



NON-DOT-REGULATED EMPLOYEE ALCOHOL MISUSE PREVENTION AND ANTI-DRUG POLICY

Note: This policy will replace the current as Policy 7.2 in the Employee Handbook & Policy Manual after approval by the Common Council.

7.2 DOT-Regulated Employee Alcohol Misuse Prevention and Anti-Drug Policy

Purpose

In compliance with the Drug-Free Workplace Act of 1988, the City of Milton has a longstanding commitment to provide a safe, quality-oriented, and productive work environment consistent with the standards of the community in which the City operates.

Policy Coverage

This policy applies to all full-time, part-time, temporary / seasonal, interns or youth apprentices, and limited-term employees. This policy also applies to employees who perform “safety sensitive functions” in association with the operation of a commercial motor vehicle in situations where the employee is not governed by the DOT-Regulated Employee Alcohol Misuse Prevention and Anti-Drug Policy.

Policy

Alcohol and drug abuse poses a threat to the health and safety of City of Milton employees and to the security of the City of Milton equipment and facilities. For these reasons, the City of Milton is committed to the elimination of drug and alcohol use and abuse in the workplace. Employee involvement with alcohol and other drugs can be very disruptive, adversely affect the quality of work and performance of employees, pose serious health risks to users and others, and have a negative impact on productivity and morale. The City has established a drug-free workplace program that balances the respect for individuals with the need to maintain a drug and alcohol free environment.

Definitions

For the purposes of this policy, the following definitions will apply:

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low weight alcohols including methyl and isopropyl alcohol.

Alcohol Use means the consumption of any beverage, mixture, or preparation, including medications, containing alcohol.

Breath Alcohol Technician (BAT) means an individual certified as trained to operate an Evidential Breath Testing Device (EBT) and proficient in breath testing procedures.

Canceled Test means, in controlled substance testing, that a test that has been declared invalid by the MRO. A canceled test is neither positive nor negative.

Collection Site means a place where individuals present themselves for the purpose of providing body fluids or tissue samples to be analyzed for controlled substances, or to provide a breath sample to be analyzed for alcohol concentration.

Controlled Substance under DOT rule means marijuana, cocaine, opioids, amphetamines, and phencyclidine (PCP) or other substances later defined by DOT as controlled substances.

Evidential Breath Testing Device (EBT) is a device designed to measure alcohol concentration from breath samples which has been approved by the National Highway Traffic Safety Administration.

Laboratory means a laboratory for conducting drug testing that is approved by the Department of Health and Human Services.

Medical Review Officer (MRO) means a licensed doctor of medicine or osteopathy with the knowledge of drug abuse disorders that is retained by the organization to conduct and analyze drug tests in accordance with DOT rules.

Safety-Sensitive Position refers to a job in which the employee is responsible for his/her own or other people's safety. It also refers to jobs that would be particularly dangerous if performed under the influence of drugs or alcohol. For the City of Milton, positions considered safety-sensitive include CDL operators and police officers.

Substance Abuse Professional (SAP) is a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Prohibited Conduct for all City Employees

- a. As required by the Drug Free Workplace Act, all City employees are strictly prohibited from using, possessing, manufacturing, distributing, or dispensing controlled substances while on City property or while operating City equipment or vehicles.
- b. City employees are prohibited from reporting for or remaining on duty or performing assigned job duties while under the influence of alcohol or a controlled substance.

- c. City managers / supervisors are prohibited from deliberately misusing this policy in regard to subordinates, as well as providing false information in connection with a test, or falsifying test results through tampering, contamination, adulteration, or substitution.

Report of Criminal Conviction

Criminal convictions for manufacturing, distributing, dispensing, possessing, or using controlled substances in the workplace must be reported in writing to the City of Milton no later than five calendar days after such conviction. Appropriate action, which may consist of discipline up to and including termination, will be taken within 30 days of notification. Federal contracting agencies will be notified when appropriate.

Reporting Abnormal Behavior

Employees who observe their coworkers acting in an abnormal manner or believe they appear unfit to perform his / her duties in a safe manner due to potentially being under the influence of drugs and / or alcohol, must notify their Department Head, Supervisor, or City Administrator immediately so the situation can be addressed.

Drug and Alcohol Tests

Pre-Employment

After a conditional offer of employment has been made, the applicant is required to take a pre-employment drug test. The applicant must report for testing within 48 hours of being notified. The applicant shall not be allowed to assume the position until such time the City of Milton has received a verified negative drug test result. An offer of employment will be withdrawn if the employee fails to report for testing within 48 hours unless the failure is due to circumstances beyond his/her control (such as a vehicular accident) or the applicant's test result is anything but negative.

Post-Accident (Non CDL Licensed Employees)

Employees who do not hold CDL licenses and are involved in an accident involving a motor vehicle that occurs while an employee is performing duties related to their employment with the City of Milton may be required to submit to testing based on reasonable suspicion.

Reasonable Suspicion

An employee is required to submit to an alcohol or controlled substance test upon a supervisor's reasonable suspicion to believe that the employee is in violation of this policy. The determination of reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances.

The City of Milton has established the following reasonable suspicion testing procedure. Please Note: This is a confidential process. Test results

will be held strictly confidential and are not to be discussed or shared with anyone who does not need to know. Likewise, a supervisor must not discuss the suspected reason for a referral or termination with anyone who does not need to know.

a. Reasonable Suspicion Testing Procedure

The City of Milton has established the following reasonable suspicion testing procedure. Please Note: This is a confidential process. Test results will be held strictly confidential and are not to be discussed or shared with anyone who does not need to know. Likewise, a supervisor must not discuss the suspected reason for a referral or termination with anyone who does not need to know.

1. In cases in which an employee is acting in an abnormal manner or appears unfit to perform his / her duties in a safe manner, the Department Head or Supervisor should remove the employee from the work area, and talk to and observe the employee in a private and safe area.
2. Firsthand observation should be made by two supervisors, if possible. The Department Head or Supervisor should observe and document the employee's behavior on the Reasonable Suspicion Checklist – Department Head / Supervisor, and the Reasonable Suspicion Checklist – Second Observer should be completed by the second observer. The second observer could be another supervisor, the City Administrator, or Administrative Services Director. Observation should include talking to the employee directly. All observations must be documented prior to receiving the test results and within 24 hours of the testing, whichever is earlier; however, the preference is to complete the Reasonable Suspicion Checklists prior to taking the employee to the testing facility.
3. The Department Head or Supervisor is to review the observations with the employee, and ask the employee for an explanation of the observed behavior. The Department Head or Supervisor will then make a determination if a reasonable suspicion test is warranted.
4. The Department Head or Supervisor must then discuss the testing and next steps with the employee and contact the City Administrator and / or Administrative Services Director to notify them of the situation if they have not already been contacted.

5. If there is no reasonable suspicion, the process ends here. If there is reasonable suspicion, the Department Head or Supervisor will then contact Mercy Occupational Health at (608) 741-3800 to notify the facility that they will be bringing the employee in for testing. Mercy Occupational Health is open daily 7 a.m. to 7 p.m. If the observed behavior occurs after hours, then the Department Head or Supervisor may contact Mercy Hospital and Trauma Center at (608) 756-6000 or Mercy Clinic North at (608) 314-3600. If the employee refuses to take the test, a refusal will be considered a violation of the City's policy and the employee will be subject to discipline, up to and including termination.
6. The Department Head or Supervisor is to then take the employee to Mercy Occupational Health, 1010 N. Washington Street, Janesville, WI, or, if after hours, to Mercy Hospital and Trauma Center, 1000 Mineral Point Avenue, Janesville, WI, or Mercy Clinic North, 3400 Deerfield Drive, Janesville, WI, for drug and / or alcohol testing if it is determined there is reasonable suspicion. The Department Head or Supervisor is to wait at the collection site until the test is completed. All alcohol tests will be done with the use of the breath test, and all drug tests will be conducted through a urine sample.

If an alcohol test is not administered within two (2) hours following the reasonable suspicion determination, the supervisor must include in their final report the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the reasonable suspicion determination, the supervisor must cease attempts to administer an alcohol test and shall state in the report the reasons for not administering the test. In addition, the driver will be out of service for 24 hours.

If the drug test is conducted more than two (2) hours after the supervisor makes a reasonable suspicion determination, the supervisor will include an explanation in their final report on the incident detailing the reason for the delay in conducting the test.

7. Once the drug and/or alcohol test has been completed the supervisor is to make arrangements for the employee to be taken home. The employee will not be permitted to drive their own car home at that time. The employee may have a family member or a friend pick them up or the supervisor may take the employee home.

8. Once the test has been completed and the employee has been taken home, the supervisor must submit a written report to the Administrative Services Director outlining in detail what happened and what behavior was observed that led the supervisor to believe the employee was under the influence of alcohol and/or drugs. This report is to be done within 24 hours of testing.
9. The employee is to be advised not to report to work. The City of Milton will contact the employee once the test results are known (this normally takes 24-48 hours) and a decision has been made as to the employee's status.
10. The results of the drug and/or alcohol test will be sent directly to the Administrative Services Director at City Hall. When the results are obtained, the employee's Department Head will meet with the City Administrator to determine the appropriate course of action to be taken.

Return-to-Duty/Follow-Up Testing

An employee is required to undergo an alcohol and/or drug test prior to returning to duty, following a violation of this policy and evaluation by a substance abuse professional (SAP). The results of the test must indicate an alcohol concentration of less than 0.02 and/or a negative result for drug use. The City is responsible for deciding whether the employee is returned to duty.

Following successful compliance with a recommendation for education and/or treatment, the employee must submit to the follow-up testing plan established by the SAP, which shall be provided to the City of Milton. The City must carry out the SAP's follow up testing requirements and must ensure that the tests are unannounced with no pattern to their timing and that the employee is given no advance notice.

Test Refusal

The following behavior constitutes a test refusal for drugs and alcohol:

- a. Failure to appear for the test in the time frame specified by the City, with the exception of pre-employment.
- b. Failure to remain at the testing site until the testing process is completed
- c. Failure to provide a urine specimen, saliva, or breathe specimen, as applicable.
- d. Failure to provide a sufficient volume of urine or breathe without a valid medical explanation for the failure.

- e. Failure to undergo a medical examination as part of the verification process.
- f. Failure to cooperate with any part of the testing process.
- g. Failure to permit the observation or monitoring of specimen donation when so required.
- h. Failure to take a second test required by the City or collector.
- i. A drug test result that is verified by the MRO as adulterated or substituted (applicable to drug test only).

Results of a Positive Alcohol or Drug Test

Any employee who tests positive for drugs or for alcohol concentration of 0.02 or higher is subject to discipline, up to and including discharge.

Controlled Substances, Over-the-Counter, and Prescription Medications

a. Non-Safety Sensitive Positions

Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Any employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with safe performance of his/her job. If the use of a medication could compromise the safety of the employee, fellow employees or the public, it is the employee's responsibility to use appropriate personnel procedures (i.e. call in sick, use leave, request change of duty, change medications, notify supervisor, notify City's contracted Occupational Health Clinic) to avoid unsafe workplace practices.

b. Safety-Sensitive Positions

Before performing any work-related duties, employees must notify their supervisor if they are taking any legally prescribed medication, therapeutic drug (to include the use of CBD Oils), or any non-prescription (over-the-counter) drug especially if it contains any measurable amount of alcohol or if it carries a warning label that indicates the employee's mental functioning, motor skills, or judgment may be adversely affected by the use of this medication. It is the responsibility of the employee to inform their physician of the type of safety-sensitive function that they perform in order that the physician may determine if the prescribed substance could interfere with the safe and effective performance of their duties or operation of City of Milton vehicles and other equipment. However,

as required by the Federal Regulations, any employee who uses or possesses medication containing alcohol or any substance which would cause a positive test while on duty or who tests positive for alcohol or controlled substance(s) will be removed from his or her position, and subject to the provisions of this policy, even though the reason for the positive test is the fact that the employee's prescription medication contains alcohol or a controlled substance.

The appropriate use of Rx and OTC is not prohibited. A legally prescribed drug is one where the employee has a prescription or other written approval from a physician for the use of the drug in the course of medical treatment. The prescription must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal controlled substances while performing City business is prohibited.

It is the responsibility of any employee to remove themselves from service if they are experiencing any adverse effects from medication or the use of a medication that could compromise the safety of the employee, fellow employees, or the public. It is the employee's responsibility to use appropriate personnel procedures (i.e., call in sick, use leave, request change of duty, notify supervisor, notify City's contracted Occupational Health Clinic) to avoid unsafe workplace practices.

The City may require an employee to a completed Medical Reporting Form from a medical professional verifying the use of a prescription or a legal non-prescription controlled substance will not impair his/her ability to safely and effectively perform his/her job. A physician must specifically advise the employee that the substances in a prescription will not adversely affect the employee's ability to safely perform their job.

Depending on the circumstances, employees may be reassigned, prohibited from performing certain tasks, or prohibited from working if they are determined to be unable to perform their jobs safely and properly while taking the prescription.

c. Medical Review Officer (MRO)

The MRO serves as an independent, impartial gatekeeper regarding the accuracy and integrity of drug testing. As a safeguard to quality and accuracy, the MRO reviews each test for accuracy.

When the laboratory reports a confirmed positive, adulterated, substituted, or invalid drug test from the laboratory, test results are reviewed and interpreted by the MRO before they are reported to the City. The MRO conducts a verification process with the employee during which time he/she will obtain information to determine if an alternative medical explanation for the test result.

If the MRO determines that a legitimate medical explanation exists, the drug test result may be reported as negative to the City. Even if there is a legitimate medical explanation and verifies a negative test, the MRO has a responsibility to raise fitness-for-duty considerations with the City. When no legitimate medical reason is established, the MRO may verify a test result as a positive or refusal to test, as applicable.

Confidentiality of Records

The City respects the confidentiality and privacy rights of all employees. Accordingly, the results of any test administered under this policy and the identity of any employee participating in the City's Employee Assistance Program (EAP) or other assessment or treatment program will not be revealed by the City to anyone except as required by law. The City will release any employee's records as directed by the express written consent of the employee authorizing release to an identified person. In addition, the City will ensure that any lab, agency or Medical Review Officer (MRO) used to conduct testing under this policy will maintain the confidentiality of employee test records.

The Medical Review Officer (MRO) will not reveal individual test results to anyone except the individual tested, unless the MRO has been presented with a written authorization from the tested employee. The City may be requested by the MRO to have a tested employee contact the MRO if the employee was unable to be reached after a minimum of three (3) attempts over a 24 hour period. The MRO will disclose information related to a verified positive drug or alcohol test of an individual to the Administrative Services Director or City Administrator. The City may disclose information to the employee or to the decision maker in a lawsuit, grievance, or other proceeding by or on behalf of the individual which arises from any action taken in response to a positive drug or alcohol test; or as required by law, including court orders and subpoenas; or upon the tested employee's written authorization and consent.

All records related to drug and alcohol tests of individual employees will be maintained in individual files separate from the employee's personnel file. These records will be stored in a locked cabinet and access will only be allowed to those City employees who have a legitimate need to review the records of a particular employee.

Costs

The employer shall pay all costs associated with the administration of alcohol and controlled substance testing except follow up testing and other costs associated with a “positive” test.

Prevention and Rehabilitation

The goals of this policy are prevention and rehabilitation whenever possible, rather than discipline or termination. The City encourages employees who have an alcohol or other drug problem to seek help to deal with their problem.

Help is available through the City’s Employee Assistance Program (EAP). The EAP is through Mercy Health System and can be reached at (608) 756-4681 or 855-612-HELP (4357). For more details on this program, contact the Administrative Services Director.



EMPLOYEE ACKNOWLEDGMENT FORM
NON-DOT-REGULATED EMPLOYEE
ALCOHOL MISUSE PREVENTION AND
ANTI-DRUG POLICY

I acknowledge that I have received the City of Milton’s Non-DOT-Regulated Employee Alcohol Misuse Prevention and Anti-Drug Policy. I have read and familiarized myself with the contents and understand my responsibility for adhering to this policy. I agree to follow the City of Milton’s rules and procedures as outlined in the policy. I understand that the terms described in this policy may be altered, amended, or changed by the City of Milton at any time or in order to comply with changes or revisions to federal law, with or without prior notice.

Employee Name _____

Employee Number _____

Employee Signature

Date

Supervisor Signature

Date