

HR/LR Policy and Procedure #1418A

State of Minnesota Drug and Alcohol Testing Plan

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OVERVIEW

Objective

The overall goal of this Policy and Plan is to comply with Federal law and to ensure a drug free work environment, which in turn will reduce accidents and injuries in our operations.

Policy Statement

The State of Minnesota Drug and Alcohol Plan will be implemented by all state agencies having employees as described in the plan "Scope" below.

Scope

This plan covers State of Minnesota employees who operate a commercial motor vehicle and are required to have a commercial driver's license (CDL) to perform the assigned duties of their position or employees who will be operating a commercial motor vehicle and are required to have a CDL to perform safety sensitive functions in addition to or in place of the duties of their regular position.

Definitions and Key Terms

See "IV" Page 5 in body of Plan

Exclusions

N/A

Statutory References

N/A

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GENERAL STANDARDS AND EXPECTATIONS

The State of Minnesota Drug and Alcohol Testing Plan

The State of Minnesota recognizes that safety problems are created when employees use controlled substances. Not only can the use and/or abuse of drugs or alcohol jeopardize the health, safety and well-being of the individual user and all of our employees, it can also endanger the safety of the general public, jeopardize the safety of the roadways

and cause serious accidents and casualties. In addition, the State must comply with all DOT regulations which require affirmative actions to eliminate the impact of the misuse of alcohol and drugs in the workplace. Therefore, the State has developed the "Policy on Alcohol and Other Drug Use by State Employees" (Attachment A) and this "Drug and Alcohol Testing Plan." The overall goal of this Policy and Plan is to comply with Federal law and to ensure a drug free work environment, which in turn will reduce accidents and injuries in our operations.

The Drug and Alcohol Regulations can be found on the Internet at <https://www.transportation.gov/odapc/part40>.

I. Application

This plan covers State of Minnesota employees who operate a commercial motor vehicle and are required to have a commercial driver's license (CDL) to perform the assigned duties of their position or employees who will be operating a commercial motor vehicle and are required to have a CDL to perform safety sensitive functions in addition to or in place of the duties of their regular position.

II. Designated Employer Representative

Each agency must designate a Designated Employer Representative (DER) who is responsible for the administration of this program for their agency. The DER is available to answer questions regarding the Drug and Alcohol Testing Plan. Agencies must designate a back-up resource for the DER. Attachment B is a list of the DERs for the State of Minnesota Testing Plan.

All references to the "employee" contained in this document refer to the employing agency of the covered employee.

III. Vendor Name

Concorde Inc.*
Eleven Penn Center, 12th Floor, 1835 Market Street
Philadelphia, PA 19103
(215) 563-5555
*Referred to as Vendor throughout remainder of document.

IV. Definitions

- A. Accident means an event which resulted in the loss of human life; or the issuance of a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
1. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 2. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- B. Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
1. Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

2. Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
 3. Is designed to transport 16 or more passengers, including the driver; or
 4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placed under the Hazardous Materials Regulations.
- C. Controlled substances means those substances identified in 40.85. DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines and phencyclidine.
- D. Covered Employee (Covered Position) means a state employee required to hold a CDL and to perform safety-sensitive functions.
- E. Designated Employer Representative (DER) is the employee authorized by the employer to take immediate action(s) to remove employees from safety sensitive duties and to make required decisions in the testing and evaluation process. The DER also receives test results and other communications for the employer.
- F. Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.
1. Inclusions.

Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
 2. Exclusions.
 - i. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
 - ii. Tire disablement without other damage even if no spare tire is available.
 - iii. Headlight or taillight damage.
 - iv. Damage to turn signals, horn, or windshield wipers which make them inoperative.
- G. Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.
- H. Employer as used in this document refers to the employing state agency/ department of the covered employee.
- I. Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

- J. Refuse to submit (to an alcohol or controlled substances test) means that a driver:
1. Fails to appear for any test, within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.
 2. Fails to remain at the testing site until the testing process is complete.
 3. Fails to provide a urine specimen for any drug test required by this Plan.
 4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen.
 5. Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
 6. Fails or declines to take a second test the employer or collector has directed the driver to take.
 7. Fails to undergo a medical examination or evaluation as directed by the MRO as part of the verification process or as directed by the DER. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test.
 8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).
 9. Has a test reported by the MRO as a verified adulterated or substituted test result.
 10. Fails to provide an adequate amount of saliva or breath for any alcohol test required with no adequate medical explanation for the failure.
 11. Fails to sign the certification at Step 2 of the Alcohol Testing Form.
- K. Safety-sensitive function means all time from when a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:
1. All time at an employer or shipper plant, terminal, facility, or other property or any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
 2. All time inspecting equipment as required by federal regulations or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
 3. All time spent at the driving controls of a commercial motor vehicle in operation;
 4. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
 5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded, and

6. All time repairing obtaining assistance, or remaining in attendance upon a disabled vehicle.

V. Prohibitions

A. *Alcohol Concentration*

1. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
2. If the employer has actual knowledge that a driver has an alcohol concentration of 0.04 or greater, the driver will not be permitted to perform or continue to perform safety sensitive functions.

B. *On-Duty Use*

1. No driver shall use alcohol while performing safety-sensitive functions.
2. If the employer has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, that driver shall not be permitted to perform or continue to perform safety-sensitive functions.

C. *Pre-Duty Use*

1. No driver shall perform safety sensitive functions within four (4) hours after using alcohol.
2. If the employer has actual knowledge of a driver who has used alcohol within four (4) hours, that driver will not be permitted to perform or continue to perform safety-sensitive functions.

D. *Use Following an Accident*

1. No driver required to take a post-accident alcohol test shall use alcohol for a period of eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

E. *Refusal to Submit to a Required Alcohol or Controlled Substances Test*

1. No driver shall refuse to submit to a post-accident, random, reasonable suspicion or follow-up alcohol or controlled substance test
2. This employer shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

F. *Controlled Substance Use*

1. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.
2. No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

3. An employer may require a driver to inform the employer of any therapeutic drug use. (see - State of Minnesota Policy on Alcohol and Other Drug Use by State Employees, Attachment A - VII, Prohibitions E).

G. *Controlled Substances Testing*

1. No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.
2. No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

VI. Consequences

A. *Subject to Disciplinary Action*

Under the State of Minnesota's independent authority, any driver who engages in conduct prohibited by Section V. of the Plan (Prohibitions) will be subject to disciplinary action up to and including discharge.

B. *Removal from Safety-sensitive Functions*

A driver found to have an alcohol concentration of 0.02% or greater but less than 0.04% shall be removed from performing safety-sensitive functions for no less than a 24 hour period following the administration of the test. Under the State's independent authority, the employee will be removed from work without pay for 24 hours and the employee shall be subject to discipline, up to and including discharge.

VII. Medical Review Officers (MRO)

Dr. Richard Wallace

Concorde, Inc.
Eleven Penn Center, 12th Floor
1835 Market St.
Philadelphia PA 19103
(215) 563-5555, option 1

Medical Review Officer duties and determinations will fully comply with 49 CFR Part 40 and the DOT final rule.

VIII. DHHS/SAMHSA Approved Laboratories

All testing is performed by a DHHS/SAMHSA Approved Laboratory.

Laboratory Corporation of America (LabCorp)
1904 Alexander Dr.
Research Triangle Park NC 27709
800-833-3984

A split sample test will be sent to an alternative DHHS/SAMHSA approved laboratory.

IX. Collection

- A. Specimen collection and chain of custody procedures contained in 49 CFR Part 40.
- B. Collection of both urine (for drug testing) and breath (for alcohol) may occur at an authorized clinic away from the work location or the collection may be done on-site at the work location.
- C. Drugs
 - 1. Security measures will be taken at the testing facility to prevent unauthorized access that could compromise the integrity of the collection process or the specimen.
 - 2. Chain of custody procedures will be followed by authorized collection site personnel.
 - 3. No unauthorized personnel will be permitted in any part of the designated collection site where urine specimens are collected or stored.
 - 4. The procedures for collection of a specimen shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen provided.
 - 5. Precautions will be taken to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected.
 - 6. Collection control will be maintained by collection site personnel, to the maximum extent possible, keeping the individual's specimen bottle in sight throughout the collection process.
 - 7. Transportation of the sample to the laboratory shall follow chain of custody procedures.
 - 8. Failure to cooperate in the collection procedures by the employee shall be noted on the drug testing custody and control form by the collection site personnel.
 - 9. A Split Sample is required at the time of collection. A single void of 45 ml is used. 30 ml is used for the primary bottle and 15 ml is poured into the secondary bottle. Both specimens are stored at the laboratory. The donor has 72 hours, after notification by the MRO to request the split sample be tested. The testing will be done at a second laboratory. Action taken by the MRO, the employer, Concorde Inc. and other required actions for the first confirmed positive cannot be stayed or postponed pending the second result. The cost of the split sample test is borne by the State unless the test result is positive.
 - 10. Insufficient Sample: An employee who is unable to provide the required minimum amount of specimen will be required to consume up to 40 ounces of liquids during a three hour period. If after three hours the employee is still unable to provide the required specimen, the testing effort will cease and the employee will be referred to a licensed physician to determine if a medical basis exists for the failure to supply the required minimum sample. If there is no medical basis, the failure to supply an adequate amount of urine shall be determined as a refusal to test on behalf of the employee.
 - 11. Dilute Specimen: An employee who has a test reported by the MRO as a negative dilute, will be directed to take another test immediately.

D. *Alcohol*

1. Alcohol testing shall be performed by a qualified breath alcohol technician (BAT).
2. The equipment used for alcohol testing shall be an evidential breath testing device (EBT).
3. A breath alcohol testing form shall be used in the testing process.
4. A screening test shall be conducted and, if a positive result (a level of 0.02% or greater), a confirmation test shall be conducted not less than 15 minutes after nor more than 30 minutes after the screening test. Any action taken by the employer shall be based on the results of the confirmation test.
5. *Insufficient Breath*: An employee who is unable to supply an adequate amount of breath shall be sent, as soon as practical, to a licensed physician of the employer's choice. The physician shall make a determination (with written documentation) as to whether there was a medical condition that could have caused the failure to provide an adequate amount of breath. If the physician determines there was a medical condition, the employee's failure to supply an adequate amount of breath shall not be considered a refusal to test. If the physician is unable to make the determination that medical reason exists, the failure to supply an adequate amount of breath shall be deemed a refusal to test by the employee.

X. **Substance Abuse Professional (SAP) Services**

Agencies have the option to contact the Substance Abuse Professionals (SAP) on the list of certified SAPs or they may establish their own system for SAP services. The SAP shall be fully certified. Initial SAP referral shall be at no charge to the employee.

XI. **Employee Assistance Program**

The State Employee Assistance Program (EAP) is a resource to help employees deal with serious personal or work-related problems. The State EAP provides confidential, cost-free, short-term counseling to state employees and their family members at multiple access sites throughout Minnesota.

EAP services can be accessed toll-free in greater Minnesota at 1-800-657-3719. In the metro area, please call 651-259-3840 (MN Relay Service 711).

XII. **Training/Education Program**

All employees in positions covered by this Plan shall receive information that will address the effects and consequences of controlled substance use and alcohol abuse on personal health, safety and the work environment. All covered employees shall receive a copy of the Drug and Alcohol Testing Plan. A signed certification of the covered employee's receipt of the Drug and Alcohol Testing Plan and educational materials will be maintained by the agency's designated employer representative.

Supervisors responsible for observation and documentation leading to reasonable suspicion testing will receive training in specific contemporaneous physical and behavioral clues that may indicate prohibited drug or alcohol use. Said training is the responsibility of the employer. Documentation of training will be maintained by the agency designated employer representative.

Testing Procedures

To ensure a drug-free workforce and a workforce free of alcohol use and abuse during the performance of safety-sensitive functions, the State of Minnesota is required to conduct the six following tests on all covered employees:

- I. Pre-employment/Pre-placement Testing
- II. Random Testing
- III. Post-accident Testing
- IV. Reasonable Suspicion Testing
- V. Return-to-duty Testing
- VI. Follow-up Testing

The drugs that will be tested for are:

- Marijuana
- Cocaine
- Opiates
- Phencyclidine (PCP)
- Amphetamines

I. Pre-Employment/Pre-Placement Testing

A. *Application*

An applicant, upon receipt of an offer of employment, shall submit to controlled substance testing as a pre-placement condition for all covered positions, or when a current employee moves from a non-covered to a covered position.

Note: There is no pre-employment/pre-placement testing for alcohol.

B. *Applicant Information*

The applicant will be required to complete and sign a Request/Consent form for information from previous employers from the previous two years. Information to be requested includes:

- i. Alcohol tests with a result of 0.04 alcohol concentration or greater.
- ii. Verified positive controlled substance test results.
- iii. Refusals to be tested.
- iv. Other violations of DOT agency drug and alcohol testing regulations.

C. *Regulatory Requirements*

1. An individual may not be hired into a covered position unless the individual passes a drug test.

2. An employee may not be assigned to a covered position until the employee passes a drug test.
3. A pre-employment drug test may be administered only after the person to be tested is informed that the urine sample being collected will be tested for evidence of:
 - Marijuana
 - Cocaine
 - Opiates
 - Phencyclidine (PCP)
 - Amphetamines
4. An employee may not be assigned to a covered position until the previous employer information is received and there are no violations of DOT Drug & Alcohol regulations; or the employee has complied with the return-to-duty requirements of Subpart O of part 40 and DOT agency drug and alcohol regulations.

D. *Implementation Procedures*

1. The employer will notify all applicants in writing that passing a drug test for marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines shall be a condition for employment.
2. Upon selection, the candidate will be sent to the collection site for testing.
3. If the candidate does not pass the test, the second most desirable candidate will be tested. The employer will provide the candidate a listing of SAPs including names, addresses, and telephone numbers.
4. The employer will hire or place a candidate in a covered position only after receipt of the written confirmation of negative test results from the Medical Review Officer (MRO).

E. *Documentation*

Records will be retained for one year on all employees passing a pre-employment/pre-placement drug test. Records will be retained for five years on candidates not passing a pre-employment/pre-placement drug test.

II. **Random Testing**

A. *Application*

Random testing for controlled substances must be administered to 50 percent of the drivers in covered positions on an annual basis. Random alcohol testing shall be administered to 10 percent of the drivers in covered positions annually.

B. *Regulatory Requirements*

1. A covered employee shall be subject to drug and alcohol testing on an unannounced and random basis.

2. Each covered employee shall be in a single pool composed of all State employees covered by this Plan from which random selection is made. Each employee in the pool shall have an equal chance of selection and shall remain in the pool, even if he/she has been selected previously.
3. A covered employee shall be selected for drug and alcohol testing on a random basis by using a scientifically valid random generation number in a computer program.

C. *Implementation Procedures*

1. The Vendor will provide a computer program for making the random selections throughout the year to insure against predictable selection dates.
2. The D.E.R. shall submit the names and employee identification numbers of all covered employees. Employee names of new hires and terminations will also be provided within five working days in order to keep the random selection list current.
 - a. The Vendor will notify the D.E.R. of the employees selected.
 - b. The employer's D.E.R. (or designee) will then:
 - Notify the employee that he/she has been selected for random testing.
 - Immediately dispatch the employee to the collection site for testing.

D. Test Results

1. If the Test Results are Negative:

No further action is necessary.
2. If the Test Results are Positive:
 - a. The MRO will notify the agency D.E.R. of a positive test result following his/her contact with the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
 - b. The MRO will inform the employee that he/she has the right, within 72 hours, to submit a request to have the split sample be sent to an alternate DHHS/SAMHSA approved lab. If the result of the split sample is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota. If the split sample test is negative, it will be treated as a cancelled test.
 - c. The employee must be immediately removed from performing sensitive job functions. Under the State's independent authority, the employee will be immediately removed from work and placed on leave. On the first positive, the employee will be on leave without pay until evaluated by a SAP. On the second positive, the employee will be placed on investigatory leave.
 - d. When results of a random test are positive, the employee will be referred to a SAP. The SAP will provide a comprehensive face-to-face assessment and evaluation and recommend a course of education and/or treatment. The employee shall be given an opportunity to participate in the

recommended education/ treatment and must demonstrate successful compliance with the SAP's recommendations prior to returning to safety-sensitive duty.

Under the State's independent authority, on a first positive result on a random test, the employee shall not be discharged if an employee participates and completes the recommended counseling or rehabilitation. However, an employee who fails to meet with the SAP, refuses the offer to participate in counseling or rehabilitation program, fails to complete the counseling or rehabilitation (as determined by and reported by the SAP) or who tests positive on a second test, shall have no such protection against discharge.

E. *Documentation*

1. The employer shall retain a record of the names and Employee ID numbers of all covered employees sent to the Vendor.
2. The employer shall retain a copy of the written notification of all names and Employee ID numbers selected for random testing by the Vendor.
3. The employer shall retain a copy of all test results from the MRO. Positive test results are kept five years; negative tests are kept one year.
4. The employer shall retain a copy of the letter from an employee requesting a test of the split sample. The letter will be retained for the same length of time as the corresponding test result is kept.

III. **Post Accident Testing**

A. *Application*

As soon as possible following an accident involving a commercial motor vehicle operating on a public road in commerce, the employee(s) shall be tested for alcohol and drugs in the following situations:

1. If the employee was performing safety-sensitive functions with respect to the vehicle and the accident involved the loss of human life; OR
2. If the employee receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - a. bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - b. one or more vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

B. *Alcohol Tests*

If the employee has not submitted to an alcohol test within 2 hours after the accident, the employer shall prepare and maintain on file a record stating the reason a test was not promptly given. If the driver has not submitted to an alcohol test within 8 hours, the employer must cease attempts to administer the test and prepare and maintain the record described above. The written documentation will be forwarded to the designated employer representative.

C. *Drug Tests*

If the employee has not been administered a drug test within 32 hours following the accident, attempts to administer the test shall cease. The employer shall prepare a record stating the reasons why the test was not promptly administered. The written documentation will be forwarded to the agency designated employer representative.

D. *Implementation Procedures*

A driver who is subject to post-accident testing shall remain readily available for such testing. Failure to remain readily available may be deemed by the employer as a refusal to submit to testing. The driver may take any necessary steps to obtain medical attention for injured persons (including him/herself) and may leave the scene of the accident for the period necessary to obtain assistance in responding to the accident or to obtain emergency medical care.

If the employee is tested by a party other than the vendor's agent, the employee is responsible for providing the employer with the name of the testing agent and a release for the employer to obtain the test results.

E. *Test Results*

1. If the Test Results are Negative:

The MRO may release the employee to return to work. Under the State's independent authority, the employee may be subject to discipline up to and including discharge as a result of his/her behavior related to the accident, regardless of the negative test results.

2. If the Test Results are Positive:

- a. The MRO will notify the D.E.R. of the positive test result after having contacted the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
- b. The MRO must inform the employee that he/she has the right within 72 hours to submit a request to have the split sample sent to an alternate DHHS/SAMHSA approved lab. If the result of the split sample test is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota.
- c. The employee must immediately be removed from performing safety sensitive functions. The employee will be referred to a SAP and treatment resources.
- d. Under the State's independent authority, the employee will be removed from work and placed on investigatory leave and will be subject to discipline up to and including discharge.

F. *Documentation*

1. The agency shall obtain and retain a copy of the completed Accident Report Form, including a notation of the citation, for any accident and state whether testing is/is not required.
2. The D.E.R. will maintain a file of all written documentation regarding the reasons why drug and/or alcohol tests were not administered within the timeframes required in this Section.

3. The employer shall retain a copy of test results. Positive test results are kept five years; negative test results are kept one year.
4. The employer shall retain a copy of the letter from an employee requesting a test of the split sample. The letter will be retained for the same length of time as the corresponding test result is kept.

IV. Reasonable Suspicion Testing

A. Application

Reasonable suspicion testing is required when a trained supervisor reasonably suspects that an employee has violated Part V Prohibitions of this plan. Reasonable suspicion test referrals must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations involving suspicion of drug use may include indications of the chronic and withdrawal effects of controlled substances.

B. Regulatory Requirements

1. An employee who is reasonably suspected of using a prohibited drug or alcohol must be administered a drug and/or alcohol test.
2. An employee is reasonably suspected of using a prohibited drug or using alcohol in violation of the regulations when a supervisor who is trained in the detection of drug and/or alcohol use under this program can articulate and substantiate specific behavioral or contemporaneous physical indicators of probable drug and/or alcohol use.

C. Implementation Procedures

1. A written record shall be made of the observations leading to a reasonable suspicion drug and alcohol test and shall be signed by the supervisor(s) making the observation.
2. Under the State's independent authority, an employee is entitled to union representation prior to any reasonable suspicion test. When the physical presence of a union representative is not practical, the employee shall be allowed to confer with a union representative by telephone. Local unions shall be responsible for providing these names and phone numbers. Under no circumstances should accessing union representation delay administration of the test.
3. A supervisor must escort the employee to the collection site.
4. Alcohol testing is authorized by this section only if the observations are made during, just preceding or just after performing safety-sensitive function. A driver can be directed to undergo reasonable suspicion alcohol testing only while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, just after the driver has ceased performing such functions, or at any time the employee is in readiness to perform safety-sensitive functions.

D. Test Results

1. If the Test Results are Negative:

The MRO may release the employee to return to work. Under the State's independent authority, the employee may be subject to discipline up to and including discharge as a result of his/her behavior preceding the reasonable suspicion test regardless of the test results.

2. If the Test Results are Positive:
 - a. The MRO will notify the agency D.E.R. of the positive test result after having contacted the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
 - b. The MRO must inform the employee that he/she has the right within 72 hours to request that the split sample be tested at an alternate DHHS/SAMHSA approved lab. If the result of the split sample test is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota.
 - c. The employee must be immediately removed from safety-sensitive work and referred to a SAP and treatment resources. Under the State's independent authority, the employee will be placed on investigatory leave and will be subject to discipline up to and including discharge.

E. *Documentation*

1. The supervisor(s) shall make a written record of the observations leading to a reasonable suspicion test, and signed by the supervisor(s) who made the observations, within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier.
2. The employer shall retain a copy of all positive test results from the MRO for five years.
3. The employer shall retain a copy of all negative test results from the MRO for one year.
4. The employer shall retain a copy of the letter from an employee requesting a test of the split sample. The letter shall be retained for the same period of time as the corresponding test result.

V. **Return-to-Duty Testing**

A. *Application*

An employee who has a positive alcohol and/or controlled substance test result is required to take a return-to-duty test on a date specified by the SAP. The result must be negative (for alcohol - concentration of less than 0.02) before he/she will be allowed to return to duty in a covered position.

B. *Regulatory Requirements*

To be eligible to return to duty, the employee must be in compliance with the recommendations of the SAP and the negative return to duty test must be on file. An employee who refuses to take, or does not pass, a return-to-duty drug and/or alcohol test may not return to a covered position until the employee passes a drug and/or alcohol test and the employer has determined that the employee may return to duty.

C. *Implementation Procedures*

The employee is responsible to report to a collection site when required by the employer.

D. *Test Results*

1. If the Test Results are Negative:
 - a. The agency D.E.R. informs the employee and the employee's supervisor.
2. If the Test Results are Positive:
 - a. The employee cannot return to his/her safety-sensitive position.
 - b. On a positive controlled substance return-to-duty test, the MRO will notify the designated employer representative of a positive test result following his/her contact with the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
 - c. The MRO will inform the employee that he/she has the right within 72 hours to submit a request for the split sample to be tested at an alternate DHHS/SAMHSA approved lab. If the result of the split sample test is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota.
 - d. Under the State's independent authority, the employee will be subject to discipline up to and including discharge.

E. *Documentation*

1. The employer shall retain a copy of a Return-To-Duty Test result from the MRO. Positive test results are kept five years; negative test results are kept one year.
2. The employer shall retain a statement from the SAP stating the employee's compliance/non-compliance with the recommended treatment, education and/or counseling.
3. The employer shall retain a copy of the letter from an employee requesting a retest of the split sample. The letter shall be retained for the same period of time as the corresponding test result.

VI. Follow Up Testing

A. *Application*

A driver who has engaged in conduct prohibited by Part V of this Plan shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver's return to duty. The unannounced tests will be administered as directed by the SAP for not more than 60 months after the employee has returned to duty. Whether testing is conducted on a daily, weekly, or monthly basis is left to the discretion of the SAP.

The employee shall be subject to at least six, unannounced follow-up tests during the first 12 months following his/her return to duty. The SAP may terminate the requirement for follow-up testing at any time after the initial six tests have been completed if the SAP makes the determination that such testing is no longer warranted.

B. *Implementation*

1. The employee is required to report to a collection site when required by the employer.

2. Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, just after the driver has ceased performing safety-sensitive functions, or at any time the employee is in readiness to perform safety-sensitive functions.

C. *Test Results*

1. If the Test Results are Negative:
 - a. The agency D.E.R. may release the employee to return to work.
2. If the Test Results are Positive:
 - a. The employee must be immediately removed from safety-sensitive work and referred to a SAP and treatment resources.
 - b. Under the State's independent authority, the employee will be placed on investigatory leave and will be subject to discipline up to and including discharge.

D. *Documentation*

1. The employer shall retain a copy of a Follow-Up Test result from the MRO. Positive test results are kept five years; negative test results are kept one year.
2. The employer shall retain a statement from the SAP as to when follow-up testing is to be scheduled.
3. The employer shall retain a copy of the letter from an employee requesting a test of the split sample. The letter shall be retained for the same period of time as the corresponding test result.

MTS 4/3/95

Revised 9/19/95, 10/10/95, 10/4/96, 4/7/97, 11/18/97, 3/25/98, 8/10/99, 9/2/99, 8/18/00, 9/27/00, 11/17/00, 7/11/02, 6/6/03, 3/30/06, 1/16/08

Attachment A: State of Minnesota Policy on Alcohol and Other Drug Use by State Employees

I. Introduction

The State of Minnesota recognizes that alcoholism and other drug dependencies are a significant social problem with a potential for causing severe effects to the state's workforce. The State of Minnesota recognizes that it has a responsibility to maintain a drug free workplace. The state also recognizes that drug dependency may be an illness. Consistent with this understanding, however, the state has an obligation to ensure that its employees perform their jobs efficiently, safely and in a professional business-like manner.

The purpose of this document is to set forth the state's policy regarding alcohol and other drug use, including unlawful drug use or abuse, in the workplace.

II. Scope of Coverage

This policy is applicable to all employees of the Executive Branch and shall be enforced by each state agency. Questions regarding this policy should be addressed to agency Appointing Authorities or their Personnel Officers, or to Minnesota Management & Budget.

III. Definitions

- A. "Work-related Alcohol and Other Drug Abuse" is defined as the use of mood-altering drugs, including all forms of alcohol, narcotics, depressants, stimulants, hallucinogens, marijuana or the use of prescription drugs when resulting behavior or appearance adversely affects work performance.
- B. "Adversely Affects Work Performance" and "Under the Influence" shall be determined to be present if the employee is perceptibly impaired; has impaired alertness, coordination, reactions, responses or effort; if the employee's condition threatens the safety of him/herself or others; or if the employee's condition or behavior presents the appearance of unprofessional or irresponsible conduct detrimental to the public's perception of the state as an employer as determined by the supervisor or manager or others observing the employee.
- C. "Controlled Substances" means those substances whose distribution is controlled by regulation or statute including, but not limited to, narcotics, depressants, stimulants, hallucinogens and cannabis.
- D. "Mood-altering" or "Alter" means changed behavior which may limit an employee's ability to safely and efficiently perform his/her job duties, or poses a threat to the safety of the employee or others

IV. State Employee Assistance Program

The state has in place a formal Employee Assistance Program to assist employees in addressing problems such as alcohol or other drug abuse. Employees who may have an alcohol or other drug abuse problem are encouraged to seek a professional assessment from the Employee Assistance Program before the problem affects their employment status. Participation in this program is voluntary and confidential, except as may be required pursuant to Public Law 100-690, Title V, Subtitle D.

V. Non-Discrimination

The state's policy on work-related substance abuse is non-discriminatory in intent and application. However, in accordance with Minnesota Statutes, 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.

VI. Consequence of Violations

Violations of this policy may constitute just cause for discipline, including possible discharge. Each situation will be evaluated on a case-by-case basis depending upon the severity and circumstances involved.

VII. Prohibitions

- A. No employee shall report to work under the influence of alcohol, marijuana, controlled substances, or other drugs which affect his/her alertness, coordination, reaction, response, judgment, decision-making or safety.

- B. No employee shall operate, use or drive any equipment, machinery or vehicle of the state while under the influence of alcohol, marijuana, controlled substances, or other mood-altering drugs. Such employee is under an affirmative duty to immediately notify his/her supervisor that he/she is not in appropriate mental or physical condition to operate, use or drive state equipment.
- C. No employee shall unlawfully manufacture, distribute, dispense, possess, transfer, or use a controlled substance in the workplace or wherever the state's work is being performed.

During work hours or while on the state's premises, no employee shall use, sell, possess or transfer alcoholic beverages, with the following exceptions:

- Consumption, possession, sale or purchase of alcohol when authorized by a Commissioner under separate statutory or executive agency authority.
- Possession of alcohol while being transported in a state vehicle in compliance with applicable statutory requirements.
- Possession of alcohol while in an employee's personal vehicle on the state's premises in compliance with applicable statutory requirements.

Additionally, employees shall not participate in these activities during rest breaks or during overtime work.

- D. Engaging in off-duty sale, purchase, transfer, use or possession of illegal drugs or controlled substances may have a negative effect on an employee's ability to perform his/her work for the state. In such circumstances, the employee is subject to discipline.
- E. When an employee is taking medically authorized drugs or other substances which may alter job performance, as defined in III(D) above, the employee is under an affirmative duty to notify the appropriate supervisor of his/her temporary inability to perform the job duties of his/her position.
- F. Agencies shall notify the appropriate law enforcement agency when they have reasonable suspicion to believe that an employee may have illegal drugs in his/her possession at work or on state premises. Where appropriate, agencies shall also notify licensing boards.
- G. Employees are discouraged from consuming alcoholic beverages during lunch or dinner meals when returning immediately thereafter to perform work on behalf of the state. Employees are advised that in any situation subsequent to the intake of alcohol where the employee must continue conducting the state's business, any employee whose condition or behavior adversely affects his/her work performance shall be subject to possible discipline, up to and including discharge.

VIII. Supplemental Policies

State agencies may promulgate supplemental policies, which are not in conflict with this policy, including prohibiting the use or consumption of alcohol and/or controlled substances within a specified time period before the commencement of work. Such pre-work abstinence must be restricted to employees involved in sensitive security, treatment, or equipment operation and written notice must be disseminated to affected employees. Further, policies may be adopted only after meet and confer sessions are held with exclusive representatives and approval of MMB.

IX. Data Disclosure

Disclosure of information regarding employee alcohol and other drug use in the workplace must be consistent with applicable collective bargaining agreements and law. Questions in this area should be directed to the Employment and Labor Law Section of the Attorney General's Office or to Minnesota Management & Budget, Labor Relations Division.

X. Federal Grant Employees

Each employee engaged in the performance of work on federal grants or contracts is required to notify their agency of any criminal drug statute conviction for a violation occurring in the workplace no later than (5) five days after such conviction.

XI. Drug/Alcohol Testing

Other than the testing required by the Omnibus Transportation Employee Testing Act of 1991 and relevant U.S. Department of Transportation regulations, any alcohol and/or other drug testing undertaken by Appointing Authorities shall be in accordance with Minnesota Statutes 181.950-957 (1987), the Minnesota Drug and Alcohol Testing in the Workplace Act. Individual agency drug and alcohol testing policies must be in written form and must be reviewed by Minnesota Management & Budget prior to implementation.

All employees who are required to hold a Commercial Driver's License as a condition of employment are subject to drug and alcohol testing required by the OTETA of 1991 and relevant U.S. Department of Transportation regulations. These employees are subject to random, pre-employment, post accident, reasonable suspicion, return-to-duty and follow-up testing.

The specific requirements for testing are governed by regulations promulgated by the U.S. Department of Transportation. Information regarding the implementation of the testing is contained in the "State of Minnesota Drug and Alcohol Testing Plan". All employees subject to this testing shall be provided a copy of the "Plan" and information on the effects of alcohol and controlled substances.

XII. Effective Date

This Policy on Alcohol and Other Drug Use in the Workplace shall be in full force and effect beginning March 18, 1989.

08/24/88 Sect. XI. Rev 4/1/95 Rev. 9/10/09

Rev. 3/18/89 Sect. XI Rev 9/19/95

Attachment B: Drug & Alcohol Testing Designated Employer Representative

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RESPONSIBILITIES

Agencies are responsible for the request:

- Developing Internal Alcohol and Other Drug Use Testing Plans in accordance with this policy and procedures
- Each agency must designate a Designated Employer Representative (DER) who is responsible for the administration of this program for their agency.

MMB is responsible for:

- Updating the State Drug and Alcohol Testing Plan and the State Policy on Alcohol and Other Drug Use by State Employees as necessary.

REFERENCES

HR/LR Policy and Procedure #1418 – State Policy on Alcohol and Other Drug Use by State Employees

CONTACTS

Labor Relations Representative

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