order. Evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minnesota Statutes, Chapter 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation, or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed as required by law, court order, or subpoena. Positive test results may not be used as evidence in a criminal action against the employee tested.

Name (Please Print or Type)

Social Security Number

Signature

Date and Time

Witness

Date and Time