

Policy Statement

Des Moines Valley Health and Human Services (DVHHS) recognizes that alcoholism and other drug dependencies are a significant problem with a potential for causing performance and safety problems within the DVHHS workforce. DVHHS wishes to provide a safe work place for its employees and to maintain a drug and alcohol free workplace. DVHHS intends to comply with the requirements of the federal Drug Free Workplace Act of 1988 (Public Law 100-670) and the requirements of the Minnesota Drug and Alcohol Testing in the Workplace Act (Minnesota Statute § 181.950 et. seq.).

To the extent that federal and or state statutes or regulations change, this policy shall be construed as consistent with those changes.

Application

This policy shall be applicable to all employees and un-paid interns of DVHHS, except those who are covered by the "Transportation Employee Drug and Alcohol Testing Policy." This policy shall be applicable to employees covered by a collective bargaining agreement. If the language in this policy and the collective bargaining agreement conflict, then the bargaining agreement language shall control. This policy also applies to any job applicant who has received a conditional employment offer contingent on passing drug or alcohol testing. It is the duty and responsibility of all supervisors and directors to enforce this policy and to communicate it to their staff. It is the duty of DVHHS Human Resources to communicate this policy to all job applicants. See *Pre-employment Checks – Policy # 360*.

Definitions – for the purpose of this policy the following definitions shall apply.

“Under the Influence” an employee is under the influence, due to alcohol or controlled substance use, if they submit a positive test sample as outlined in this policy; is perceptibly impaired; has impaired alertness, coordination, reactions, responses or effort; if the employee’s condition threatens the safety of him/herself or others; or if the employee’s condition or behavior presents the appearance of unprofessional or irresponsible conduct detrimental to the public’s perception of DVHHS as an employer as determined by the supervisor, a director or others observing the employee who then report their observations to the supervisor, a director or DVHHS Human Resources Department.

“Controlled Substances or Drug” those substances whose distribution is controlled by Minnesota Statutes Chapter 152 including, but not limited to, narcotics, depressants, stimulants, hallucinogens or cannabis (marijuana).

“Alcohol” is the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

“Work Hours” are all hours for which an employee is compensated by DVHHS including regular pay hours, overtime hours and paid on call hours.

“Business Days” are days that DVHHS offices are open.

“**Employee**” is as defined in *Definitions – Policy # 110*.

“**Job Applicant**” a person who applies to become an employee of DVHHS, and includes a person who has received a job offer made contingent on the person passing drug or alcohol testing.

“**Reasonable Suspicion**” an articulable basis for forming a belief based on specific facts and rational inferences drawn from those facts.

“**Test sample**” is urine, blood and/or breath provided by the applicant or employee at the time required by DVHHS. DVHHS retains sole discretion as to whether urine, blood and/or breath shall be collected for the test sample.

“**Positive Test Sample or Result**” a finding of the presence of a drug, combination of drugs, or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of the one of the programs listed in Minn. Stat. § 181.953, subdivision 1. A positive test result for alcohol is a finding of the presence of alcohol.

“**Initial Screening Test**” drug or alcohol test which uses a method of analysis under one of the programs listed in Minn. Stat. § 181.953, subdivision 1.

“**Confirmatory test or retest**” a drug or alcohol test that uses a method of analysis allowed under one of the programs listed in Minn. Stat. § 181.953, subdivision 1.

“**Tampering with the Sample for Testing**” includes any attempt to distort the test’s accuracy. This includes, but is not limited to, adding chemicals to the sample or providing a diluted sample so that accurate test results may not be obtained by the laboratory. Tampering also includes providing a test sample from another person or a test sample from the individual submitting the sample but collected at a time prior to when the employer requires the test sample be given.

“**Refusal to Submit**” is when an applicant or employee:

- a. Fails to provide an adequate sample for testing without a valid and verified medical explanation after the applicant or employee has been notified of the request for a test sample for testing; or
- b. Engages in conduct that unreasonably delays or obstructs the testing process.

Non-Discrimination

DVHHS’s policy on work-related substance abuse is non-discriminatory in intent and application. However, in accordance with Minnesota Statutes, Chapter 363, “disability” does not include any condition resulting from alcohol or other drug abuse, which prevents a person from performing essential functions of the job or creates a direct threat to property or the safety of individuals.

When Testing May Occur

- A. Job Applicants: A job applicant shall be required to undergo drug testing after a job offer has been conditionally made and before commencing employment in the position.

- B. Reasonable Suspicion Testing: DVHHS may request an employee to submit to reasonable suspicion testing if a supervisor of the employee, any director or DVHHS Human Resources Department has reasonable suspicion that the employee:
- a. Is under the influence of drugs or alcohol;
 - b. Has violated this policy regarding the use, possession, sale or transfer of drugs or alcohol while the employee is working or operating a DVHHS vehicle, machinery or equipment;
 - c. Has sustained or caused another person to sustain a work related personal injury as defined in Minn. Stat. § 176.011, subdivision 16.; or
 - d. Has caused a work related accident or was operating or helping to operate machinery, equipment or a vehicle involved in a work related accident.
- C. Treatment Program Testing: An employee may be required by DVHHS to undergo drug and alcohol testing if the employee has been referred by the employer for chemical dependency treatment or assessment or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any recommended chemical dependency treatment program. Test results for alcohol collected pursuant to this testing basis only shall be considered to be positive test results if any presence of alcohol is detected, including but not limited to when ethyl glucuronide testing (EtG) is administered.

Prohibited Activities

- A. No employee shall work or be on **paid on-call** under the influence, as defined in this policy. In addition, if an employee is called about a work issue while outside of their regularly scheduled work hours they shall refuse to answer any questions and refer the caller to another employee if they are under the influence as defined in this policy. If an employee, not on paid on-call time; however, is called into work by a supervisor but is under the influence at the time of receiving the call the employee shall immediately notify the supervisor that they are unable to report to work as directed due to being under the influence.
- B. No employee shall operate, use or drive any equipment, machinery or vehicles during work hours after consuming any alcohol, marijuana, controlled substances or be under the influence of any other substances which affect his/her alertness, coordination, reaction, response, judgment, decision-making or safety. Such employee is under an affirmative duty to immediately notify his/her supervisor that he/she is not in appropriate mental or physical condition to operate, use or drive equipment on the job.
- C. No employee shall unlawfully manufacture, distribute, dispense, possess, transfer or use a controlled substance on county property or wherever DVHHS's work is being performed with the following exceptions:
- a. When the prohibited act is performed by a Sheriff's Department employee in accordance with department policy.
 - b. When the prohibited act is performed by a licensed practical nurse or licensed registered nurse or other employee of DVHHS in accordance with department

policy.

During work hours or while on DVHHS's premises, no employee shall use, sell, possess or transfer alcoholic beverages, with the following exceptions:

- a. When the prohibited act is performed by a Sheriff's Department employee in accordance with department policy.
- b. Possession of sealed alcohol while in an employee's personal vehicle on DVHHS's premises in compliance with applicable statutory requirements.

Additionally, employees shall not participate in these activities during rest breaks (whether paid or unpaid) or during work hours.

- D. Engaging in off-duty sale, purchase, transfer, use or possession of illegal drugs or controlled substances may have a negative effect on an employee's ability to perform his/her work for DVHHS. In such circumstances, the employee is subject to discipline, in addition to any other criminal or other sanctions.
- E. When an employee is taking medically authorized controlled substances or drugs, as defined under "Definitions" in this policy that may affect job performance, as defined under "Definitions," the employee is under an affirmative duty to notify the appropriate supervisor of his/her temporary inability to perform the job duties of his/her position.
- F. Supervisors, directors and DVHHS Human Resources Department are required to notify the appropriate law enforcement agency when they have reasonable suspicion to believe that an employee may have illegal drugs in his/her possession at work or on DVHHS and / or county premises.
- G. Employees shall not consume alcoholic beverages or use drugs during meals or breaks (whether paid or unpaid) when returning thereafter to perform work on behalf of DVHHS. Employees are advised that in any situation subsequent to the intake of alcohol where the employee must continue conducting DVHHS's business, any employee whose condition or behavior adversely affects his/her work performance shall be subject to possible discipline, up to and including discharge, or the requirement of satisfactory participation in an alcohol assessment or rehabilitation program.

Federal Grant Employees

Each employee engaged in the performance of work on Federal grants or contracts is required to notify their agency of any criminal drug statute conviction for a violation occurring in the workplace no later than (5) five days after such conviction.

Employee Training/Resources

By this policy, DVHHS has established a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace and its policy of maintaining a workplace free of drug and alcohol use.

Each DVHHS employee shall receive a copy of this policy and will be expected to read and sign an acknowledgement of receipt of the policy. The Director or DVHHS Human Resources Department will provide, upon request, information regarding any available drug counseling, rehabilitation, and assistance programs that an employee may enter through his or her health insurance program. Employees who may have an alcohol or other drug abuse problem are encouraged to seek a professional assessment before the problem affects his or her employment status. The DVHHS Human Resources office will also maintain information regarding the dangers of drug or alcohol use in the workplace.

Rights of Employees and Job Applicants

Before requesting an employee or job applicant to undergo testing under this policy, the employee or applicant shall be provided with a form (Appendix A) which includes acknowledgment that the employee or applicant has seen this policy and provides them with the opportunity to indicate any over-the-counter or prescription medications which they are currently taking or have recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.

Within three working days after receipt of a test result report from the testing laboratory, the employee or applicant shall be notified of the results and their rights under the Drug and Alcohol Testing in the Workplace Act (Appendix B).

Drug/Alcohol Testing Procedure and Standards

Applicants shall report to the test collection site as directed by DVHHS Human Resources Department and shall follow all directions of the test collector to provide a sample for laboratory testing.

Any employee whom is the subject of a reasonable suspicion test shall be transported to the test collection site as arranged by the supervisor, a director, or DVHHS Human Resources Department and shall follow all directions of the test collector to provide a sample for laboratory testing.

All laboratory testing shall be conducted by a testing laboratory which meets the licensing, accreditation or certification criteria for drug testing as set forth in Minn. Stat. § 181.953, subdivision 1.

Positive Test Result

Applicants and employees may request a confirmatory retest of the original sample at the employee's or applicant's own expense after notice of a positive confirmatory test result. Any confirmatory retest must be requested in writing by the employee or applicant within five working days after the employee or applicant received notice of the positive test result. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or applicant.

Applicants and employees have 3 business days to produce medical verification of any valid prescription that may have caused a positive result on the test following notification of a positive confirmatory test. If the applicant or employee fails to provide medical verification of a valid prescription within 3 business days that caused the positive result then the applicant or

employee has waived the defense of the result indicating proper usage of a valid prescription. Acceptable medical verification includes a signed note from the prescribing professional indicating the name of the prescription, the dosage prescribed, any special instructions given regarding taking the prescription and the dates for which the prescription was valid if taken as prescribed. Alternatively, a pharmacy printout or statement, signed by the dispensing licensed pharmacist, indicating the name of the prescription, the dosage prescribed, any special instructions given regarding taking the prescription and the dates for which the prescription was valid if taken as prescribed. If the prescription is one for which the employee should have previously notified their supervisor and restricted their work activities for the safety of themselves, co-workers or the public, and they failed to do so, the employee may still be disciplined according to DVHHS's discipline policy.

If an applicant's confirmatory test result is positive as defined in this policy the applicant's conditional job offer shall be immediately revoked and the applicant shall be ineligible for employment with DVHHS for at least one year.

If the confirmatory test result confirms violation of this policy by an employee the employee shall be disciplined pursuant to DVHHS's discipline policy and Minn. Stat. 181.953.

Upon notification of a positive confirmatory test result the employee shall immediately pay for and fully and honestly complete a chemical use assessment by a Rule 25 certified assessor or licensed alcohol and drug counselor (LADC). The employee shall then immediately follow all recommendations of the chemical use assessment at their own expense. If the employee fails to fully cooperate and successfully complete either the assessment or any of the recommendations then the employee may be subject to discipline up to and including termination of employment. Failure to completely follow recommendations may include, but is not limited to, refusing to participate in the recommended counseling or rehabilitation program or failing to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

It is the employee's responsibility to provide verification of compliance of conditions to timely and successfully complete the assessment and follow the assessment recommendations to the DVHHS Human Resources Department.. Failure to provide accurate and timely verification as required by the DVHHS Human Resources Department shall be deemed a violation of this policy and the employee may be subject to discipline up to and including termination of employment.

Confidentiality of Test Results

All alcohol/controlled substances test result records are considered private data and shall be protected as such as required by the Minnesota Data Practices Act. Test results may be disclosed as permitted in Minn. Stat. § 181.954. To comply with Minn. Stat. § 181.954, DVHHS may require an employee sign consent to release test result data to a third-party individual, government agency or private organization if deemed necessary by DVHHS.

Test Refusal

All applicants and employees have the right to refuse to undergo drug and alcohol testing. An applicant who refuses to take a drug and alcohol test shall be disqualified from further

consideration for the conditionally offered position. An applicant or employee who unreasonably delays providing a test sample for testing will be considered to have refused. An employee refusing to take a drug and alcohol test under this policy shall not be permitted to perform safety sensitive functions and will be considered insubordinate. The employee will be subject to disciplinary action including possible termination of employment.

Tampering with the Sample for Testing

If an applicant tampers with a sample provided for testing, the conditional offer for the applicant shall be immediately revoked and the applicant shall be ineligible for employment by DVHHS for at least one year.

If an employee tampers with a sample provided for testing, the employee shall be disciplined pursuant to DVHHS's discipline policy, including possible termination of employment. If an employee assists an applicant or another employee with tampering with a sample provided for testing, the employee shall be disciplined pursuant to DVHHS's discipline policy, including possible termination of employment.

Required Reporting

All employees are required to immediately report to their supervisor, a director or DVHHS Human Resources Department if they have reasonable suspicion of another employee violating this policy. When reporting employees must identify themselves and provide the basis for why they believe the other employee to be in violation of this policy. Employees may not be subject to discipline for reports made in good faith. In addition to reporting to their supervisor, a director or DVHHS Human Resources Department, employees must also separately comply with all reporting requirements of any professional licenses which they have. If an employee fails to report as required or maliciously makes a false report the employee shall be disciplined pursuant to DVHHS's discipline policy, including possible termination of employment.

Consequence of Violations

Violations of this policy may constitute just cause for discipline, up to and including discharge. An employee may be found in violation of this policy using evidence other than testing. Each situation will be evaluated on a case-by-case basis depending upon the severity and circumstances involved. Where appropriate, the supervisor or director shall notify the appropriate licensing boards of any violations of this policy.

Contact Person

DVHHS has designated the DVHHS Human Resources Department as the persons responsible to coordinate the implementation, direction and administration of DVHHS's alcohol and controlled substance policy.

References:

Definitions – Policy # 110
Employee Assistance Program – Policy # 706
Pre-employment Checks – Policy # 360

Revision Dates:

10/15/2015

Des Moines Valley Health and Human Services
Employee Policy Handbook

Adopted: 04/10/2014
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Revised: 11/9/2017

This policy repeals all prior policies relating to this subject