

Delaware County Drug-Free Workplace Policy

Drug-Free Workplace Policy

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DELAWARE COUNTY

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1.0 Purpose and responsibility.

The Delaware County Drug-free Workplace Programs with the Drug Program Coordinator shall plan for, implement, administer, coordinate and evaluate Delaware County's Drug-free Workplace Policy, including any testing and education programs developed for County employees, and shall ensure Delaware County's compliance with provisions of the federal Drug-free Workplace Act of 1988 and any subsequent amendments for the safety of Delaware County's employees and the general public.

2.0 Scope

To all Appointing Authorities, Offices, Departments, and Employees of Delaware County.

3.0 Distribution

To all Appointing authorities, Offices, Departments, and Employees of Delaware County

4.0 Definitions of terms.

For purposes of this policy:

- (A) "Abuse" means:
 - (1) Any use of an illegal drug;
 - (2) Intentional misuse of any over-the-counter drug in cases where such misuse impairs job performance;
 - (3) Use of any prescription drug in a manner inconsistent with its medically prescribed intended use, or under circumstances where use is not permitted;
 - (4) Use of alcohol where such use impairs job performance; and
 - (5) Intentional and inappropriate use of any substance, legal or illegal, which impairs job performance.
- (B) "Agency" means any office, department, commission, board, institution or facility under the direction of Delaware County.
- (C) "Alcohol" means ethyl alcohol or ethanol.
- (D) "Applicant testing" means drug testing of final applicants for positions in County service who have tentatively met all relevant employment criteria but have not been officially offered employment with the County.
- (E) "Appointing authority" means the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, institution, or facility.
- (F) "Chain of custody" means procedures to ensure the integrity of each specimen for drug testing by tracking its storage from point of collection to final disposition.

- (G) “Collection site” means a place designated by the Board of County Commissioners where individuals present themselves for the purpose of providing a specimen to be analyzed for the presence of drugs.
- (H) “Confirmation test” means a drug test on a specimen to substantiate the results of a prior drug test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous or initial drug test.
- (I) “Controlled substance” means those substances defined in sections 3719.01 and 3719.41 of the Ohio Revised Code.
- (J) “Drug” means:
- (1) Any drug which, under the Federal Food, Drug, and Cosmetic Act, federal narcotic law, sections 3715.01 to 3715.72, or Chapter 3719 of the Ohio Revised Code, may be dispensed only upon a prescription;
 - (2) Any drug which contains a Schedule V controlled substance and which is exempt from Chapter 3719 of the Ohio Revised Code, or to which such chapter does not apply; or
 - (3) Any other substance defined in section 4729.02 of the Ohio Revised Code.
- (K) “Drug Program Coordinator” means the person responsible for implementing, directing and managing the drug-free workplace program within the County. The Drug Program Coordinator serves as the County’s principal contact with the testing laboratory and maintains the effective operation of the drug-free workplace program within the County.
- (L) “Drug test” means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person’s bodily fluids.
- (M) “Employee” means any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer who is paid by warrant of the Delaware County Auditor.
- (N) “Employee Assistance Program” means the program through which employees may secure confidential counseling for behavior health issues including drug and alcohol rehabilitation. The employee assistance program is currently administered by The Human Factor, Inc.
- (O) “Follow-up test” means a drug and/or alcohol test for employees referred through administrative channels to counseling or rehabilitation program such as those recommended by or associated with the employee assistance program. Such employees shall undergo follow-up testing for a time and frequency stipulated by the Drug Program Coordinator. Such testing is distinct from testing which may be imposed as a component of the counseling or rehabilitation program itself.
- (P) “Illegal drug” means any substance other than alcohol, having psychological and/or physiological effects on a human being that is not a prescription or non-prescription medication, including controlled dangerous substances and controlled substance analogs of volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate ingestion.
- (Q) “Initial testing” means a drug test to determine the presence or absence of drugs or their metabolites in specimens.
- (R) “Laboratory” means a facility having certification, staff, equipment and personnel required by the director of the department of administrative services to perform urine testing for drugs or breath testing for alcohol for employees of any office, department, commission, board, institution or facility of County government.

- (S) “Medical Review Officer” means a person who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with a person’s medical history and other relevant biomedical information.
- (T) “Delaware County Drug-Free Workplace Programs” means the implementation of drug-free workplace programs to ensure Delaware County’s compliance with provisions of the federal Drug-Free Work Act of 1988 or subsequent amendments.
- (U) “Positive test result” means a test result that was positive on an initial FDA-approved immunoassay test, confirmed by a gas chromatography/mass spectrometry assay (or other confirmatory test(s) meeting National Institute On Drug Abuse standards), and reviewed and verified by a medical review officer, or a breath test for alcohol administered by the state patrol or a person qualified under rule 3701-53-07 of the Ohio Administrative Code Which equals or exceeds a threshold level established in section 4511.19 of the Ohio Revised Code as constituting a positive test for being under the influence of alcohol.
- (V) “Prescription” means a written or oral order for a controlled substance for the use of a particular person or a particular animal given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the director of the United States drug enforcement administration pursuant to the federal drug abuse control laws.
- (W) “Reasonable suspicion testing” means alcohol or other drug testing based on a belief that an employee is using or has used drugs in violation of the employer’s policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon the following:
- (1) Observable phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of being under the influence of a drug;
 - (2) Abnormal conduct or erratic behavior while at work, absenteeism, tardiness, or deterioration in work performance;
 - (3) A report of drug use by reliable and credible sources and which has been independently corroborated;
 - (4) Evidence that a individual has tampered with a drug test during his/her employment with the current employer;
 - (5) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of alcohol and/or other drugs while working, or while on the employer’s premises or operating the employer’s vehicle, machinery, or equipment.
 - (6) The occurrence of a significant incident involving an employee’s on the job actions which has resulted in: a) the personal injury of any person, including the employee, in which medical treatment has been sought away from the scene, or b) which property damage has occurred where a vehicle or equipment has been towed away from the scene or is rendered inoperable.
- (X) “Specimen” means a tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.
- (Y) “Substance” means alcohol or drugs.
- (Z) “Workplace” means a County owned or utilized premise for official County business or any place where official County business is conducted, except the Delaware County Fairgrounds during non-working hours unless the employee is representing the County in any way.

5.0 Policy

Voluntary Compliance

Employees who voluntarily disclose to their employer that they have a drug or alcohol problem will be offered confidential assistance in contacting counseling and treatment programs and provided information about any available insurance coverage or benefits, including the County's employee assistance program. The employer will expect such employees to take such actions as are necessary to remedy the problem. Such employees shall not be subject to follow-up testing as defined in this policy.

Should said employee become subject to reasonable suspicion testing pursuant to this policy, however, he/she will become subject to disciplinary actions and follow-up testing as defined in this policy and will lose any protections he/she may have enjoyed under the voluntary disclosure status.

Alcohol testing techniques and methods.

- (A) All procedures and protocols for collection and testing of an employer's breath for alcohol shall conform to the methods and procedures set forth in this policy. The threshold concentration level for a positive test will be .08 blood alcohol content (BAC).
- (B) Test results shall be reported to the Medical Review Officer (MRO) within twenty-four hours of the testing procedure.
- (C) The employee assistance program shall provide to the drug Program Coordinator a monthly statistical summary of all alcohol breath testing information including the number of employees tested and the results of that testing. This information shall be forwarded no later than fourteen calendar days after the end of the month covered by the summary.

Drug testing techniques and methods.

- (A) The initial drug testing protocol for County employees and applicants for County employment shall use an assay technique, which meets federal food and drug administration requirements. The initial cutoff levels and the drug panel for testing shall meet National Institute On Drug Abuse criteria to determine whether specimens are negative for the following five drugs or classes of drugs:

<u>Drug class</u>	<u>Initial test level (ng/ml)</u>
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	*300
Phencyclidine	25
Amphetamines	1,000

- 25 ng/ml if immunoassay specific for free morphine.

- (B) These test levels and initial test methods may be subject to change by Delaware County if advances in technology or other consideration warrant identification of these substances at other concentrations. Initial test methods and test levels for other drugs meeting certification criteria of the National Institute on Drug Abuse may be added to the testing protocol as deemed necessary by the Drug Program Coordinator.

Collection and handling of specimens.

- (A) The individual to be tested shall be transported by the employer or employer representative to a collection site within a reasonable travel time upon notification for drug testing.
- (B) The collection site person shall request the individual to present photo identification or other confirming identification. In the event that no Identification is produced, an instant photograph will be taken of the individual. The individual will be required to sign, date, and write his/her social security number on the photograph.
- (C) The individual shall be required to follow all procedures as required by the collection site.
- (D) The individual shall be instructed to wash and dry his/her hands prior to urination and shall not have access to any water or other materials, which could adulterate the urine specimen.
- (E) The individual shall provide the specimen in the privacy of a stall or a partitioned area that allows for individual privacy.
- (F) The collection site person shall receive the specimen (which must contain sixty ml of urine), measure its temperature and color and visually inspect for contaminants.
- (G) The specimen shall be sealed and labeled in the presence of BOTH the individual and the collection site person. The labels shall contain the date, the individual's specimen number and any other identifying information provided or required by the Drug Program Coordinator.
- (H) The individual tested shall initial the I.D. label on the specimen certifying that it is the specimen collected from him/her.
- (I) The collection site person shall enter into the record book all information identifying the specimen and shall sign the book.
- (J) The individual tested shall sign the statement in the record book certifying that the specimen is, in fact, the specimen he/she provided.
- (K) The collection site person shall complete the Chain of Custody form and ship the specimen to the testing laboratory in a sealed, secure container.
- (L) The laboratory shall use the Chain of Custody procedures to maintain control and accountability of all specimens from receipt through completion of testing. The date and purpose shall be documented on an appropriate Chain of Custody form each time a specimen is handled and transferred.
- (M) Laboratory personnel shall inspect each specimen package for evidence of tampering, etc.
- (N) Specimens shall be tested by grouping them into batches, with each batch containing an appropriate number of standards for calibrating the instrumentation and a minimum of ten percent controls or as stipulated by National Institute on Drug Abuse guidelines.

Confirmatory testing

- (A) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed below:

<u>Drug</u>	<u>Confirmatory test level ng/ml</u>
Marijuana metabolite	15
Cocaine metabolite	150
Opiates:	
Morphine	*300
Codeine	*300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500
1. Delta-9-tetrahydrocannabinol-9-carboxylic acid	
2. Benzoylcegonine	

- (B) All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."
- (C) Confirmatory test levels shall be subject to change if advances in technology or other considerations warrant identification of these substances at other concentrations by the National Institute on Drug Abuse. Confirmatory test methods and testing levels for other drugs meeting certification criteria of the National Institute on Drug abuse may be added to the testing protocol as deemed necessary by the Drug Program Coordinator.

Reporting of test results

- (A) The laboratory shall report test results to the MRO. All test results shall be certified as accurate by the responsible person at the laboratory. Results may not be transmitted by telephone, but transmission by other electronic means (computer, teleprinter or facsimile) shall be permissible. All specimens which test negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive for a specific drug or drugs.
- (B) The Medical Review Officer may, at his/her discretion, request that the laboratory provide quantitation of test results. The Medical Review Officer will not normally report quantitation of test results, but will only report whether the test was positive or negative unless prior written approval to provide other information is authorized by the Drug Program Coordinator.
- (C) The employee assistance program shall provide to the Drug Program Coordinator A monthly statistical summary of urinalysis testing information or any other documentation pertaining to the testing process as requested by the Drug Program Coordinator. This information shall be forwarded by registered or certified mail no later than fourteen calendar days after the end of the month covered by the summary.

Record and specimen retention

- (A) Unless otherwise instructed in writing by the Drug Program Coordinator, all records pertaining to a given urine specimen shall be maintained by the laboratory for a minimum of two years.
- (B) All positive urine specimens shall be routinely retained in frozen storage (-20 degrees C or less) so as to be available for any necessary retest for a period of one year, unless authorized otherwise in writing by the Drug Program Coordinator.

Applicant testing

- (A) Every application for employment as a new hire with Delaware County service shall state:
“All applicants tentatively selected for this position will be required to submit to urinalysis to test for illegal drug use prior to appointments. An applicant with a positive test shall not be offered employment.”
- (B) Each applicant shall be notified that appointment to the position will be contingent upon a negative test result. Failure of the vacancy announcement to contain this statement shall not preclude applicant testing if advance written notice is provided applicants in some other manner.
- (C) The Drug Program Coordinator shall direct applicants to the appropriate collection site. The test must be undertaken as soon after notification as possible.
- (D) Applicants shall be advised of the opportunity to offer an explanation or submit medical documentation of legally prescribed medications which may explain a positive test result. Such information will be reviewed only by the Medical Review Officer in conjunction with his/her determination of the validity of a positive confirmatory test result.
- (E) Any office/department of County government shall decline to extend a final offer of employment to any applicant with a verified positive test result and such applicant will not be reconsidered for County employment for a period of one year.

Reasonable suspicion testing

- (A) Where there is reasonable suspicion to believe that an employee, when appearing for duty or on the job, is under the influence of, or his/her job performance is impaired by, alcohol or other drugs, the employee may be required to submit a urine specimen for testing for the presence of drugs or a breath sample for testing for the presence of alcohol.
- (B) Such reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of, or is using or abusing, alcohol and/or other drugs. Examples of reasonable suspicion shall include, but not be limited to, slurred speech, disorientation, and abnormal conduct or behavior.
- (C) Reasonable suspicion must be documented in writing by:
 - (1) The employee’s supervisor; with
 - (2) Written corroboration by the department head or his/her designee.
- (D) Reasonable suspicion testing shall also include incident-based accident or unsafe practice testing wherein employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to themselves, to others, or the overall operation of the agency may be subject to

testing. Such incident-based reasonable suspicion testing shall be for conditions and situations and according to procedures prescribed by this policy.

- (E) The employee may be transported to an offsite collection facility and shall be asked to provide a urine sample and/or submit to a breath test for alcohol in accordance with criteria delineated in this policy.
- (F) Supervisors and managers shall be trained and receive annual refresher training to address the abuse of alcohol or other drugs by employees, to recognize facts that give rise to reasonable suspicion, and the proper procedures for documenting facts and circumstances to support a finding or reasonable suspicion as prescribed in this policy. Failure to receive such training shall not, however, invalidate otherwise proper reasonable suspicion testing.
- (G) Employees shall be given the opportunity to offer an explanation or submit medical documentation of legally prescribed medications or exposure to toxic substances which may explain a positive test result. Such information shall be reviewed only by the Medical Review Officer in conjunction with his/her determination of the validity of a positive confirmatory test and shall be released to the employer only to explain a test result.

Finding of employee alcohol and/or drug use and disciplinary consequences.

- (A) An employee may be found to use alcohol and/or illegal drugs on the basis of any appropriate evidence including, but not limited to :
 - (1) Direct observation;
 - (2) Evidence obtained from a workplace-related arrest or criminal conviction;
 - (3) A verified positive test result; or,
 - (4) An employee's voluntary admission.
- (B) On the first occasion in which an employee has a confirmed positive alcohol or other drug test, the employee shall be required to enroll in and successfully complete a substance abuse program certified by the Ohio Department of Alcohol and Drug Addiction Services. The employee shall also be subject to random testing for a period of time of 24 months after the date of successful completion of the above mentioned substance abuse program.
- (C) For second or subsequent occurrences, disciplinary action taken against an employee found to use alcohol and/or illegal drugs may include the full range of disciplinary actions, including removal. The severity of the action chosen will depend on the circumstances of each case and the employing agency's work rules, policies, and procedures.
- (D) Any employee who refuses to submit to a properly ordered drug test shall be deemed as having a positive test result as stipulated in paragraph (B) of this section.
- (E) Attempts by an employee to alter or substitute the specimen provided for drug testing shall be deemed a refusal to take the drug test when required and shall subject the employee to the same disciplinary actions as required for refusing to submit to a properly ordered test.

Returning to work following drug/and or alcohol rehabilitation

With regards to employees required to complete drug and/or alcohol rehabilitation as a result of a positive drug/alcohol test per the *Delaware County Drug-Free Workplace Policy* and/or the *Delaware County Substance Abuse Policy for Commercial Driver Licensed Drivers*, the following will apply:

- (A) An employee may return to work in a safety sensitive position only when:
 - a. The employee is qualified and legally able to complete all essential functions, including safety sensitive functions, of the position,

- b. The substance abuse professional of the rehabilitation program within which the employee is enrolled has given to the appointing authority of the employee written release to perform the essential functions, including all safety sensitive functions, of the position, and
- (B) In order to retain his/her position during rehabilitation, the employee is required to request an unpaid leave of absence for medical purposes in accordance with number 1 of the *UNPAID LEAVE OF ABSENCE* section of the Delaware County employee Handbook.
- (C) The employee must show “progress” during the rehabilitation program. “Progress” shall be defined as by follow-up drug and/or alcohol tests showing a decrease in prohibited substance traces in the employee’s system and no introduction of a new prohibited substances in the employees system.
- (D) Should a follow-up drug/alcohol test show the presence of a prohibited substance or the introduction of a new prohibited substance, the employee is considered to no longer be in rehabilitation and he/she is subject to immediate termination.
- (E) An employee who fails to participate in an acceptable rehabilitation program following a positive drug/alcohol test is subject to immediate termination.

Disciplinary action; Federal Drug-Free Workplace Act of 1988.

As required by the Federal Drug-Free Workplace Act of 1988, each employee in an agency receiving federal grant funds shall be required to notify his/her agency head or the agency head’s designee, within five calendar days after he/she is convicted of a violation of any federal or state criminal drug statute, provided such conviction arose from an occurrence at the workplace or any location where the employee was working at the time of the incident which led to the conviction. Each agency shall be required to notify any federal agency with which it has a contract or grant, within ten calendar days after receiving notice from the employee, of the fact of such conviction. Any employee’s failure to report such a conviction will subject such employee to disciplinary action, up to and including termination. An agency head or his/her designee may send the employee to the employee assistance program for referral and treatment, or may take appropriate personnel action against such an employee, as allowed in the sections of “Finding of employee alcohol and/or drug use and disciplinary consequences”. Whatever the case, such action shall be taken within thirty calendar days of the employee’s notification of the employee’s conviction.

Appeal of drug test results.

- (A) Employees who have a positive drug test result may ask for a retest of the original specimen within ten (10) calendar days of receiving the initial test result. Such requests shall be in writing, signed, and dated, and shall be presented to the immediate supervisor of the employee. The supervisor will immediately (within 24 hours) forward such request to the Drug Program Coordinator. The laboratory performing such a retest shall be certified by the National Institute on Drug Abuse and chosen by the employee.
- (B) Any such retest shall be at the expense of the employee. In the event that the retest results prove to be negative, the expense of the retesting will be born by Delaware County.

- (C) An employee request for a retest shall not delay the imposition of appropriate disciplinary action or referral to an alcohol and/or drug abuse rehabilitation program.

Drug-free Workplace training/education

- (A) The Drug Program Coordinator shall provide, or arrange to have provided, information and training programs concerning the impact of alcohol and other drug abuse on job performance, as well as information concerning the employee assistance program and any other resources available for employee assistance in dealing with a substance abuse program.
- (B) All employees shall be furnished a copy of the County's drug-free workplace policy and drug testing procedures.
- (C) All new employees shall be furnished a copy of such document and such procedures at the time of their orientation, but no later than thirty (30) calendar days from the first day of their employment.
- (D) The Drug Program Coordinator shall develop and implement, or arrange to have implemented, a training and education program for supervisors and managers to provide knowledge and skills essential for their recognizing and addressing alcohol and other drug abuse among employees and to facilitate their participation in the implementation and administration of drug testing and other drug-free workplace programs within the agency in which they work.
- (E) Each office/department shall be required to document to the Drug Program Coordinator that it has distributed copies of the Drug-Free Workplace Policy to all employees. All employees shall sign an acknowledgement that they have read and understand the policy and work rules pertaining to it. This acknowledgement shall be kept in the employee's file. Agencies shall review the policy annually with employees.

Confidentiality

To the extent required by law, Delaware County will keep confidential, any and all, drug and/or alcohol treatment records, medical records, positive test results, and information it provides its Medical Review Officer, unless a written release, signed by the employee, is on file with the Drug Program Coordinator. Such records and information shall be kept in secure files separate from personnel files. Ordinarily, such information will be disclosed within the County only on a need- to-know basis, and disclosed outside the County only where required by law or where a claim, charge, or lawsuit is filed against the County or its agents involving such information.