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**DRUG AND ALCOHOL POLICY AND PROCEDURE**

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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. Abuse of alcohol, drugs, and controlled substances impairs employee judgment, resulting in increased safety risks, injuries, and faulty decision-making.

## **II. Scope**

This Policy applies to all employees. The type of testing is contingent upon whether the employee is considered safety sensitive. A "safety-sensitive employee" is defined as any employee whose duties involve risk of injury or harm to the general public. All safety-sensitive employees have been issued, upon initiation of this Policy or upon hire (whichever is later), a copy of the County's Policy describing in detail what substances will be tested for and under what conditions employees will be tested.

## **III. Statement of Policy**

- A. To ensure a safe and productive work environment, the County prohibits the use, sale, dispensation, manufacture, distribution or possession of alcohol, drugs or controlled substances on any County premises or worksites. This prohibition includes County-owned vehicles or personal vehicles being used for County business or parked on County property. County employees are required to report to work unimpaired, and while at work will remain unimpaired by alcohol, controlled substances including marijuana, and other drugs including prescription and non-prescription medications.
- B. It is a violation of this Policy for an employee to use, possess, manufacture, sell, trade, transfer and/or offer for sale alcohol or any drug covered under the Federal Controlled Substances Act, including marijuana, while on work hours except as stated in paragraph III. (D) below. Any drug covered under the Federal Controlled Substances Act, including marijuana, and drug paraphernalia, is prohibited on County property except as stated in paragraph III. (D) below.
- C. No employee shall report to work or be at work with alcohol or with any detectable amount of prohibited drugs in the employee's system. **AN EMPLOYEE WILL BE PRESUMED TO BE IMPAIRED AND IN VIOLATION OF THIS POLICY WHENEVER THE PRESENCE OF DRUGS IN EXCESS OF A TRACE OR AN ALCOHOL CONTENT LEVEL OF .05 GRAMS OR GREATER OF ALCOHOL PER HUNDRED MILLILITERS OF BLOOD OR .05 GRAMS OR GREATER OF ALCOHOL PER 210 LITERS OF BREATH IS DETECTED IN A SUBSTANCE ABUSE TEST ADMINISTERED UNDER THE TERMS OF THIS POLICY.**

- D. 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.
- E. 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.
- F. Illegal use of drugs off duty and off County premises or work sites is not acceptable. It can affect on-the-job performance and the confidence of the public in the County's ability to meet its responsibilities.
- G. It is the responsibility of all management and supervisory personnel to implement and enforce this Policy and ensure compliance by County employees.

**Violations of this Policy may be cause for management/supervisor intervention that may result in a referral to mandatory treatment and/or corrective or disciplinary action up to and including termination.**

#### **IV. Categories of Employee Substance Testing**

All employees will be subjected to the following testing:

- A. Pre-employment Testing:
  - 1. All persons seeking employment with the County shall undergo post-offer, pre-employment drug testing. Applicants will be informed that, as a condition of employment, they must pass a drug-screening test.
  - 2. Applicants who test positive will be notified that they have not met the standards for employment and of their right to request a re-test of the urine sample that can be reviewed by a Medical Review Officer (MRO).

B. Reasonable Suspicion Testing:

Any employee may be asked to submit to tests for alcohol and/or illegal drugs when the employee is reasonably suspected of being impaired in the performance of his or her job.

1. Reasonable suspicion testing may result from one of the following examples, but is not limited to the following:
  - a. Specific, personal and articulable observations concerning the appearance, behavior, speech or performance of the employee; or
  - b. Violation of a safety rule, or other unsafe work incident which, after further investigation of the employee's behavior, leads the supervisor(s)/manager(s) to believe that the employee's functioning is impaired; or
  - c. Other physical, circumstantial, or contemporaneous indicators of impairment;
2. When a supervisor/manager has reasonable suspicion to request testing, the supervisor/manager will arrange to transport the employee to the collection site and will arrange for the employee's transport home.
3. The employee will continue in a paid status pending the receipt of drug testing results by the authorized testing laboratory.

C. Post-Accident Testing

Any driver involved in an accident in which a fatality occurs must immediately submit to a controlled substance and an alcohol test. Any driver 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 driver upon its independent authority.

The testing provisions that apply to employees and applicants for safety-sensitive employment that require a Commercial Driver's License (CDL) are outlined in the County's D.O.T. Drug and Alcohol Policy.

**V. The kinds of substances tested for will include the following substances or their metabolites:**

- A. Marijuana
- B. Cocaine
- C. Opioids
- D. Phencyclidine (PCP)
- E. Amphetamines
- F. Alcohol

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.

**VI. Inspection and Searches**

The County may conduct unannounced inspections 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.

**VII. 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.

If an employee seeks treatment for drug or alcohol use, the employee may be eligible to go into a drug and/or alcohol treatment program either through the County's medical insurance program or at his or her own expense.

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.

### **VIII. Safeguards/Confidentiality**

The drug screen analysis is accomplished through split sample urinalysis testing. Alcohol testing may be through breath testing. Samples will be collected in a sanitary environment designed to maximize employee's privacy while minimizing the possibility of sample tampering. If there is a positive drug and/or alcohol result on the initial screening test, the laboratory or blood alcohol technician will automatically do a second test to confirm the results. The second drug test will be performed using gas chromatography/mass spectrometry or other scientifically-accepted method. A positive breath alcohol test will be confirmed by a second breath test.

All drug tests are performed by a government-certified outside laboratory certified by the Department of Health and Human Services (DHHS). All government-certified outside laboratories strictly follow chain of custody guidelines to ensure the integrity of the testing process. The County shall use 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 the appropriate medical training to evaluate positive results, medical histories, 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.

If the results of the initial test are negative, the testing laboratory will report the results to the MRO retained by the County. The MRO or the testing laboratory reports the negative results to the County. In this instance, no additional tests on the specimen will be done.

If the results of the initial test are positive, that is, if the results exceed the permitted levels for any of the five drugs tested or if the blood alcohol test comes back positive, a second confirmatory test shall be performed. The employee is prohibited from performing any duties if the initial test is positive and while the confirmatory testing is being performed. Only specimens that are confirmed positive on the second (confirmatory) test are reported positive to the MRO for review and analysis. The MRO will contact the employee personally in the case of a positive test result. The MRO has the responsibility of reporting to the County whether the test results are positive or negative.

An applicant or employee who does not pass a drug test may request that the original sample be analyzed again at the individual's expense by a government certified laboratory. All requests for an independent analysis must be made in writing within 72 hours of notification of a confirmed positive test result. In the event the drug and/or alcohol test results are not determinable due to a diluted sample, the applicant will be required to re-test.

Each applicant or employee will have an opportunity to discuss the drug and/or alcohol test with a Medical Review Officer in a confidential setting. Each applicant or employee upon his or her request may be provided with a written copy of the positive test result, upon written request. Upon written request within seven days of taking the test, an employee may access records relating to his or her drug and/or alcohol test.

**IX. Policy Violations**

- A. Testing Positive: Employees who test positive for drugs or alcohol are in violation of this Policy.
- B. Refusal to Comply: Employees who refuse required testing are in violation of this Policy.
- C. Interference with Testing: Employees who adulterate, tamper with or otherwise interfere with accurate testing are in violation of this Policy.
- D. Any employee, who has been observed using or possessing illegal drugs or alcohol during work time, including lunch breaks, or on the County's premises is in violation of this Policy.

**ANY VIOLATION OF THIS POLICY WILL RESULT IN DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION.**

**X. At-Will Employment**

Nothing in this Policy is to be construed to prohibit the County from maintaining a safe and secure work environment or to limit its right to impose disciplinary actions as it may deem appropriate for reasons of misconduct or poor performance, regardless of whether the misconduct or poor performance arises out of the use of alcohol or drugs. 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.**

## **ACKNOWLEDGEMENT OF RECEIPT**

THE UNDERSIGNED EMPLOYEE has received a copy of the Otero County Drug and Alcohol Policy and Procedure dated September 4, 2018, and understands that in order to continue my employment with this employer I must abide by the terms of the Policy. I agree to notify the employer of any drug violation occurring in the workplace.

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.

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Employee's Signature

\_\_\_\_\_  
Employee's Printed Name

Date: \_\_\_\_\_