Drug & Alcohol Testing Policy

Policy Number: 740

This policy is in accordance with Minnesota Statutes 181.950 through 181.957

Definitions

Confirmatory test/confirmatory retest: A drug and/or alcohol test completed on the sample that was positive on the initial screening test, and that uses a method of analysis under Section 181.953, subdivision 1, as being reliable for providing specific data as to the drugs, alcohol or their metabolites.

County: Cottonwood County

Drug: A controlled substance as defined in Minnesota Statutes, Section 152.01, subdivision 4.

Drug and/or alcohol testing: Analysis of a body component sample according to standards established under one of the programs listed in Minnesota Statute 181.953, subdivision 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.

Employee: Anyone approved by the County Board for a permanent position with the County and who is paid through the County's payroll system. "Employee" shall not include "transportation employees", as defined under the Transportation Employee Testing Policy, except to the extent of applicant alcohol testing.

Initial Screening Test: A drug or alcohol test that can detect the presumptive presence of a drug, drug metabolite, or alcohol in a sample.

Job Applicant: A person who applies to become an employee of the County and has received a job offer made contingent on the persons passing drug or alcohol testing.

Positive Test Result: A finding of the presence of alcohol or drugs or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of one of the testing programs authorized under M.S. 181.953.

Random Selection: A mechanism for selection of employees that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected and (2) does not give an employer discretion to waive the selection of any employee selected under the mechanism.

Reasonable Suspicion: A basis for forming a belief based on specific facts and rational inferences drawn from those facts.

Safety Sensitive: A job, including any supervisory or management position, in which, an impairment caused by drug or alcohol usage, would threaten the health or safety of any person. Non-exhaustive examples of safety sensitive positions are where a brief lapse in judgment would endanger lives, such as a driver/equipment operator or individuals who transport clients; a position that carries a firearm, such as a Sheriff's Deputy; positions which involved drug interdiction, such as a jailer or child/adult protective services worker.

Sample: A body component sample, i.e. urine, blood and/or breathe that is appropriate for drug and alcohol testing.

Valid Medical Reason: (a) a written prescription, or an oral prescription reduced to writing, which satisfies the requisites of Minnesota Statutes Section 152.11, and names the applicant or employee as the person for whose use the prescription is intended; and (b) the drug was 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 (c) the drug was used in accordance with the terms of the prescription.

Non-Discrimination

The County's policy on work-related substance abuse is nondiscriminatory in intent and application. However, in accordance with Minnesota Statute, Chapter 363, disability does not include any condition resulting from alcohol or other drug abuse, which prevents a person from performing essential functions of the job or creates a direct threat to property or the safety of individuals.

Types of Testing

Job Applicants: The County may request or require a job applicant to undergo drug and alcohol testing provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If the offer for employment is withdrawn, the employer is required to inform the applicant of the reason for the withdrawal.

Current employees may be requested or required to undergo drug and alcohol testing only:

- As part of a routine physical examination provided the test is requested or required no more than once annually and the employee has been given at least two weeks written notice that a drug or alcohol test may be administered as part of the examination.
- On a random basis only for employees in "safety sensitive positions." (Terms are defined under "Definitions.")
- The County may request or require an employee to undergo drug and alcohol testing if the County has a reasonable suspicion of alcohol or drug use and when:
    - The employee is reported by supervisor or co-worker to be under the influence of drugs or alcohol while involved in work-related activities. Such report can be made to a supervisor, Department Head, County Coordinator, or Board of County Commissioners.
    - The employee has violated provisions of the County's policy regarding the use, possession, sale or transfer of drugs or alcohol while the employee is working on County premises or operating County equipment.
    - Suspicious behavior has resulted in a personal injury to the employee or injury to another employee, client, or citizen while involved in work-related activities.
    - Suspicious behavior which results in one of the following:
        - Near miss – Accident or incident which did not result in bodily injury to an employee or property loss to the County, but had a potential of severe injury, fatality, major property loss, or major liability claim.

- Hazard – Situations, which could result in potential harm or injury to persons or property.

- Incident – Occurrences, including injuries or suspected injuries and/or property damage that may result in liability to the County. This category includes damage presented by the general public.

- County-owned vehicle accident – Accident involving a County-owned or leased vehicles operated by a County employee.

- County property loss – County property loss or damage caused by fire, theft, vandalism, weather, etc. This includes vehicles, buildings, equipment and tools.

Treatment Program Testing: Any employee who has been referred by the County for chemical dependency evaluation or treatment or who is participating in such a treatment program may be required to undergo drug or alcohol testing during the evaluation or treatment period, and for two (2) years after completion of treatment. No prior notice of testing need be given to the employee.

Testing Procedures

In most cases, samples taken for drug testing will involve the taking of urine for analysis.

All drug and alcohol testing will be conducted by a laboratory in compliance with Minnesota State Law.

Prior to testing, the employee or job applicant will complete a form, which indicates that the employee or applicant has seen the County's testing policy and the sample collection site will request information relevant to the reliability of the test, including medications being taken.

Within three (3) working days of receiving the test results, the County will inform, in writing, the employee or job applicant of the results.

The employees may request from the County a copy of the actual test result report.

If an initial test produces a positive result, the County may direct the laboratory to run a confirmatory test of the original sample.

An employee or applicant may request a confirmatory retest of the original sample, at the expense of the employee or applicant.

If an employee or applicant intends to obtain a confirmatory retest, the employee or applicant must so notify the County in writing within five (5) working days of receipt by the employee or applicant of the positive confirmatory test result. Within three (3) working days of receiving this notice, the County will notify the laboratory to retest the original sample.

Chain of custody: All samples will be taken at a collection site or clinic using generally accepted medical practices. Collection kits, sample identification, transferring of samples from the collection site to the testing laboratory and testing procedures will be in accordance with those prescribed by the testing laboratory as defined by M.S. 181.953.

Rights of Employees and Job Applicants

Any job applicant may refuse to undergo testing. If a job applicant refuses to undergo testing, the applicant's conditional offer of employment will be withdrawn.

If required by the County, any employee who refuses to undergo testing will be charged with insubordination and subject to disciplinary action including dismissal unless the employee can prove to the satisfaction of the County that there are extenuating circumstances.

A refusal to undergo a blood test based on religious grounds shall not be deemed a refusal unless the individual also refuses to provide a urine sample to be tested for drugs and alcohol. Attempts to delay the taking of the test or failure to take the test at the appointed time and place designated by the County will be considered a refusal to test.

Any employee or job applicant may submit to the County any information to explain a positive confirmatory test result.

The employee or job applicant may request a copy of the test result report from the County.

Any employee or job applicant may request a confirmatory retest of the original sample at the expense of the employee or job applicant.

If possible and if time permits, a supervisor should discuss the employee's behavior or cause of suspicion of alcohol or drug use with another supervisor, Department Head, County Coordinator, or County Board prior to requiring the employee to undergo a drug or alcohol test.

An employee has a right to union representation during discussions regarding the employee's behavior or other reasons, which have led the employer to suspect alcohol or drug use affecting performance on the job.

No retaliation will occur against any employee who reports another employee for suspicion of alcohol or drug use on the job when behavior or other actions support a suspicion.

Personnel Action(s) Resulting From Positive Test Result

No adverse personnel action will be taken on the basis of a positive test result on an initial screening test, unless the positive result is verified by a confirmatory test.

Where there has been a positive test result in a confirmatory test, or in any confirmatory retest requested by the applicant or employee, Cottonwood County will take the following action unless the applicant or employee has furnished a valid medical reason for the positive test result:

- An applicant who is a finalist for a position with the County will be disqualified from further consideration for the conditionally offered position.

- An employee with a positive test result on the first occurrence may be disciplined but not discharged unless the following conditions have been met:

    a. The employee is to be referred for an evaluation by a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency. If that evaluation determines that the employee has a chemical dependency problem, the County will give the employee an opportunity to participate in an appropriate drug or alcohol treatment (counseling or rehabilitation) program, at the employee's own expense or pursuant to coverage under an employee benefit plan; and

    b. The employee either refuses to participate in the counseling or rehabilitation program, or fails to successfully complete the program, as evidenced by withdrawal from the program before its completion or by poor attendance or a lack of active participation (as determined by treatment program staff) during the program.

If both (a) and (b) have occurred, the County may take whatever disciplinary action, including discharge, deemed appropriate. If the employee is not discharged, the employee will be subject to, without prior notice, testing for a period of two (2) years.

Where the employee has a positive test result following completion of an employer-referred treatment program, the County may take whatever disciplinary action, including discharge, if deemed appropriate.

Notwithstanding any other provisions herein, the Department Head and County Coordinator, after consultation with the County Board, may temporarily suspend, with or without pay, or reassign an employee to another position pending the outcome of a confirmatory test, and any confirmatory retest if requested by the employee, provided the Department Head, County Coordinator, and the County Board believe such action is in the best interest of the County.

Notwithstanding any other provisions herein, an employee may be disciplined or discharged from employment for conduct, which is a violation of County Personnel Policy rules and regulations even though the conduct was associated with a violation of this policy.

Appeals Procedures

Disciplinary actions taken pursuant to this drug and alcohol testing policy are appealable pursuant to the procedures established in Policy Number 313 "Disciplinary Action" of the Cottonwood County Personnel Policy or any applicable collective bargaining agreement, but not both. Veterans shall be treated in accordance with Minnesota Statutes 197.46.

Policy Exceptions

Nothing in this policy limits or restricts the right of the County to discipline or discharge an employee for conduct which violates any of the Cottonwood County Personnel Policy rules and regulations, departmental policy work rules that are consistent with the Personnel Policy and approved by the County Board, or any collective bargaining agreement provided that the employee is not tested for drugs and alcohol.

Nothing in this policy limits or restricts the right of the County to establish, or negotiate where required, other provisions which are in compliance with State and Federal statutes or requirements.

This policy shall apply to individuals covered by the Transportation Employee Testing Policy with respect to applicant alcohol testing. In all other cases, however, the Transportation Employee Testing Policy shall apply to those employees, who shall be exempt from this Section.

Federal Grant Employees Reporting Requirement

Each employee engaged in the performance of work involving federal grants or contracts is required to notify the County Board of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. Upon receipt of such notice, the County will, within ten (10) days, notify the contracting agency of the conviction.

Data Disclosure

Pursuant to Minnesota Statue 181.954, drug testing data collected is private data and will be disclosed only in the following situations:

- A laboratory may only disclose to the employer test results regarding the presence or absence of drugs and alcohol.

- Test results, reports and other information may not be disclosed by an employer or laboratory to another employer, to a third-party individual, government agency or private organization without the written consent of the employee or job applicant.

- There are three exceptions to the privacy and confidentiality of the test results:

    - Evidence of positive test results may be used in an arbitration proceeding pursuant to a collective bargaining agreement, provided the information is relevant to the proceeding.

    - A positive test result may be disclosed to any federal agency or other unit of the federal government as required under federal law, regulation, or an order to comply with a federal government contract.

    - Positive test results may be disclosed to a substance abuse treatment facility for the evaluation or treatment of the employee if the employee chooses to allow such a release and signs a written statement authorizing the release.

- Positive test results may not be used in a criminal action against the employee or job applicant tested.