



**EMPLOYEE DRUG AND ALCOHOL POLICY
AND PROCEDURE IN COMPLIANCE WITH
MINIMUM D.O.T. REGULATIONS**

**Adopted September 25, 2017
Amended September 4, 2018**

I. Purpose

Otero County (hereinafter referred to as the "County") is committed to a safe, healthy, and productive work environment for all Employees free from the effects of substance abuse. Drug or Alcohol use may pose a serious threat to health and safety. Abuse of alcohol, drugs, and controlled substances impairs Employee judgment, resulting in increased safety risks, injuries, and faulty decision-making.

The use of controlled substances and the misuse of alcohol increase the risk of accidents, jeopardize the safe work environment, and cause harm to an individual's health and personal life. The purpose of this Policy is to establish procedures to support a safety and health program and to comply with minimum federal safety standards for safety-sensitive functions regulated by the Department of Transportation (DOT). These standards were designed to reduce accidents that result from an Employee's use of controlled substances and alcohol.

II. Scope

This Policy applies to all drivers who are required to hold a commercial driver's license (CDL) in order to perform their job for the County or who perform a safety-sensitive function. For purposes of this Policy, a driver is covered by DOT regulations as those regulations relate to the driver's fitness-for-duty and use of alcohol prior to going on duty, while on duty, or while operating or having physical control of a commercial motor vehicle. DOT testing for controlled substances under this Policy requires that drivers abstain from the use of controlled substances at any time or risk violating DOT regulations prohibiting the presence of controlled substances in their body.

Under this Policy performing a safety-sensitive function means all of the time after a driver begins to work or is required to be ready to work until the time the driver is relieved from work and all responsibility for performing work. Safety-sensitive functions include: (1) All time at the County facility or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the County; (2) All time inspecting equipment as required by the law or otherwise inspecting, servicing, or conditioning any commercial motor vehicle; (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.

III. Statement of Policy

1. No Employee shall unlawfully manufacture, use, possess, or distribute controlled substances.
2. No Employee shall report for work, perform any safety-sensitive functions or, while in the employ of the County, have at any time, any controlled substance present in his/her body. Presence of controlled substances will be determined by testing performed as described in this Policy.
3. No Employee shall perform safety-sensitive functions within four (4) hours after consuming alcohol.
4. No Employee shall consume alcohol while performing safety-sensitive functions.
5. No Employee shall possess alcohol while on duty.
6. No Employee shall report to work or perform safety-sensitive functions while having an alcohol concentration of 0.02 or greater. An Employee's alcohol concentration will be determined by testing performed as described in this Policy.
7. No Employee shall leave the scene of an accident, without a valid reason, before arranging to have both a controlled substance and alcohol test performed.
8. No Employee shall consume alcohol after an accident unless eight (8) hours have expired, the Employee has been tested or the County has determined that the Employee's performance could not have contributed to the accident, whichever occurs first.
9. No Employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater.
10. No Employee shall refuse to take a required test.
11. Use and possession of prescription drugs is not prohibited when possessed by the individual to whom it is prescribed and when used in the stated dosage, according to labeling, and a physician's prescription. The sale, trade, transfer, and/or offer for sale of any prescription drug is prohibited on County property and during work hours. Marijuana, including medical marijuana, is not a prescribed drug. Over-the-counter drugs are not prohibited when used at the stated dosage according to labeling.

12. An Employee shall, when drugs are prescribed by a medical professional, inquire of the prescribing professional whether the drug prescribed has any side effects which may impair the Employee's ability to safely perform the Employee's job duties. If the answer from the medical professional is yes, the Employee shall obtain a statement from the medical professional indicating any work restrictions and their duration. The Employee shall present that statement to his or her supervisor prior to going on duty.

IV. Consequences of Violation under County Policy

1. Any violation of this Policy will result in discipline up to and including termination under the County's independent authority, as provided for by the DOT.
2. Employees who adulterate or otherwise interfere with accurate testing required pursuant to this Policy are in violation of this Policy.
3. Any Employee who has been observed using or possessing illegal drugs or alcohol during work time, including lunch breaks, or on County premises is in violation of this Policy.
4. The County will not hire applicants who test positive for illegal controlled substances.
5. The County will provide to any Employee who violates a DOT drug and alcohol regulation a listing of Substance Abuse Professionals readily available to the Employee.

V. Minimum Consequences of Violation as Mandated by DOT.

If an Employee tests positive for a controlled substance or has an alcohol concentration of 0.02 or greater, the Employee will be removed from safety-sensitive functions.

To be eligible to return to work after testing at an alcohol concentration of 0.02 to 0.039, the Employee must be off-duty for at least twenty-four (24) hours. Pursuant to the County's independent authority, an Employee testing between 0.02 and 0.039 may be subjected to disciplinary action up to and including termination.

To be eligible to return to work after a positive controlled substance test or test indicating an alcohol concentration of 0.04 or greater, the Employee must be evaluated by a Substance Abuse Professional (SAP). If the SAP determines that additional treatment is necessary, the Employee must complete such treatment before returning to work. In addition, the Employee will be subject to follow-up testing.

The above consequences are minimum requirements as set out by the DOT. Compliance with the above does not guarantee an Employee will be returned to work following a violation of this Policy. Employees will be subject to disciplinary action up to and including termination for violation of this Policy per the County's independent authority, regardless of eligibility to return to work under the DOT regulations.

Before an Employee returns to duty requiring the performance of a safety-sensitive function after violating the alcohol or controlled substance provisions outlined by DOT, the Employee shall undergo a return-to-duty test with a result indicating a verified negative result. (See Article VII, Types of Testing, subparagraph 4. below.)

VI. Substance and Alcohol Screening

For the purpose of assuring compliance with the Federal Department of Transportation Regulations and this Policy, applicants for safety-sensitive positions and Employees who perform safety-sensitive functions will be subject to controlled substance and alcohol screening under the circumstances described below. Applicants and drivers are required to submit to testing in the following circumstances as a condition of their employment.

VII. Types of Testing

Pre-employment testing

Applicants for driving-related positions shall undergo a test for the presence of controlled substances prior to being hired or utilized by the County. Under no circumstances may a driver or other Employee perform a safety-sensitive function until a confirmed negative result is received.

Applicants who refuse to submit to testing will not be hired.

If an applicant is applying for a position to perform safety-sensitive duties for the County for the first time, the applicant must provide his/her written permission for the County to request the following information from DOT-regulated employers who have employed the applicant during any period during the two years before the date of the applicant's application with the County: (a) Alcohol tests with a result of 0.04 or higher alcohol concentration; (b) verified positive drug tests; (c) refusals to be tested (including verified adulterated or substituted drug test results); (d) other violations of DOT-agency drug and alcohol testing regulations; and (e) documentation of the applicant's successful completion of DOT return-to-duty requirements in the event the applicant had violated a DOT-drug and alcohol regulation (including follow-up tests).

If the applicant refuses to provide his/her written consent to request the information, the applicant will not be permitted to perform safety-sensitive functions for the County.

If the previous employer does not have information concerning the return-to-duty process with regard to the applicant, the County must seek to obtain this information from the applicant.

Testing for Current Employees

1. Post-Accident Testing

Any Employee involved in an accident in which a fatality occurs must immediately submit to a controlled substance test and an alcohol test. Any Employee who receives a citation for a moving traffic violation must immediately submit to a controlled substance test and alcohol test if, (a) the accident results in a fatality, or bodily injury to a person who must immediately receive medical treatment away from the scene, or (b) one or more of the vehicles involved is towed from the scene.

The County can require testing even if a citation is not issued to the Employee, upon its independent authority, in the situations as outlined above.

2. Reasonable Suspicion Testing

An Employee will be required to submit to a controlled substance and/or alcohol test upon reasonable suspicion. Reasonable suspicion means that the actions, appearance or conduct of the Employee on duty are indicative of the use and/or presence in the Employee's body of a controlled substance or alcohol. Reasonable suspicion is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the Employee.

An Employee will not be allowed to return to driving a County vehicle until a confirmed negative test result is received. The Employee will remain on paid status pending the receipt of drug-testing results by the County.

3. Random Testing

Employees will be subject to controlled substance testing and alcohol testing at any time on a random basis as a term and condition of holding a driver position. Upon being notified of selection, the Employee must immediately proceed to the testing site.

Random testing will be spread reasonably throughout the year and will be unannounced to ensure that no Employee receives advanced knowledge of the time of testing. All Employees will have an equal chance of being selected each time a random selection is made.

The number of controlled substances tests conducted annually shall equal or exceed twenty-five percent (25%) of the number of driver positions subject to testing.

The number of alcohol tests conducted annually shall equal or exceed ten percent (10%) of the number of driver positions subject to testing.

An Employee shall only be tested for alcohol while the Employee is performing safety-sensitive functions, just before the Employee is to perform safety-sensitive functions, or just after the Employee has ceased performing such functions.

4. Follow-Up and Return to Duty

Any Employee who has been required to or voluntarily undergoes rehabilitation for substance abuse must submit to a drug test and receive a confirmed negative test result and an alcohol test (with a result of less than 0.02) before returning to work. In addition, the Employee will be subject to follow-up testing not to exceed sixty (60) months following the Employee's return to work.

VIII. Testing Procedures

1. Controlled Substances

Controlled substance screening shall be conducted in a laboratory certified by the Department of Health and Human Services (DHHS) and in accordance with the Procedures for Transportation Workplace Drug Testing Programs. All controlled substance screening includes split sampling which provides that a urine sample be split into two separate containers.

The substance screen will test for the following drugs: **marijuana, cocaine, opioids, amphetamines and phencyclidine (PCP)**. However, the County has the discretion, pursuant to reasonable suspicion or post-accident testing procedures, to request additional testing which are not included in the 5-panel drug test regimen.

Any positive initial test will be confirmed by a gas chromatography/mass spectrometry (GC/MS) test.

The County shall employ a Medical Review Officer (MRO) who will receive the laboratory results of the testing procedure. The MRO shall be a licensed physician and have knowledge of substance abuse disorders and appropriate medical training to evaluate positive test results, medical history, and any other relevant biomedical information. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally-prescribed medication.

The MRO shall also review all specimens which are found to be adulterated or substituted specimens. In the instances of an adulterated or substituted specimen, the MRO may provide the Employee an opportunity to present a legitimate medical explanation. If no legitimate medical explanation is provided,

the MRO will report the verified adulterated or substituted specimen to the County. The County will consider the verified adulterated or substituted specimen as a refusal to test and immediately remove the Employee from performing safety-sensitive functions. The Employee may then be subjected to disciplinary action under the County's independent authority.

The MRO will be the sole custodian of the individual test results. The Medical Review Officer will advise the County only of whether the test results were negative or positive.

After receiving notification of a verified positive test or an adulterated or substituted specimen, an Employee may request that the split sample be analyzed. Such a request must be made within 72 hours of notification of the verified positive test. If such a request is made, the sample will be tested at another DHHS certified laboratory, at the Employee's expense. Upon written request within 7 days of a verified positive test, the Employee may obtain copies of any records pertaining to his or her controlled substance tests.

Precautions shall be taken to ensure that the specimen is not adulterated or diluted during the collection procedure and that the information on the bottle matches the information on the custody and control form.

2. Alcohol Testing

Alcohol testing shall be conducted by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing Device (EBT). The Employee will provide a breath sample. If an Employee's alcohol concentration is greater than 0.02, a second confirmation test will be performed.

IX. Refusal to Submit to Testing

This provision regarding the refusal to submit to testing excludes applicants for employment. Refusal to submit to testing is a violation of this Policy. Any Employee refusing to submit to testing will be referred to a Substance Abuse Professional and will face appropriate disciplinary action. The following behaviors constitute a refusal:

"Refusal to Submit" is defined as:

1. Refusal to appear for testing;
2. Failure to remain at the testing site until the testing process is complete;
3. Failure to provide a urine specimen;
4. In instances of observed or monitored collection, failure to allow observation or monitoring;

5. Refusal to sign the testing form;
6. Failure to provide adequate breath;
7. Failure to take a second test as directed;
8. Otherwise fail to cooperate in the testing process;
9. Perform any actions which prevent the completion of the test;
10. A test result reported by the MRO as a verified adulterated or substituted test;
11. Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation;
12. Failure to undergo a medical examination or evaluation when directed;
13. Tampering with, attempting to adulterate, adulteration or substitution of the specimen, or interference with the collection procedure;
14. Not reporting to the collection site in the time allotted;
15. Leaving the scene of an accident without a valid reason before the tests have been conducted;

X. Voluntary Employee Self-Identification Program

The County supports sound treatment efforts. Whenever practical, the County will assist Employees in overcoming drug, alcohol, and other problems which may affect Employee job performance as long as this Policy has not already been violated. An Employee may not self-identify in order to avoid required testing. The following is required to participate in this voluntary program: the Employee makes the admission of alcohol misuse or controlled substances use prior to reporting to duty to perform a safety-sensitive function and the Employee does not perform a safety-sensitive function until the County is satisfied that the Employee has been evaluated and has successfully completed education or treatment requirements.

Employees who seek voluntary treatment prior to a violation of this Policy will not be disciplined for making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program. The Employee will be allowed a sufficient opportunity to seek evaluation, education or treatment to establish control over the Employee's drug or alcohol problem. Employees who seek voluntary assistance will be returned to safety-sensitive duties only upon successful completion of an educational or treatment program as determined by a drug and alcohol abuse evaluation expert. Prior to the Employee participating in a safety-sensitive function, the Employee shall undergo a return-to-duty test with a result indicating an alcohol concentration of less than 0.02 and/or

controlled substance test with a verified negative test. In addition, the County may monitor any Employee who voluntarily reports under this provision by conducting unannounced follow-up testing not to exceed 60 months following the Employee's return to work.

If the Employee elects to enter an appropriate treatment program, the Employee may be placed on unpaid status but will be required to use any accrued vacation time and sick leave while participating in the evaluation and treatment program so long as the Employee is complying with the conditions of treatment. The County will have the right to require verification from the health care provider for a release to work and/or verification of treatment as covered in the County's medical leave policies. More information regarding availability of treatment resources and possible insurance coverage for treatment services is available from the Human Resources Office.

XI. Company Representative

Please contact the Human Resources Office if you have any questions about this Policy or wish to discuss issues related to the use of controlled substances or the misuse of alcohol.

XII. Inspection and Searches

The County may conduct unannounced inspection for violations of this Policy in the workplace, worksites, or County premises. This inspection may include County-owned vehicles or personal vehicles being used for County business or parked on County property. Employees are expected to cooperate in any inspection.

XIII. At-Will Employment

Nothing in this policy is to be construed to prohibit the County from maintaining a safe work environment or imposing disciplinary action as it deems appropriate for reasons of misconduct or poor performance, regardless of whether the misconduct or poor performance arises from drug or alcohol use. Such disciplinary actions may include termination of employment. Employment with Otero County is "at-will." Employees have the right to end their work relationship with the County, with or without advance notice for any reason. The County has the same right.

ACKNOWLEDGMENT

I have received a copy of Otero County’s Employee Drug and Alcohol Policy and Procedure in Compliance with Minimum D.O.T. Regulations dated September 4, 2018, and understand that in order to continue my employment with the County I must abide by the terms of the Policy.

I also verify that I have received information on the effects of alcohol and controlled substances on my health, work and personal life, signs and symptoms of a problem and available methods of intervening when a problem is suspected.

I UNDERSTAND THAT THIS POLICY IN NO WAY MODIFIES MY STATUS AS AN AT-WILL-EMPLOYEE AND IN NO WAY IMPLIES, INFERS, OR GUARANTEES MY CONTINUED EMPLOYMENT FOR ANY DEFINITE TERM AND THAT I MAY BE DISMISSED AT THE DISCRETION OF THE COUNTY FOR OTHER REASONS THAN FAILING TO FOLLOW THE TERMS OF THIS POLICY.

Employee’s Signature

Employee’s Printed Name

Date: _____