

CITY OF FORT WAYNE POLICY AND PROCEDURE MANUAL

Effective as of 07/01/07

Policy 610: Drug and Alcohol Testing Procedures

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1. INTENT

The City of Fort Wayne is dedicated to providing a safe and drug free workplace. In meeting these goals, it is our intent to:

- a. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;
- b. Create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
- c. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;
- d. Encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties; and
- e. Achieve the above objectives consistent with the need to protect and preserve the privacy and dignity of all employees.

2. PURPOSE OF EMPLOYEE DRUG AND ALCOHOL TESTING

The City of Fort Wayne expects employees to report for work in condition to perform their duties. On-the-job involvement with drugs and/or alcohol is a violation of the City of Fort Wayne's policy and Federal law.

3. APPLICABILITY

- a. These policies apply to all safety-sensitive and non-safety-sensitive employees, including all employees, volunteers, contract employees and contractors when they are on City of Fort Wayne property, when performing any safety-sensitive functions, or working on behalf of the City. These policies also apply to off-site lunch periods or breaks when an employee is scheduled to return to work. Visitors, vendors, and contractor employees are governed by these policies while on City of Fort Wayne premises and will not be permitted to conduct City of Fort Wayne business if found to be in violation of these policies.
- b. A list of job classifications presently designated as safety-sensitive is attached hereto as Table 1. The City of Fort Wayne will advise the appropriate collective bargaining agent(s) regarding any new or additional job classifications it may propose to add to the list of safety-sensitive job classifications. Any unresolved dispute over any proposed addition to Table 1 shall be subject to

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the grievance/arbitration procedures in any applicable collective bargaining agreement.

4. PROHIBITED SUBSTANCES

"Prohibited substances" addressed by these policies include the following:

a. **Illegally Used Controlled Substances or Drugs:**

Any illegal drug or substance identified in Schedules I through V Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to: marijuana, amphetamines, opiates 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. Illegal use includes the use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

b. **Alcohol:**

The use of beverages containing alcohol or substances, including any medication, mouthwash, food, candy, or any other substance such that alcohol is present in the body while performing City of Fort Wayne business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

5. PROHIBITED BEHAVIOR

- a. Reporting for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
- b. Possessing alcohol while on duty or operating a City motor vehicle or other motorized equipment.
- c. Using alcohol while performing any job functions.
- d. Using alcohol following an accident before undergoing a post-accident alcohol test.
- e. Using, manufacturing, distributing, dispensing or possessing controlled substances.
- f. Refusal to submit immediately to a chemical or alcohol test (reasonable suspicion, post-accident, and random) when requested.

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- g. All employees are required to notify the City of Fort Wayne of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.
- h. The City of Fort Wayne is dedicated to assuring fair and equitable application of the Drug and Alcohol Testing procedures. Therefore, supervisors and managers are directed to use and apply all aspects of this procedure in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this procedure, or who is found to deliberately misuse the procedure in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

6. DEFINITIONS

- a. "Accident (Non-Vehicular)" means that an employee sustains an on-the-job injury that results in casting, suturing or overnight hospitalization or, in the opinion of the Risk Management investigator with the concurrence of at least one supervisor, the injury was the result of an employee's actions.
- b. "Accident (Vehicular)" means an occurrence associated with the operation of a motor vehicle or other motorized equipment, if, as a result:
 - i. A death occurs; or
 - ii. An individual suffers bodily injury that requires medical treatment away from the scene of the accident; or
 - iii. One or more of the vehicles involved incurs disabling damage as a result of the occurrence and is transported away from the scene by a tow truck or another vehicle; or
 - iv. The employee receives a citation under state or local law for a moving traffic violation; or
 - v. In the opinion of the Risk Management investigator, with the concurrence of at least one supervisor, the employee driver's actions contributed to the accident.
- c. "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol. References to use or possession of any beverage, mixture or preparation containing ethyl alcohol (including any medication containing alcohol).

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- d. "Alcohol Test" means a test conducted by a Certified Breath Alcohol Technician, or any other person approved by the City of Fort Wayne Police Department, using an Evidential Breath Testing Device to measure the amount of alcohol concentration in a volume of breath.
- e. "Alcohol Use" means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- f. "Breath Alcohol Technician (BAT)" means an individual trained and certified to proficiency in the use of an evidential breath testing device.
- g. "Cancelled Test" means a test that has been declared invalid by a Medical Review Officer (MRO) for drug testing or for alcohol.
- h. "CDL" means a Commercial Driver's License.
- i. "Confirmation Test"
 - i. For alcohol testing, means a second test following a screening test with a result of 0.02 or greater that provides a quantitative data of alcohol concentration. Confirmation of the screening test must be by an Evidential Breath Testing (EBT) device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), and must be capable of printing out each test result and air blank, and must sequentially number each test.
 - ii. For controlled substances testing, means a second analytical procedure to identify the presence of a specific drug metabolite which is independent of the screen test and which used a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas Chromatography Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.
- j. "Controlled Substances/Drugs" for purposes of these procedures, means controlled substances or drugs are cocaine, marijuana, opiates, amphetamines, phencyclidine and any other substance determined by the U.S. Department of Transportation to be a controlled substance.
- k. "Controlled Substance (or Drug) Test" means a method for determining the presence of controlled substances in a urine sample using a scientifically reliable method.

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- l. "Employee" means any person employed by the City of Fort Wayne in a non-public safety position, excluding any elected official.
 - m. "EAP" means an Employee Assistance Program provided by The City of Fort Wayne to assist its employees in dealing with drug or alcohol dependency or other personal problems.
 - n. "Evidential Breath Testing Device (EBT)" means a device approved by the NHTSA and placed on NHTSA's Conforming Products list and is used for the evidential testing of breath.
 - o. "Medical Review Officer (MRO)" means 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 or her medical history and any other relevant biomedical information.
 - p. "Safety-Sensitive Classification" means:
 - i. Any of the job classifications listed in Table 1.
 - ii. A classification which involves the operation of a vehicle or equipment which is used to maintain public health and safety for which a CDL is a required condition of employment.
 - iii. Parks & Recreation staff responsible for the daily supervision of children.
 - q. "Screening Test (also known as an "initial test"):"
 - i. In alcohol testing, means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system.
 - ii. In controlled substances testing, means an immunoassay screen (or other DHHS-approved test) to eliminate "negative" urine specimens from further consideration.
 - r. "Split Sample" means an additional sample collected with the original specimen to be tested in the event the original specimen tests positive for CDL testing only.

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- s. "Verified Negative Drug Test Results" means a drug test result reviewed by a MRO and determined result reviewed by a MRO and determined to have no evidence of prohibited drug use.
- t. "Verified Positive Drug Test Results" means a drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

7. CIRCUMSTANCES OF DRUG AND ALCOHOL TESTING.

The following drug and/or alcohol screening situations will be utilized by the City of Fort Wayne:

- a. **Pre-employment Testing:** All applicants shall undergo urine substance abuse testing immediately following the offer of employment. All current employees shall undergo urine substance abuse testing prior to or transfer from a non-safety-sensitive position into a safety-sensitive position. Receipt of a negative substance abuse test result is required prior to commencement of employment. If an applicant refuses to be tested or fails the pre-employment substance abuse test, the applicant will be disqualified for employment for a period of twelve months. A negative pre-employment substance abuse test is required prior to further consideration for employment.
- b. **Post-accident Testing:** Such testing shall be limited to accidents as defined in sections 6.a. and 6.b., except as follows: If an accident (non-vehicular), in the opinion of the Risk Management investigators with the concurrence of one supervisor, is the result of the actions of an employee. Substance abuse tests must be performed within eight hours after the accident. Alcohol tests must be performed within three hours after the accident.
- c. **Reasonable Suspicion:** Any employee may be subject to urine and/or breath testing when there are reasons to believe that substance abuse is adversely affecting his/her job. Such a determination will be made on the basis of documented objective facts and circumstances which are consistent with the short-term effects of substance abuse. Examples of reasonable cause include, but are not limited to, the following:
 - i. Physical signs and symptoms consistent with prohibited substance use.
 - ii. Evidence that the employee has engaged in the manufacture, distribution, dispensing, possession, or use of prohibited, substances on the job.
 - iii. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures.

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Reasonable cause referrals must be made by one supervisor (two supervisors are preferred) who reasonably conclude that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited abuse or misuse. The questioned conduct must be witnessed and documented in writing. All employees tested for reasonable cause will be driven to the testing facility by a member of Risk Management, the department head or the department head's designee.

- d. Random: Such tests shall be limited to employees who occupy safety-sensitive classifications (Table 1), and who are not in the CDL testing pool, on a random, unannounced basis. Each year, at least 25% of all employees occupying safety-sensitive functions will be tested for drugs. All safety-sensitive employees will remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing. Random testing will be conducted in accordance with procedures established by the City's Risk Management Department.
- e. Return-to-duty: Employees who have voluntarily entered an accepted drug/alcohol rehabilitation program or Employee Assistance Program, prior to announcement of a drug screen collection, and notified the City of such, shall be tested for prohibited drug or alcohol use before they return to duty. The employee must first be certified as capable of resuming duties. Any such employee, once returned to duty, will be administered unannounced follow-up drug and alcohol tests for up to 60 months (CDL classifications only) and for up to 12 months (non-CDL classifications) after their return to duty.

8. SUBSTANCES TO BE INCLUDED IN TESTING

Alcohol (Ethanol), amphetamines, cannabinoids (marijuana), cocaine, opiates, phencyclidine (PCP), and their metabolites will be included. Because the City is concerned about the abuse of prescribed and over-the-counter medications as well as illegal drugs and alcohol, the above list may be expanded to include yet-to-be-developed substances, changes in The City of Fort Wayne policy, or changes to federal laws and regulations.

9. DRUG TESTING PROCEDURES

- a. The City of Fort Wayne shall identify and select only qualified medical laboratories certified by DHHS/NIDA/SAMHSA to perform the urinalysis testing described by these procedures. Appointments for urine collection for drug screens will be coordinated by Risk Management. The specimens will be collected at special facilities that optimize confidentiality and observe DPT collection procedures. The collection facility must adhere to the collection provisions set forth in the DHHS regulations entitled Mandatory Guidelines for

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Federal Workplace Drug Testing Programs 53FR (11970) published April 11, 1988 known as DHHS Guidelines and 49 CFR Part 40, as amended. A strict chain of custody will be maintained on the specimen as described in the DHHS Guidelines. In the event that a non-designated collection facility must be used, Risk Management will contact the facility to insure that the facility is properly advised concerning the collection requirements as described in the DHHS Guidelines. Record keeping and reporting of all drug testing and results shall be in strict accordance with federal guidelines to protect the confidentiality of the employees.

- b. If there is concern about an individual's ability to function safely, that individual will be provided transportation to their home after completion of the drug testing. Supervisors will always transport employees to the collection site.

10. DRUG TESTING

a. Initial Test

- i. The initial test shall use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. The most current NIDA/SAMHSA cutoff levels shall be used when screening specimens to determine whether they are negative for these drugs. Current cutoff levels are:

Initial Test Cutoff Levels (ng/ml)	
Marijuana Metabolites (cannabinoids)	50
Cocaine Metabolites	300
Opiate Metabolites*	2000
Phencyclidine (PCP)	25
Amphetamines	1000
*25 ng/ml if immunoassay-specific for free morphine	

- ii. These cutoff levels are subject to change be the DHHS as advances in technology or other considerations warrant.

b. Confirmation Test

- i. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/N4S) techniques using the most current NIDA/SANMSA cutoff levels. The current cutoff levels are:

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Confirmatory Test Cutoff Levels (ng/ml)	
Marijuana Metabolite (1)	15
Cocaine Metabolite (2)	150
Opiates:	
Morphine	2000
Codeine	2000
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine (3)	500

- (1) Delta-9 tetrahydrocannabinol-9-carboxylic acid
- (2) Benzoylgonine
- (3) Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/ml.

ii. These cutoff levels are subject to change by the DHHS and/or the DOT as advances in technology or other considerations warrant.

c. Split Sample Testing

- i. Does NOT include pre-employment testing. Applies only to CDL holders. Other employees will have an instant test, (eCup) which if positive will be sent to the current lab utilized by the City of Fort Wayne's Medical Provider. The specimen will be tested following current guidelines, and if positive will automatically undergo a confirmation test.
- ii. The employee who has had a NIDA drug screen may request, within 72 hours of notification of a positive test by the MRO, that the split sample be tested at a separate DHHS certified laboratory. This request must be made in writing to the MRO. The results of the split sample test shall be the final test results that are reported to the employer by the MRO. The cost for transportation and testing of the split sample is the sole responsibility of the employee and must be paid for in advance. If results from the split sample are negative, the City of Fort Wayne will reimburse the employee.

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11. ALCOHOL TESTING PROCEDURES

- a. Alcohol testing will only be conducted using evidential breath testing devices in accordance with NIDA.
- b. Breath testing will be coordinated by The City of Fort Wayne Department of Risk Management. The breath specimen will be conducted at a site that optimizes confidentiality. The collection site must adhere to the collection provision set forth by NIDA. A strict chain of custody will be maintained on the specimen. All record keeping will be in strict accordance with Federal regulations.
- c. If there is concern about an individual's ability to function safely, the individual will be provided transportation to their home after completion of the testing. Supervisors will always transport employees to the test site.
- d. Alcohol breath testing will be performed in the following manner in accordance with NIDA.
- e. Screening Test - The initial test shall be done using an EBT in accordance with NIDA. If the initial test results are less than .02 alcohol concentration, the results are negative and will be reported by the BAT as such. If the initial test results are .02 or greater, a second of confirmatory test must be conducted.
- f. The confirmatory test must be conducted on the same EBT as the initial test in accordance with NIDA. Before the confirmatory test may be given, a minimum of 15 minutes and maximum of 20 minutes must have passed since the initial test was performed. During this period, the employee should avoid any actions that could increase mouth alcohol. The 15-20 minute waiting period is to ensure that the presence of mouth alcohol does not artificially raise the test result.
- g. Only the results of the confirmatory test shall be reported, irrespective of the results on the initial test. If the results of the initial and confirmatory tests are not identical, the confirmation test result is deemed to be the final test result.
- h. If the results of the confirmatory test is less than .02 alcohol concentration, a negative result shall be reported by the BAT.

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- i. If the results of the confirmatory test are .02 or greater alcohol concentration (non-negative results), the employee must be removed from his/her safety-sensitive or non-safety-sensitive position for eight hours or longer and be referred to mandatory evaluation by Risk Management. Based on the Risk Management evaluation, the employee may be subject to the involuntary rehabilitation procedures as well as other disciplinary measures up to termination.

12. POSITIVE TEST/REFUSAL TO TEST

- a. A positive substance abuse test is a violation of The City of Fort Wayne's policy. An employee who refuses to submit to a drug and/or alcohol test will be considered to have failed the test. Failure to comply with the request for drug/alcohol testing will be just cause for termination. If a positive test for drugs is reported by the medical review officer, it is understood that the screening test was positive and a second confirmatory test, based on a different scientific principle was also positive. The acceptable method of confirmation is: gas chromatography/mass spectrometry (GC/MS). A verified positive drug test for alcohol (.02 or above) is reported, it is understood that the positive test was the result of the confirmation test on an EBT. A positive alcohol test result will result in immediate termination of employment. City of Fort Wayne employees with positive drug/alcohol screens will be informed in a meeting with their supervisor and/or department manager.
- b. Any employee who has resigned or been discharged after a positive drug or alcohol test shall not be eligible for re-hire until twelve months following his/her termination.

13. BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST

Behavior that constitutes a refusal to submit to a test includes, but is not limited to, the following:

- a. Refusal to take the test.
- b. Inability to provide sufficient qualities of breath or urine to be tested without a valid medical explanation.
- c. Tampering with or attempting to adulterate the specimen or collection procedure.
- d. Not reporting to the collection site in the allotted time.
- e. Leaving the scene of an accident without a valid reason before the test has been conducted.

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14. CONDITION OF EMPLOYMENT

Participation in The City of Fort Wayne Drug and Alcohol Testing program is a requirement of all non-public safety employees; therefore, is a condition of employment for such employees.

15. CHANGES OR MODIFICATIONS

The City of Fort Wayne reserves the right to change the provisions of this testing procedure. All personnel and unions will be notified at least 15 calendar days prior to instituting the changes and allowed an opportunity to comment. Changes required by federal, state and/or local law will not require advance notification.

16. USE OF LEGAL DRUGS

Employees who are taking prescription or non-prescription lawful drugs which they have been informed may affect the performance of their job duties must report such usage to the Risk Management Department and/or their immediate supervisor before beginning their work day. Such drugs used on the job may be determined to be allowable drugs if the medical review officer has determined that the use of the drug is consistent with safe performance of the employee's duties and the drug is being used at the prescribed dosage.

17. VOLUNTARY REHABILITATION

- a. The City of Fort Wayne maintains an Employee Assistance Program (EAP) available to all employees. Risk Management will assist in contacting the EAP. The purpose is to provide access to professional services to aid the employee who has an alcohol or drug problem, or other personal problems that may affect job performance.
- b. Though voluntary participation treatment programs will not prevent disciplinary action(s) for procedure violations that have already occurred, no such employee shall be disciplined in any way solely as a result of having enrolled in the EAP.
- c. At the conclusion of treatment, arrangements for drug screen follow-up testing will be made by Risk Management.

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18. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

- a. The Americans with Disabilities Act (ADA) does not, in any way, preclude or interfere with the employer's compliance with the Department's new or existing drug and alcohol testing regulations. However, Title I of ADA, which prohibits discrimination against a "qualified individual with a disability," may affect the personnel actions an employer may wish to take with respect to some individuals who test positive for drugs or alcohol, or otherwise violate the prohibitions of the department's drug and alcohol rules.
- b. The ADA specifically provides that an employee or applicant who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability." It is clear that an individual who has a positive test result on a DOT mandated drug test is currently engaging in the illegal use of drugs. Therefore, under Title I, an employer may discharge or deny employment to an individual who has a positive result on a US DOT- mandated drug test.
- c. Unlike the situation with respect to current use of illegal drugs, the use of alcohol contrary to law, Federal regulation, or employer policy does not deprive an individual of status as a "Qualified individual with a disability" that he or she would otherwise have under Title I. An individual is protected by Title I; however, only if the individual has a disability in the first place. While, as the EEOC notes in its Title I regulation, "individuals disabled by alcoholism are afforded the same protections accorded other individuals with disabilities" (56 CFR 35752, July 26, 1991), not all individuals who uses alcohol in violation of the law, Federal regulations of employer policy are disabled by alcoholism.)
- d. Under Title I, an employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance as it holds other employees, even if the unsatisfactory performance is related to the drug use or alcoholism of the employee.
- e. It should also be pointed out that the ADA does not preclude an employer from disciplining or dismissing an employee who commits a violation of the employer's conduct and performance standards, even if the individual is an alcoholic or has another disability.

19. CONTACT PERSONS

Risk Manager 427-1176

Labor Relations Manager 427-1458