

11.17 DRUG FREE WORKPLACE

Illicit drug and alcohol use and abuse in the workplace is a danger to everyone. It impairs the safety, health, and welfare of all employees, promotes crime, and lowers efficiency and effectiveness. This policy addresses and attempts to prevent such issues within the ranks of the Erie County Sheriff's Office.

The Erie County Sheriff, hereinafter referred to as the Employer, will not condone and will not tolerate any of the following workplace related behaviors by an Employee of the Erie County Sheriff's Office:

1. The use of illegal drugs;
2. The use of alcohol;
3. The sale, purchase, manufacture, transfer, use or possession of any dangerous drugs obtained without a prescription (excluding the proper use of prescription medication);
4. The employee's presence at work while under the influence of alcohol and/or any drug-legal or illegal-unless the use of a legal drug is in accordance with a prescription.

The purpose of this policy is to promote safety through the guidelines contained herein and set forth in this agency's mandatory random drug testing program. Any employee who violates this "Drug Free Workplace Policy" (hereinafter referred to as the policy) may be subject to discipline, up to and including termination of employment, even for the first offense.

The employer appoints the Erie County Director of Human Resources and the Erie County Loss Control Coordinator as Designated Employer Representatives (DER) for this policy. These individuals will have responsibilities limited to: receiving notifications from the contracted drug testing agency regarding employees who are required to submit to random drug testing pursuant to the procedure as specified elsewhere in this policy; transmitting the name(s) to the Employer or Employer's designee; and receiving and reporting the results of such tests to the Employer. All communications regarding any portion of this policy and any test results will be directed by a DER only to the Employer and/or the Employer's designee. Confidentiality of all information received pursuant to this policy will be strictly guarded and maintained by the Employer and/or the Employer's designee, with no information being made available to any other person without a legitimate need to know.

The term "employees," as used in this policy, includes all full-time, part-time, intermittent, and temporary employees, and also includes agency volunteers.

An employee's violation of this policy will not ordinarily be reported to any law enforcement agency unless such policy violation has also resulted in a violation of the Ohio Revised Code or applicable local ordinance, or because such a measure must be taken to assure the safety and security of other employees and/or the general public.

PRESCRIPTION AND OVER THE COUNTER DRUGS

The employer does not prohibit an employee from using prescription and over the counter drugs, when used as prescribed and/or recommended by the manufacturer, provided:

1. Any prescription drug is dispensed to the employee for medical reasons by a suitable medical practitioner, with dosage and frequency of use prescribed on the label or accompanying documentation, and
2. The employee's use of the prescription or over-the-counter drug does not affect the employee's job performance or conduct, or threaten the safety, productivity, public image or property of the employer or other employees.

No employee is to perform any function or duty on behalf of the employer if any drug being taken under this provision knowingly and adversely affects the employee's ability to perform any such function or duty in a safe manner.

RANDOM DRUG TESTING PROCEDURES, FREQUENCIES AND PATTERN

General requirements of all drug and alcohol testing situations on part of the employee include:

1. Reporting at Firelands Corporate Health Center (Firelands), or specimen collection site as designated by the Employer; and
2. Providing the required specimens(s) as soon as possible after arrival at the specimen collection site; and
3. Immediately returning to assigned duties at the conclusion of the specimen collection process as advised by specimen collection site personnel; and
4. Full compliance with this policy, all procedures contained herein, and compliance with all reasonable instructions of individuals who are collecting the biological sample and/or employed by the specimen collection site. In all cases in which the Employer has cause to believe that the employee's or the public's safety may be endangered by allowing the employees to drive to the specimen collection site, the Employer will provide transportation to the collection site.
5. An employee's refusal to comply with any random testing requirements and/or failing to provide the requested specimens when selected for random testing, or adulteration or substitution of the employee's specimen(s) will be considered a refusal to test and will be interpreted the same as a positive test and/or insubordination. Any such refusal subjects the employee to the full range of discipline, up to and including termination of employment or cancellation of an offer of employment.
6. A specific percentage of employees, as determined by the Employer, will be subject to annual random drug and alcohol testing in a pattern determined by the Employer. All employees will always be subject to random testing, regardless of their prior test history.

REASONABLE SUSPICION TESTING

Reasonable suspicion testing will be performed when the employer and/or an employee's supervisor determine(s) that an employee may be under the influence of alcohol and/or an illicit drug, or under the influence of a prescription drug to the point the employee's use of the prescription or over-the-counter drug affects the employee's job performance or conduct, or threatens the safety, productivity, public image or property of the Employer or other employees. Any suspicion must be documented in writing within twenty-four (24) hours of the development of such suspicion, but need not be placed in writing prior to ordering the employee to undergo a reasonable suspicion test. Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, including but not limited to: direct observation of drug or alcohol use or possession; physical symptoms or appearance of being under the influence of a drug or alcohol; and/or the odor of alcohol or other prohibited substances; and/or
2. An abnormal pattern of conduct or erratic behavior which may include repeated examples of deteriorating job performance, unexplained patterns of absenteeism, tardiness, recurrent accidents, repeated violations of established safety or work rules, etc., which are not attributable to other known factors; and/or
3. Convictions of or plea (including no contest or *nolo contendere*) to an alcohol or drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, manufacture, use or trafficking. The employee must immediately report to the employer or his designee any arrest and/or plea to and/or conviction for any drug-related offense; and/or
4. Self-admission, information provided either by a reliable or credible source, or independently corroborated information, pertaining to an employee's alleged alcohol or drug abuse; and/or
5. Newly discovered evidence that the employee has impeded with a previous drug or alcohol test.

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The first priority of the employer is the removal of the employee suspected of abusing alcohol or illicit drugs from the work environment. This shall be done to prevent the employee from causing harm to himself, herself, other individuals in the workplace, or anyone else.

The employer and/or the employer's supervisor shall instruct the employee under suspicion to accompany him/her to a private area that is removed from the individual employee's co-workers to advise the employee of such suspicion and to arrange for any testing and/or transportation for such testing. If the Employer and/or supervisor determine that the employee cannot finish his/her scheduled shift and the Employer and/or the supervisor determine that the employee cannot be entrusted to operate a motor vehicle, the Employer and/or supervisor will allow the employee to make arrangements for alternate transportation or the Employer will make such arrangements.

The employee will be compensated for any leave taken in conjunction with the employer's ordering of reasonable suspicion test result is negative. The employee will not be paid if the test is positive, with the exception that any applicable CBA language shall take precedence.

DRUG TESTING TECHNIQUES AND METHODS

Drug testing practices are to include testing for the five to eleven drug(s) identified below through submission of a saliva sample at the Department of Health and Human Services certified laboratory at Firelands adhering to the following:

- D.H.H.S. – approved protocol (may exclude split-specimen)
- D.H.H.S. – approved chain-of-custody
- D.H.H.S. – approved collection Site
- Immunoassay drug screen – (preliminary test)
- GC/MS (confirmatory test)
- MRO review, interview and ruling on any positive test
- Split Specimen

The initial drug testing protocol for employees and applicants shall use an immunoassay technique, which meets Federal Food and Drug Administration requirements. The initial cutoff levels and the drug panel for testing shall meet the Department of Health and Human Services/National Institute on Drug Abuse criteria to determine whether specimens are negative for the drugs listed below.

All specimens identified as positives on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques or any other procedures required by federal law.

The cutoff levels for the initial test as well as the confirmatory test shall be those established by the Federal Department of Health and Human Services as listed below:

	<u>Initial Test Level (Ng/ml)</u>	<u>Confirmatory</u>
Marijuana metabolites	50	15
Cocaine metabolites	150	100
Opiate metabolites	2,000	2000
Phencyclidine	25	25
Amphetamines	500	250
Barbiturates	300	300
Benzodiazepines	300	300

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Methadone	300	300
Propoxyphene	300	300
Heroin	10	10
Ecstasy (MDMA/MDA/MDEA)	500	25

These test levels and initial and confirmatory test methods may be subject to change by the Employer if advances in technology or other consideration warrant identification of these substances at other concentrations. Initial and confirmatory test methods and test levels for other drugs meeting certification criteria of the department of Health and Human Services/National Institute on Drug Abuse may be added to the testing protocol as deemed necessary by the Employer.

ALCOHOL TESTING TECHNIQUES AND METHODS

Alcohol testing practices will include an initial breath screen using a National Highway Traffic Safety Administration (NHTSA) approved device. The Employer reserves the right to conduct this initial breath screen using a breath alcohol screening device owned and maintained by the agency.

Confirmatory test shall be conducted using a federally approved and qualifying evidentiary breath test (EBT) conducted by a qualified breath alcohol technician. If the confirmatory EBT testing machine is not available or reasonably accessible, a blood test will be an option that can be ordered by the Employer. The Employer is required to document and maintain on file the reason the EBT was not administered.

COLLECTION AND HANDLING OF TEST SPECIMENS

1. The employee to be tested shall be instructed to report to the collection site as soon as possible after the testing order is given during the employee's scheduled work hours. In some instances, it may be necessary for the employer or employer's designee to transport the individual to the collection site.
2. The collection site technician shall request the employee to present photo identification or other confirming identification, or the employee will be otherwise identified by the employer.
3. The employee shall be required to follow all procedures as required by the collection site technician.
4. The saliva specimen shall be sealed and labeled by the collection site technician in the presence of both the employee submitting the specimen and the collection site technician. The label shall contain the date, the employee's uniquely assigned specimen number and any other information provided or required to be submitted by the employer and/or the collection site technician.
5. The employee tested shall initial the identification label on the specimen certifying that it is the specimen collected from him/her.
6. The collection site technician shall complete any applicable chain of custody form and shall ship the specimen to the appropriate testing laboratory in a sealed, secure container.
7. The laboratory shall use appropriate chain of custody procedures to maintain control and accountability of all specimens from receipt through completion of testing. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled and transferred.
8. Laboratory personnel shall inspect each specimen package for any evidence of specimen tampering, and such information shall be immediately reported to the employer.

REPORTING OF TEST RESULTS

The testing laboratory shall report test results to Firelands, who will then report the results to a DER, who will report the results to the Employer or the Employer's designee for the receipt of such test results. Testing laboratory personnel shall certify all test results as accurate. Laboratory test results may not be transmitted by telephone, but transmission by other electronic means (email or facsimile) shall be permissible. All specimens which test negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive for a specific drug or drugs.

Firelands shall provide to a DER an annual statistical summary of drug testing information or any other documentation pertaining to the employer's testing process as requested by a DER. The summary shall not include any personal identifying information. Initial and confirmation data shall be included from test results reported within that month.

APPEAL OF DRUG TEST RESULTS

Employees who have a positive drug test result may review the initial test results and request a retest according to any requirements of an applicable collective bargaining agreement or, in the absence of such agreement, within three (3) calendar days of receiving the initial test result. Such requests shall be in writing, signed, dated and shall be presented to the Employer. The Employer will, as soon as possible but no later than twenty-four (24) hours after receipt of the request, forward the request to the DER. Such retest will be scheduled at Firelands, or at another laboratory of the employee's choosing, provided that the laboratory performing such a retest is certified by the National Institute on Drug Abuse. Any such retest shall be at the expense of the employee.

An employee who is suspended, pending appeal of a positive test required pursuant to this policy, will be permitted to use any available sick, vacation or personal days in order to remain in an active pay status. If the employee has no sick, vacation or personal days he/she will be placed on unpaid leave status. If the employee's re-test indicates a negative result, the employee's unused time balance will be restored.

RECORDS AND SPECIMEN RETENTION

All records pertaining to a given alcohol or drug test shall be maintained as required by federal law. All positive specimens shall be routinely retained in frozen storage so as to be available for any necessary retest for a period of one year, unless otherwise authorized in writing by the employer. A longer retention shall be required under legal challenge for an indefinite period.

VOLUNTARY DISCLOSURE

An employee who voluntarily discloses to the Employer that he/she has a substance abuse (alcohol and/or drug) addiction issue will be offered confidential assistance in contacting counseling and treatment programs and will be provided information about any available insurance coverage or benefits. The Employer will expect such employees to take such actions as are necessary to remedy the addiction issue. Although an employee's decision to seek assistance will not be used as the basis for disciplinary action, it will also not be allowed as a defense by the employee from imposition of disciplinary action when facts confirming a violation of this policy become known, nor will such decision to seek assistance be used as a defense against any disciplinary action for violation of any other policy. Also, should any employee who makes such a voluntary disclosure be subjected to a reasonable suspicion testing that results in a positive result, he/she will become subject to disciplinary action and follow up testing as defined in this policy and will lose any protections he/she may have enjoyed under the voluntary disclosure status.

DISCIPLINARY CONSEQUENCES FOR POSITIVE TEST RESULT

A confirmed positive alcohol or other drug test under this policy will result in appropriate progressive disciplinary action, pursuant to the terms and conditions of any applicable collective bargaining agreement, being taken against the employee.

Failure to produce either a saliva and/or valid breath sample as required by this policy, whether for a random test or for a reasonable suspicion test, will be treated as a refusal to test unless there is a verifiable medical reason that the specimen could not be produced. Any employee refusing to provide a sample as required by this policy will be subject to the disciplinary process for an act of insubordination. If a claimed medical condition, confirmed by a medical professional (physician, physician's assistant, or registered nurse) does not allow for the collection of a saliva and/or breath sample, alternate testing methods will be considered by the Employer.

Any employee who tampers with, or attempts to tamper with, the submission of a saliva or breath sample – or the actual sample itself – or falsifies any statement made in conjunction with the testing process will be subject to any and all appropriate progressive disciplinary action – up to and including termination.

RETURN TO WORK UPON SUCCESSFUL COMPLETION OF DRUG AND/OR ALCOHOL REHABILITATION

An employee who is enrolled in substance abuse rehabilitation as a result of a positive drug or alcohol test under this policy, and who has completed such rehabilitation, and absent any other pertinent factors and/or disciplinary action, will be allowed to return to work upon presentation of a written release signed by a licensed physician or recognized rehabilitation professional. The release must include a statement to the effect that the employee's presence in the workplace will not constitute a safety hazard to the employee, co-worker(s) and others.

Should a follow-up drug/alcohol test show the presence of a prohibited substance or the introduction of a newly prohibited drug in the employee's body, appropriate progressive disciplinary action shall be taken up to and including termination. Random follow-up tests will be unannounced and may occur at any time and with more frequency than random tests submitted by other employee(s).

POST-EMPLOYMENT OFFER, PRE-EMPLOYMENT, OR NEW HIRE DRUG TESTING

Effective immediately upon implementation of this policy, all applicants are subject to post-offer, pre-employment or "new hire" drug testing that is conducted by an Employer approved contractor. The Employer will decline to extend an offer of regular employment to any applicant, or will release from employment a probationary employee, who refuses to test or who provides a specimen that contains a verified positive test result for any illicit drug or alcohol under this policy.

EMPLOYEE ASSISTANCE

The Employer believes in offering useful information to assist employees with a substance abuse issue. The Employer is well aware of the known frequency of substance abuse issues within the law enforcement profession, and will be supportive of employees taking action on their own behalf to address a substance abuse issue. The Employer will make information regarding local substance abuse resources and employee assistance programs available to any employee in need of such assistance.