

DRUG FREE WORKPLACE POL-51-210

See Also: CDL Drug and Alcohol Policy, POL 51-220 (Transit)

Approved by: City Manager

I. Purpose

The objective of this policy is to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988 and any future amendments. Compliance with this Act is a condition for many of the grant funding the City receives from the Federal government. This revision replaces the City of Bethel Drug and Alcohol Policy dated January 14, 2010.

II. Policy

City employees will report and remain at work in such mental and physical condition as will permit them to perform their assigned tasks in a professional and competent manner. The manufacture, distribution, dispensation, possession, purchase, or use of alcohol, or any controlled substance, and/or being under the influence of alcohol, or illegal drugs, or any controlled substance, and/or the unauthorized use, and/or possession, of prescription drugs is prohibited on City property. Whereas this Policy does not prohibit the use or possession of over-the-counter drugs (OTC) where such use or possession is consistent with the proper use of such substances, City employees are encouraged to advise their supervisor of such use where it may affect performance. If any employee's use of such OTC products affects his/her performance, the employee may be relieved of his or her job duties. Employees who violate this Policy are subject to appropriate disciplinary action up to and including termination.

III. Definitions

Accident: An occurrence associated with the operation of a vehicle that results in:

- a. Contact between the vehicle and another vehicle;
- b. Rollover or other single vehicle incident resulting in visible or disabling damage;
- c. Contact between a vehicle and a pedestrian;
- d. Contact between a vehicle and a stationary structure;
- e. Situations specifically identified by US Department of Transportation that require DOT Testing for covered employees.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

City Premises: All City-owned buildings, parking lots, vehicles, empty lots, harbor and docking facilities, and all internal and external storage spaces. For the purposes of this

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Policy, City Premises also includes any location where a City employee is performing his/her work, to include private property.

City Property: All City-owned, or leased property used by employees such as, but not limited to, vehicles, lockers, desks, closets, etc. **There is no expectation of employee privacy relative to any City property.**

DOT Testing: Specialized accident criteria and testing protocols that apply to those positions associated with the Transit Program (FTA) or holding a commercial driver's license (FMCSA). The City only requires DOT Testing when a FTA or FMCSA-covered employee is involved in an accident that meets the DOT-designated criteria as defined in POL 51-210 and POL 52-220.

Drug: Any chemical substance (natural or manufactured) that produces physical, mental, emotional or behavioral changes in the user. Drugs include federally controlled substances (including marijuana), illegal substances, prescription drugs, and medications available over-the-counter without a prescription.

Drug Paraphernalia: Equipment, a product or material that is used, may be used, or is intended for use, in concealing a drug or in the process of introducing a drug into the human body.

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer and maintains records confidentiality in accordance with regulations.

Disabling damage:

- a. Damage that prevents the vehicle from being driven from the scene in daylight after simple repairs;
- b. Damage that does not prevent the vehicle from being driven, but additional damage would result if it were driven in its normal manner
- c. Does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Fitness for Duty: The ability to work in a manner suitable for the job. To determine "fitness", a medical evaluation may include drug and/or alcohol testing.

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Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Reasonable Suspicion: Supported by articulable facts (capable of being explained AND justified) strong enough to establish that a policy violation has occurred.

Safety-sensitive functions: A function through which the employee holding the position has the responsibility for his/her own safety or other people's safety. Specific duties identified by the City as safety-sensitive include:

- a. Operating a transit revenue service vehicle even when the vehicle is not in revenue service;
- b. Operating a commercial motor vehicle or heavy equipment by an employee when the operation of such a vehicle requires the driver to hold a Commercial Driver's License (CDL);
- c. Performing maintenance of a transit bus, commercial motor vehicle, or heavy equipment;
- d. Serving as a certified police officer or community service officer/patrol;
- e. Dispatching emergency responders;
- f. Responding to dispatches for fire, search and rescue, or other emergency situations;
- g. Providing emergency medical services; and
- h. Monitoring water quality and maintaining local water standards.

Split Specimen: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

Verified negative test: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified positive test: A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

IV. Prohibited Substances

Prohibited substances addressed by this policy include the following:

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- a. Controlled substances or drugs identified in schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines (including methamphetamine and ecstasy), opiates (including codeine, morphine and heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Prohibited activities include use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. In addition, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.
- b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited as long as a medical practitioner has advised the employee that the drug will not adversely affect the employee's ability to perform his/her work.
- c. Alcohol: The use of items containing alcohol (including any beverages, mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive or any other job functions is prohibited. A non-DOT random or reasonable suspicion alcohol test can be performed any time an employee is on duty.

V. Prohibited Conduct

- a. Reporting to work or remaining on duty while having an alcohol concentration of 0.02 or greater regardless of when the employee consumed the alcohol.
- b. Reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds.
- c. Consuming alcohol while on duty. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The employee will subsequently be relieved of his/her on-call responsibilities and may be subject to discipline for not fulfilling his/her on-call responsibilities.
- d. Consuming alcohol within four (4) hours prior to the performance of any safety-sensitive job functions.
- e. Consuming alcohol for up to eight (8) hours following involvement in an accident or until the employee submits to the post-accident drug/alcohol test, whichever occurs first.
- f. Consistent with the Drug-free Workplace Act of 1988, all employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of prohibited substances in the work place.

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- g. Refusing to take a required breath test or provide a urine sample as directed by City authority under this policy.
- h. Failure to report within five (5) days a criminal drug statute conviction for a violation occurring in the workplace.

VI. Test Types

All employees, regardless of their position, are subject to one or more of the following types of non-DOT testing:

- a. Pre-employment as a condition of hire;
- b. Post-accident;
- c. Reasonable suspicion if a violation of this policy is suspected;
- d. Return to duty;
- e. Follow-up, if warranted to confirm a positive result or as part of a mandated rehabilitation plan.

Employees that fall under DOT drug and alcohol regulations, i.e. those associated with the transit program (FTA) or that hold a CDL (FMCSA), are not exempt from this policy. These employees are subject to non-DOT testing in situations that may not meet DOT testing criteria, in particular, post-accident testing for incidents that do not meet either the FTA or FMCSA definition of vehicle accident.

VII. Drug Testing Procedures

Any employee referred for a drug or alcohol test will be removed from performing any safety-sensitive functions until the City receives a verified test result from the Medical Review Officer. During this waiting period, the employee may not be offered alternative work if there are no tasks available within a similar skill set or responsibility level to the employee's current position. In such instances, the employee may be offered the opportunity to take paid leave, placed on paid administrative leave or required to take leave without pay, depending on the situation.

1. All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner by appropriately trained staff at a designated site. Every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.
2. The employee (donor) must provide a valid picture identification at the testing location prior to either test.

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3. The City of Bethel's designated drug testing entity utilizes urine specimen collection procedures for testing for Controlled Substances. Urine specimens are analyzed for the following drugs or drug metabolites:
 - a. Marijuana metabolites/THC
 - b. Cocaine metabolites
 - c. Phencyclidine (PCP)
 - d. Amphetamines and Methamphetamine
 - e. Opiate metabolites (Codeine, Morphine and Heroin)

VIII. Pre-Employment Testing

All job applicants who are selected for positions that include safety-sensitive functions must submit to a pre-employment drug test as a condition of employment. Refusal to test or a positive test result will be used as a basis for refusal to hire and/or rescinding a conditional offer. Current employees seeking a different position in the City with safety-sensitive functions may be required to submit to a drug test as a condition of hire into the new position.

IX. Post-Accident Testing and Reporting

There are special testing procedure rules applicable to post-accident testing. An employee involved in an accident must notify the Police Department and their supervisor as soon as possible after an accident. The Supervisor must immediately contact Human Resources.

1. A post-accident alcohol test should be administered within two (2) hours of the accident and no later than eight (8) hours after the accident. If either threshold is not met, Human Resources must prepare and file a record stating the reasons the test was not properly administered.
2. A post-accident test for controlled substances must be administered within thirty-two (32) hours following the accident. If the test is not completed within that period, the City shall cease attempts to administer a controlled substances test. Human Resources will prepare and maintain on file a record stating the reasons the test was not properly administered.

An employee who is subject to post-accident testing must remain readily available for such testing or may be deemed by the City to have refused to submit to testing, which will be treated the same as a positive test result.

If an accident occurs after normal work hours or on a holiday in which the designated testing site is closed, the Supervisor must contact Human Resources immediately on the

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next regular workday. A post-accident drug test will be conducted at that time. The employee must make themselves available for the test, even if the employee was not expected to be at work on that day.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that the City is unable to perform a drug and/or alcohol tests because law enforcement personnel have detained the employee, the City may use drug and/or alcohol post-accident test results administered by local law enforcement officials in lieu of the City-administered test. The local law enforcement officials must have independent authority for the test and the City must obtain the results in conformance with local law.

X. Reasonable Suspicion Testing

Employees will be subject to a reasonable suspicion drug and/or alcohol test when the City has reasonable suspicion to believe that the employee has violated this policy. Reasonable suspicion shall mean that there is objective evidence, based upon specific, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. A reasonable suspicion drug or alcohol test can be performed any time the employee is on duty.

The supervisor making the observation shall prepare a written record of the observations that led to a reasonable suspicion test. The supervisor must submit the written record to Human Resources as soon as practicable following the observations. The employee will receive a copy of the statement prior to his/her referral for a test. Human Resources will process a referral and the City shall be responsible for transporting the employee to the testing site.

An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in this policy.

XI. Return-to-Duty Testing

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All employees who perform safety-sensitive functions and test positive on a drug or alcohol test or refuse a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both before being returned to performing safety-sensitive functions.

If the employee is under a rehabilitation plan identified by a substance abuse professional (SAP), the SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undo concerns for public safety.

XII. Follow-Up Testing

An employee who has tested positive for drugs has the right to request a follow-up test to confirm or refute the results. A follow-up test will be performed under direct observation. The employee will be responsible for any and all costs associated with a follow-up test that confirms the positive test result.

XIII. Test Results

A Medical Review Officer (MRO) reviews all lab results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of a non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If the MRO finds no legitimate medical explanation for the test result, the MRO will verify the test as positive or a refusal to test and report the result to the Designated Employee Representative (DER). If the MRO finds a legitimate explanation, the MRO will report the test result as negative to the DER.

Refusal to submit to a drug/alcohol test is considered a positive test result and a direct act of insubordination and may result in termination and referral to a Substance Abuse Professional. A test refusal includes the following circumstances:

- a. Failing to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer;
- b. Failing to remain at the testing site until the process is complete;
- c. Failing to provide a specimen or to permit observation when required;
- d. Failing to cooperate with the MRO as part of the verification process for a positive test result;
- e. Failing to cooperate with any part of the testing process;

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- f. If the MRO reports that there is verified adulterated or substituted test result; and/or
- g. Admitting to the collector or MRO that you adulterated or substituted the specimen.

An employee that has been notified by the testing facility of a positive drug test and/or refusal to test because of adulteration or substitution, has seventy-two (72) hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing.

Once a request for a split specimen has been properly made, the original laboratory that tested the primary specimen will forward the split specimen to a second certified laboratory using a chain of evidence procedure.

The City of Bethel will not interfere with an employee's right to request a split specimen and will not condition the request on payment up front. However, if the second laboratory confirms the findings of the first laboratory, the employee will be responsible for reimbursing the City of Bethel for the full costs of testing incurred for the split specimen.

XIV. Consequences

The City will advise an employee violating this policy of resources available to assist him/her in resolving the problem; resources will include information about the City's Employee Assistance Program (EAP). Voluntary participation in a counseling or rehabilitation program prior to a confirmed "positive" test result is encouraged. No disciplinary action will be taken solely as a result of volunteering to participate in such a program. However, voluntary participation in such a program does not exempt an employee from the consequences of violating this policy.

An employee violating this policy may be subject to one or more of the following consequences or disciplinary measures:

- a. Immediate removal from any safety-sensitive functions;
- b. Administrative leave without pay from safety-sensitive functions pending a negative test result;
- c. Reassignment to other duties pending a negative test result;
- d. Return-to-duty testing with a required negative test result;
- e. Required evaluation by a substance abuse professional (SAP) who shall determine what assistance, if any, he/she needs to resolve the problem;
- f. Reevaluation by the SAP to determine whether he/she properly participated in the prescribed rehabilitation program if the SAP determined that the employee needed assistance in resolving the problem;

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- g. Discipline for engaging in prohibited conduct up to and including termination if necessary to protect the safety of other employees, the public or the reputation of the City.

XV. Employee Assistance Program

The City of Bethel expects employees who suspect they have an alcohol or drug problem to seek treatment. The City will help employees who abuse alcohol or drugs by providing a confidential resource that can provide assistance and referrals as appropriate. However, it is the responsibility of the employee to seek and accept assistance before drug and alcohol problems lead to disciplinary action.

XVI. Investigations and Searches

In order to enforce this policy, the City may investigate potential violations and require personnel to undergo drug and/or alcohol screening, and, where appropriate, searches of all areas of the City's physical premises, including, but not limited to, work areas, lockers, purses, briefcases, toolboxes, clothes, desks, workstations, and personal and City vehicles, etc. An employee may be asked to be present and remove a personal lock. **All employees are hereby notified that locked areas or containers do not prevent a search, and thus employees should understand there is no expectation of privacy on City premises.** Where the employee is not present or refuses to remove a personal lock, the company may do so for him or her and compensate the employee for the lock. Any such searches will be coordinated with a representative of the HR department. The City may use unannounced drug detection methods.

Employees will be subject to discipline up to and including termination for refusing to cooperate with searches or investigations.

XVII. Confidentiality and Information Disclosure

The confidentiality of all records and information relating to investigations, searches, results of drug/alcohol testing, refusal to test, and treatment will be maintained in accordance with all local, state and federal laws. Drug/alcohol testing records shall be maintained by the City's Drug and Alcohol Program Manager (DAPM). Only those with a need to know will have access to such records and information.

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The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including and drug or alcohol testing records. Employees may not have access to follow-up testing plans.

Employees, including management, who release confidential information to those without a need to know will be subject to disciplinary action, up to and including termination.

XVIII. Effects of Alcohol and Controlled Substances

Health Effects of Alcohol

Alcohol is a central nervous system depressant. When taken in moderate to large quantities it causes not only the euphoria associated with "being drunk" but also adversely affects judgment, the ability to think, and motor functions. The immediate effects of alcohol vary with several factors, making it difficult to predict what will happen when a person drinks. Long-term overuse of alcohol may cause liver damage, heart problems, sexual dysfunction and other serious medical problems. In some cases, alcohol use may lead to physical and psychological dependence on alcohol. Alcoholism is a serious chronic disease. Left untreated, it will likely get worse. Approximately 12% of all drinkers will become problem or alcoholic drinkers.

Any one or more of the following signs may indicate a drinking problem:

- a. family or social problems caused by drinking;
- b. job or financial difficulties related to drinking;
- c. loss of a consistent ability to control drinking;
- d. "blackouts" or the inability to remember what happened while drinking;
- e. distressing physical and/or psychological reactions if you try to stop drinking;
- f. a need to drink increasing amounts of alcohol to get the desired effect;
- g. marked changes in behavior or personality when drinking;
- h. getting drunk frequently;
- i. injuring yourself—or someone else—while intoxicated;
- j. breaking the law while intoxicated; and
- k. starting the day with a drink.

Health Effects of Controlled Substances

Marijuana: A variety of effects. Mild drowsiness may be a side effect and many persons who regularly smoke marijuana tend to become apathetic and may have difficulty in concentrating. Physical inertia may occur, accompanied by altered appetite, loss of weight, and a general lack of concern about physical appearance. For pregnant women, marijuana

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may be hazardous to the fetus. Continued, frequent use of marijuana may produce physical changes. Physical changes that may result include loss of weight, loss of sex drive, a reduced sperm count and respiratory and cardiac disturbances. Paranoia is a frequently reported side effect. Space-time perception is altered, making operation of moving equipment dangerous.

Cocaine: A powerful mood-altering drug, its use may lead to serious physical and/or psychological problems, sometimes resulting in death. Side effects of cocaine use may include a substantial drop in weight because of loss of appetite. Users who intravenously inject cocaine may be at greater risk for contracting infectious diseases, such as AIDS, due to the habit of sharing needles and syringes. Among the potential psychological effects are irritability, sleeplessness, paranoid thoughts and possible full-blown, paranoid psychosis. Cocaine deaths are usually caused by severe disturbances of the heart rhythm (ventricular fibrillation), heart attack (myocardial infarction), repeated convulsions, or depressed of the respiratory center of the brain. Withdrawal of cocaine may cause severe depression.

Opiates: Prolonged use may result in psychological and physical dependence, and opiates may have a respiratory depressant effect. Opiates may also be dangerous to those who have lung disease, such as asthma, because of the depressant effect on breathing.

Amphetamines: Stimulate the central nervous system. They may cause a rise in blood pressure, a racing pulse, wakefulness, euphoria and a loss of appetite. The stimulative effects of amphetamines may lead to abuse and addiction. Abuse may lead to compulsive behavior, paranoia, depression and psychosis.

Phencyclidine (PCP): A major hazard associated with abuse is a psychotic state characterized by extraordinary strength and bizarre behavior. Hypertensive episodes, cardiac arrhythmias, seizures and abnormal posturing are common side effects.

Effects of Alcohol and Controlled Substances on Work and Personal Life

Workers who use Alcohol and Controlled Substances affect everyone. Studies show that compared to Alcohol and Drug-free workers, substance abusers are far less productive, miss more workdays, are more likely to injure themselves or someone else, and file more worker compensation claims.

The measurable dollar costs of workplace substance abuse from absenteeism, overtime pay, tardiness, sick leave, insurance claims and workers' compensation can be substantial. However, the hidden costs resulting from diverted supervisory and managerial time, friction

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among workers, damage to equipment and damage to the City of Bethel's public image mean that workplace substance abuse is equally significant.

If Alcohol or substance abuse affects an employee's work life, it could lead to job loss and all of the financial problems that would follow. It can also destroy relationships, lead to serious problems with the law, and cause harm to friends and family.

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EMPLOYEE ACKNOWLEDGMENT

The Drug Free Workplace Policy describes important information about the City's requirements under the Drug Free Workplace Act of 1988 and my responsibilities as a City employee.

I understand that I should consult the Human Resources Manager regarding any questions not answered in this Policy.

Since the requirements described here are necessarily subject to change, I acknowledge that revisions to this policy may occur. All such changes will be communicated through official notices, and I understand that revised information may supersede, modify or eliminate existing policies.

Furthermore, I acknowledge that I have received a copy of this policy and I understand that it is my responsibility to read and comply with the requirements made by the City of Bethel and any revisions made to it.

Employee Name: _____

Employee Signature: _____

Date: _____