

# **CITY OF PATASKALA DRUG-FREE WORKPLACE POLICY**

## **Purpose**

The City recognizes that the ability of an employee to properly perform his or her duties depends, in part, on a workplace which is free of substance abuse. In an effort to promote public safety, to provide employees who may be drug or alcohol dependent with an opportunity for treatment and for remaining productive employees of the City, and in recognition that substance abuse is a problem which, depending on individual circumstances, may require intervention, rehabilitation, or discipline, it is the purpose of this Policy to provide a method for responding to the risks presented by the presence of substance abuse in the workplace by:

- A. Dealing with incidents of substance abuse which present a reasonable likelihood of significant risk to employees, the general public or other employees of the City;
- B. Providing assistance to an employee with drug or alcohol dependency problems; and;
- C. Disciplining an employee whose satisfactory work performance is adversely affected by substance abuse.

The City Administration and management are fully committed to the City's Drug-Free Workplace Program, which establishes clear guidelines for acceptable and unacceptable employee behavior for everyone in the workplace. We will not tolerate substance use in violation of this Policy. Behaviors related to substance use can endanger all employees, not just substance abusers.

This Policy describes the City's Drug-Free Workplace Program, and every employee is expected to read and understand it. The City's Drug Free Workplace Policy applies to every employee including management. The consequences stated in this Drug-Free Workplace Policy will apply to anyone who violates the Policy.

## **Training**

Employees will have the opportunity to receive information about substance abuse as a workplace problem, signs and symptoms, dangers of use, and how and where to get help for themselves and their families. The City of Pataskala Service Director will serve as the City's Drug-Free Workplace Program Administrator will be responsible for arranging drug and alcohol testing, identifying resources that employees can turn to for help for themselves and/or their families, and arranging for qualified people to help with employee awareness education and with supervisor training.

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### **Employee awareness education**

Every current employee will be required to attend a session in which this program is discussed. There will be an opportunity to ask questions. The written Policy will be shared, and everyone will be expected to sign for receipt. A qualified person will explain why and how substance abuse is a workplace problem, the effects, signs/symptoms of use, effects of commonly used drugs in the workplace, and how to get help. The training will also cover how an employee can get a referral for employee assistance, the importance of determining how much of a substance problem the employee has, and what type of help is needed.

There will be a minimum of one (1) hour of educational awareness annually for all employees. New employees will hear about the program during orientation and will receive substance education as soon as practical thereafter, but in no case later than 90 days after the commencement of employment. The City shall schedule said training sessions during the employees' normal work schedules.

### **Supervisor Training**

Supervisors will be trained to recognize substance problems that may endanger the employee and others as well as violate this Policy. This training is in addition to annual employee education. Supervisors will be trained about testing responsibilities, how to recognize behaviors that demonstrate an alcohol/drug problem and how to make referrals for help. Supervisors will receive a minimum of two (2) hours of initial training, and two (2) hours of refresher training by a qualified trainer.

### **Responsibility**

Although it is the responsibility of every employee to be alert to potential incidents of substance abuse in the workplace, it is the primary responsibility of supervisors to initially respond to such incidents, particularly where circumstances are reasonably felt to pose a reasonable likelihood of significant risk to the public safety. Supervisors shall take such action, not inconsistent with this Policy, as they deem appropriate to eliminate immediate risks associated with any incident of potential substance abuse.

### **Definitions**

The following definitions shall govern this Article:

- A. "Under the influence" means that the employee is adversely affected in the satisfactory performance of his or her duties by any illegal drug or alcohol, or the combination of any illegal drug and alcohol;
- B. "Legal drug" means prescribed drugs or over-the-counter drugs which have been legally obtained for the user and are used for the purpose for which they were prescribed and manufactured;

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- C. "Illegal drug" means any drug (1) which is not legally obtainable, or (2) which is legally obtainable but has not been legally obtained; and prescribed drugs not being used for prescribed purpose
- D. "Reasonable suspicion" is an articulated belief that an employee is using illegal drugs or misusing alcohol such that the employee's satisfactory work performance is adversely affected by the presence of alcohol or illegal drugs. Reasonable suspicion may be based upon:
1. Observable phenomena, such as direct observation of drug or alcohol use, possession or distribution, or the physical symptoms of being under the influence of drugs or alcohol (e.g. slurred speech, dilated pupils, odor of alcohol or marijuana);
  2. A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance (e.g. frequent absenteeism, excessive tardiness, recurrent accidents) which appears to be related to substance abuse and does not appear to be attributable to other factors;
  3. The identification of an employee as the focus of a criminal investigation into unauthorized drug possession, use, or trafficking;
  4. A report of alcohol or other drug use provided by a reliable and credible source;
  5. Repeated or flagrant violations of the City's safety or work rules, which are determined by a supervisor to pose a substantial risk of physical injury or property damage and which appear to be related to substance abuse or use that may violate the City's Drug-Free Workplace Policy.

### **Prohibited Conduct**

For purposes of this Policy, an employee shall not, while performing his or her duties for the City, or while in a City facility or vehicle, or while in uniform:

- A. Report to duty, remain on duty, or perform his/her duties under the influence of alcohol;
- B. Report to duty, remain on duty or perform his/her duties while being under the influence of any illegal drug, or while using any legal drug be impaired to the point that he or she cannot satisfactorily perform his or her assigned duties; or
- C. Unlawfully use, sell, purchase, transfer or possess alcohol, illegal drug or prescription medication.

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## **Testing**

### **Post-Offer, Pre-Employment Drug Testing**

As part of the City's employment procedures, all applicants will be required to undergo a post-offer, pre-employment drug screen/test that is conducted by a contractor designated by the City. Any offer of employment is contingent upon, among other things, satisfactory completion of this screening, and the determination by the City that the applicant is capable of performing the responsibilities of the position that has been offered.

### **Reasonable Suspicion Testing**

An employee shall be tested for alcohol or illegal drug use where a trained supervisor has reasonable belief that the employee's satisfactory work performance is adversely affected by the presence of alcohol or illegal drugs in the employee's body in violation of this policy.

Where an employee has been ordered to undergo reasonable suspicion testing, he or she shall be placed on paid administrative leave pending receipt of the test results. If the test results are negative, the employee shall be returned to assigned duties.

### **Post-Accident Testing**

Post-accident testing will be conducted within eight (8) hours whenever an accident occurs as defined below. At no time shall a drug specimen be collected after thirty-two (32) hours from the time of an employee related accident. For purposes of this policy, an accident is considered an unplanned, unexpected or unintended event that occurs on City property, during the conduct of the City's business, or during working hours, or which involves City-supplied motor vehicles that are used in conducting the City business, or is within the scope of employment, and which results in any of the following:

1. A fatality of anyone in the accident;
2. Bodily injury to the employee and/or another person that requires off-site medical attention away from the City's place of employment; or
3. Property damage in apparent excess of \$750.

When such an accident results in one of the situations above, any employee who may have contributed to the accident will be tested for drugs or alcohol use or both unless there are no evident signs of drug use or alcohol impairment as determined by the acting police officer at the accident site. In the event there are no evident signs of drug use or alcohol impairment as determined by the acting police officer, specific testing will not be required.

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Effective October 13, 2004, Section 4123.54 of the Ohio Revised Code requires notice of Rebuttable presumption. Rebuttable presumption means that an employee may dispute or prove untrue the presumption (or belief) that alcohol or a controlled substance not prescribed by the employee's physician is the proximate cause (main reason) of the work-related injury.

The burden of proof is on the employee to prove that the presence of alcohol or a controlled substance was not the proximate cause of the work-related injury . An employee who tests positive or refuses to submit to chemical testing may be disqualified for compensation and benefits under the Workers' Compensation Act.

### **Follow up Testing**

This testing occurs when an employee who has previously tested positive is allowed to return to work. A return to duty test is required before the employee is allowed to return to work, and if the employee fails this test, the employee may be disciplined, including discharge. In addition, any employee with a second positive test result may be disciplined, including discharge.

An employee's refusal or failure, when ordered, to timely submit to testing permitted under this Policy may subject a employee to discipline, including discharge. Additionally, an employee's attempt to adulterate a specimen or otherwise manipulate the drug or alcohol testing process may also result in discipline, including discharge.

By taking a test, an employee does not waive any objection or challenge he or she may possess. Within twenty-four (24) hours of the time the employee is ordered to submit to a test, the City shall provide the employee with a written notice setting forth the information and observations which form the basis of the order.

### **Testing Determination**

Upon determining that an employee must submit to test for alcohol or illegal drug usage, the supervisor shall give the employee an opportunity, prior to the test, to request the presence of, or to seek the advice from an applicable Representative. The employee and the Representative, if available, shall be given an opportunity to communicate any information or other explanation relevant to the circumstances to the supervisor. The supervisor shall then determine, after considering all of the circumstances, whether the test shall be administered.

If the supervisor determines that a test shall be given, testing shall be made immediately after discussion with the employee and the Representative, if available, but no more than thirty-two (32) hours after the determination that a test is required has been made, whichever is sooner. The Representative, if available, may accompany the employee to and be present with the employee at the collection site.

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The fact that an employee may have been taking a legal drug shall not preclude the administration of a drug test if the supervisor has reasonable suspicion to believe that the employee's satisfactory work performance has been adversely affected by the presence of such a legal drug; provided, however, that the ultimate disposition of the matter shall take such fact into consideration.

### **Collection Site/Laboratory**

The City has established the Licking Memorial Health System Hospital and the Mount Carmel East Urgent Care as designated collection site and laboratory testing facilities.

- A.** Both the collection site and laboratory performing testing under this Policy shall be mutually selected by the City and the employee and shall be certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs;"
- B.** The City, the collection site, and the laboratory shall have a clear and well-documented procedure for collection, shipment, and assessment of testing samples, which procedure shall be provided in writing to the employee subject to testing and, upon request, to the Representative;
- C.** For drug testing, the City, the collection site, and the laboratory shall follow the procedures set forth in 49 CFR Part 40, including an evidentiary chain of custody and control and split sample collection and testing. The collection site is responsible for maintaining the integrity of any specimen collection and transfer. Alcohol breath testing shall be conducted at the collection site and shall be conducted by a technician trained in such testing. Appropriate records of such testing shall be maintained by the collection site for review by the employee and/or Representative. The breath testing device shall meet standards commonly used in the private sector for such testing;
- D.** The City shall pay all costs associated with testing, except that any cost for testing of a split sample is the responsibility of the employee.

### **Testing Procedure**

- A.** For alcohol testing, the employee shall be first given a breath test, at the collection site, followed by a confirmatory urine test only where the breath test reveals an initial positive alcohol level of .04 grams per 210 l. of breath or at levels within existing City department rules and regulations.  
If the initial breath test results are below this level, testing shall be discontinued; if confirmatory urine tests results are below a level equivalent to .04 grams per 210 l. of breath, the confirmatory test shall be considered negative;
- B.** For drug testing, urine samples shall be provided;

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- C. Individual privacy shall be afforded to an employee in the collection of urine samples, provided that the collection site may impose stringent specimen alteration and/or substitution procedures;
- D. With regard to drug testing, where the employee provides a sufficient urine sample at the time of the original sample collection, this sample shall be split and placed in two (2) separate containers at the collection site. In the presence of the employee at the testing site, and without ever leaving his or her sight, each urine sample taken shall be placed in two sterile screw-capped, self-sealed, tamper-resistant urine collection containers which shall be each sealed and labeled and then initialed by the employee.

The samples shall be sent, by the most expedient means available, to the testing laboratory as soon as practicable on the day of the test. The sample within the second container shall be stored at the test collection site.

The laboratory shall commence testing of the sample within the first container only if the sample is received in an undamaged condition, properly sealed and labeled, and properly initialed by the employee. The certified laboratory shall first conduct an initial screening of this sample.

If the test results from the screening are negative, the City Administrator will be so advised and the testing procedure will be concluded. If illegal drugs or alcohol are found in the sample as a result of the screening, then that sample shall be submitted for confirmatory testing. The initial screening shall be accomplished by means of Thin Layer Chromatography (TLC) or equally reliable testing methods and the confirmatory test shall be accomplished by means of Gas Chromatography/Mass Spectrometry (GS/MS). If the test results from the confirmatory test are negative, the City will be so advised and the testing procedure will be concluded. If, as a result of the initial screening and confirmatory test, the test result is positive, the employee will be contacted directly by a Medical Review Officer (M.R.O.) and will be given the opportunity to explain the reasons for a positive test result. Should the employee offer an explanation that in the judgment of the M.R.O. sufficiently explains the positive test result, the M.R.O. will consider the results as negative and the City will be so advised and the testing procedure will be concluded;

- E. With regard to drug tests, if the test results are positive, and the employee has not offered an explanation to the M.R.O. sufficient to cause the M.R.O. to consider the results negative, the City Administrator shall be notified and contact the employee and the supervisor.

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The City will provide employees who test positive for drugs with an opportunity to have the split urine specimen tested by a clinical laboratory or hospital facility of the employee's choosing, at the employee's own expense, providing the employee notifies the City within seventy-two (72) hours of receiving the positive results and provided further that the laboratory or clinic and the testing procedure, including chain of custody, meets or exceeds the standards established in this Policy. If the employee does not request the testing of the sample within the second container after the sample within the first container tests positive, or if the employee requests the testing of the sample within the second container and it is also tests positive for an illegal drug or alcohol, rehabilitative or disciplinary action shall be taken;

- F.** The City shall provide each employee tested with a copy of all information and reports from the collection site and laboratory in connection with the testing and results;
- G.** The M.R.O. shall maintain his or her office in Licking County, Ohio or an adjoining County;

### **Employee Assistance**

#### **Voluntary Request for Assistance**

An employee may voluntarily enter treatment without a requirement of prior testing. An employee who voluntarily seeks assistance for a substance abuse problem before being required to submit to a reasonable suspicion test shall not be subject to discipline.

#### **Discipline/Rehabilitation Options**

Where an employee has been ordered to undergo testing and the test results are positive as specified in this Policy, the City may, depending upon individual circumstances, discipline the employee and/or offer the employee the opportunity for rehabilitation (treatment). Any discipline shall be for just cause and shall take into account all facts and circumstances, including the employee's desire for and/or progress in treatment, and the employee's work record.

With the exception of a positive test for use of a controlled substance and notwithstanding the above paragraph, any discipline to be imposed for a first violation of this Policy shall be held in abeyance pending completion by the employee of a treatment program. If the employee successfully completes a treatment program and is not further disciplined for substance abuse for thirty-six (36) months following the date upon which the employee was tested, the discipline shall be withdrawn and the initial charge dismissed.

However, an employee may be disciplined for any misconduct which may coincide with an employee's violation of this Policy.

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An employee serving his or her initial probationary period may be discharged, without referral to a treatment program, at the sole discretion of the City.

### **Referral to Treatment**

Where the employee is offered the option for treatment under this Policy, and the employee accepts this referral, the employee must:

- A.** Agree to cooperate in and successfully complete appropriate treatment as determined by the substance abuse professional(s) or physician(s) involved;
- B.** Discontinue use of illegal drugs or misuse of legal drugs or alcohol;
- C.** Agree to authorize persons involved in counseling, diagnosis and treating the employee to disclose to the City the employee's progress, cooperation, drug and alcohol use, completion or non-completion of counseling and treatment, and any threat to property or safety perceived in connection with the employee's continued performance of his or her job duties;
- D.** Complete any course of counseling or treatment prescribed, including an "after-care" group for a period of up to twelve (12) months; and,
- E.** Agree to submit to random testing during treatment and up to three (3) times during the twelve (12) month period following the completion of counseling, treatment and/or after-care.

Employees who do not agree to act or who do not act in accordance with the foregoing may be subject to discipline, up to and including discharge.

### **Right of Appeal**

The employee has the right to challenge the results of the drug or alcohol tests and any discipline imposed in a similar manner to any other employer action.

### **Treatment Costs**

Treatment costs arising out of the employee's use of such services shall be paid for by the employee's insurance program, subject to any deductible, co-payment and coverage limits under the employee's insurance program. Employees will be allowed to use any paid leave (including vacation, sick leave or holiday leave) or take an unpaid leave of absence for the necessary time off involved in a treatment program.

Other than as specified in this Policy or required by law, the City shall have no obligation to pay for or insure treatment or rehabilitation.

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## **Confidentiality**

All testing and actions taken under or pursuant to this Policy shall be kept confidential to the extent permitted by federal and state law, except where disclosure is warranted to comply with the provisions of this Policy relative to disciplinary action taken against an employee.

## **Other Laws**

This Policy is in no way intended to supersede or waive any rights that an employee may be entitled to under federal or state constitutions or any applicable law. Any action taken pursuant to this Policy shall not be used as evidence or otherwise in any criminal proceeding against an employee.

This Policy is not intended to supersede or otherwise infringe upon the collective bargaining agreements or current City department rules and regulations but rather address generally matters not within such agreements or as clarification to such provisions.