

Drug, Alcohol and Cannabis Testing and Drug-Free Workplace Act Policy

Policy Number: 520

Policy Statement

Des Moines Valley Health and Human Services (DVHHS) has a vital interest in maintaining safe, healthful, and efficient working conditions for employees, and recognizes that individuals who are impaired because of drugs and/or alcohol jeopardize the safety and health of other workers as well as themselves. DVHHS wishes to provide a safe work place for its employees and to maintain a drug alcohol, and cannabis-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.

To ensure that this policy is clearly communicated to all employees and applicants to whom offers of employment have been made, and to comply with state law, employees and applicants are required to review this policy and sign the “policy acknowledgment.” A job applicant will also acknowledge in this form that they understand passing the drug test is a requirement of the position.

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, cannabis, or drug 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.

“Drug” means a controlled substance as defined in Minn. Stat. § 152.01, subd. 4, and also includes all cannabinoids, including those that are lawfully available for public consumption that do not otherwise qualify as being a “controlled substance” as defined in Minn. Stat. § 152.01, subd. 4. Cannabis and its metabolites are considered a “drug” for positions in the following

categories, regardless of the kind of testing involved: safety sensitive positions; positions requiring face-to-face care, training, education, supervision, counseling or medical assistance to children, vulnerable adults or patients receiving treatment, examination or emergency care for a medical, psychiatric or mental condition; positions funded by a federal grant; or other positions for which state or federal law requires testing of a job applicant or employee.

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

“Alcohol Use or Usage” means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

“Cannabis” means cannabis and its metabolites, including cannabis flower, cannabis products, lower-potency hemp edibles, and hemp-derived consumer products.

“Cannabis Testing” means analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, subd.1, for the purpose of measuring their presence or absence of cannabis in the sample tested.

“Drug and/or alcohol testing, and drug and/or alcohol test” means analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, subd.1, for the purpose of measuring their presence or absence of drugs, alcohol, or their metabolites in the sample tested. "Drug and alcohol testing," "drug or alcohol testing," and "drug or alcohol test" do not include cannabis or cannabis testing, unless stated otherwise.

“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 alcohol, drugs, cannabis, or their metabolites in the sample tested in levels at or above the threshold detection levels.

“Initial Screening Test” drug, alcohol, or cannabis 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, alcohol, or cannabis test on a sample to substantiate the results of a prior drug, alcohol, or cannabis test on the same sample, and 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 or cannabis abuse, which prevents a person from performing essential functions of the job or creates a direct threat to property or the safety of individuals.

Furthermore, DVHHS will not retaliate against any employee for asserting their rights under this policy.

When Testing May Occur

- A. **Pre-Employment Testing:** Every job applicant shall be required to undergo drug testing, and/or an alcohol test, if applicable, after a job offer has been conditionally made and before commencing employment in the position. DVHHS will not require a job applicant to undergo cannabis testing related to “lawful consumable products” pursuant to Minn. Stat. § 181.938, which includes alcohol, cannabis, lower-potency hemp edibles, and hemp-derived consumer products, except when required by state or federal law.

If the job offer is withdrawn based on drug test results, DVHHS will inform the applicant of the reasons for withdrawal. A failure of the drug or other applicable test, a refusal to take the test, or a failure to meet other conditions of the offer will result in a withdrawal of the offer of employment even if the applicant’s professional employment has begun. A negative or positive dilute test result (following a second collection), which has been confirmed, will also result in immediate withdrawal of an offer of employment to an applicant.

- B. **Reasonable Suspicion Testing:** DVHHS may request an employee to submit to alcohol and/or drug testing, including cannabis testing, when reasonable suspicion exists to believe that the employee:
 - a. Is under the influence of drugs or alcohol, or cannabis; or

- b. Has violated this policy regarding the use, possession, sale or transfer of drugs alcohol, or cannabis while the employee is working, while on DVHHS property, or operating a DVHHS vehicle, machinery or any other type of equipment; or
- 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.

Reasonable suspicion may be based upon, but is not limited to, facts regarding appearance, behavior, speech, breath, odor, possession, proximity to or use of alcohol, drugs, or cannabis or containers or paraphernalia, poor safety record, excessive absenteeism, impairment of job performance, or any other circumstances that would cause a reasonable employer to believe that a violation of DVHHS's policies concerning alcohol, drugs, or cannabis may have occurred. These observations will be reflected on a Reasonable Suspicion Record Form.

- C. Treatment Program Testing: An employee may be required by DVHHS to undergo drug, alcohol or cannabis 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, including cannabis 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.

Right of Refusal

Right of Refusal:

Employees and job applicants have the right to refuse to submit to an alcohol, drug, or cannabis test under this policy. However, such a refusal will subject an employee to immediate termination.

If an applicant refuses to submit to applicant testing, any conditional offer of employment will be withdrawn.

Any intentional act or omission by the employee or applicant that prevents the completion of the testing process constitutes a refusal to test.

An applicant or employee who substitutes, or attempts to substitute, or alters, or attempts to alter a testing sample is considered to have refused to take a drug, alcohol, or cannabis test. In such a case, the employee is subject to immediate termination of employment, and in the case of an applicant, the job offer will be immediately withdrawn.

Refusal on Religious Grounds:

An employee or job applicant who, on religious grounds, refuses to undergo drug and/or alcohol testing, including cannabis testing, of a blood sample will not be considered to have refused testing, unless the employee or job applicant also refuses to undergo drug, alcohol, or cannabis testing of a urine sample.

Cost of Required Testing:

DVHHS will pay for the cost of all drug, alcohol or cannabis testing, requested or required of all job applicants and employees.

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, drug, or cannabis, 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, solicit, or sell or use alcohol, drugs, including cannabis, or drug paraphernalia, while on duty; while on DVHHS premises; while operating any DVHHS vehicle, machinery, or equipment; or when performing any DVHHS business, except (1) pursuant to a valid medical prescription used as properly instructed; (2) the use of over the counter drugs used as intended by the manufacturer; or (3) when necessary for approved law enforcement activity.

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

- D. Besides having a zero-tolerance policy for the use of alcohol, the use and possession of illegal drugs, or abuse of prescription drugs at the worksite, DVHHS also prohibits the use, possession of, impairment by any cannabis or cannabis products (e.g., hash oils, edibles or beverages containing cannabinoids, or pills) at the worksite by a person working as an employee at DVHHS.
- E. When an employee is taking medically authorized or over-the-counter drugs or cannabis, as defined under “Definitions” in this policy, that may affect or impair job performance or pose a safety risk to themselves or others, 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, including cannabis, 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 assessment or rehabilitation program.

Criminal Drug Convictions

Each employee engaged in the performance of work 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

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. 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, including cannabis, 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, alcohol, and/or cannabis 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 testing as set forth in Minn. Stat. § 181.953, subdivision 1.

Notification of Positive Test Result

In the event of a confirmed positive blood or urine, alcohol, drug, or cannabis test result, DVHHS will notify the employee or job applicant within three days of receipt of the result. Human Resources will send to the employee or job applicant a "Positive Test Results Notification" letter containing further instructions. The employee or job applicant may contact Human Resources to request a copy of the test result report if desired.

Right to Provide Information after Receiving Test Results

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 has been under an affirmative duty to previously notify their supervisor and they failed to do so, the employee may still be disciplined according to DVHHS's discipline policy.

Right to a Confirmatory Retest

Applicants and employees may request a confirmatory retest of the original sample 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. Within three working days after receipt of the notice, DVHHS will notify the original testing laboratory that the job applicant or employee has requested the laboratory to conduct the confirmatory retest or transfer the sample to another qualified laboratory licensed to conduct the confirmatory retest.

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.

Consequences for Employees Engaging in Prohibited Conduct

Job Applicants: If an applicant's confirmatory test result is positive as defined in this policy the applicant's conditional job offer shall be immediately revoked.

Employees: DVHHS will not discharge, discipline, discriminate against, or request rehabilitation of an employee based on a positive test result from an initial screening test that has not been

verified by a confirmatory test. DVHHS may temporarily suspend a tested employee with or without pay or transfer that employee to another position at the same rate of pay pending the outcome of the requested confirmatory retest, provided DVHHS believes that it is reasonably necessary to protect the health or safety of the employee, other employees, or the public.

The employee will be asked to return home and will be provided appropriate arrangements for return transportation to his or her residence. In accordance with Minn. Stat. § 181.953, subd. 10, an employee who has been suspended without pay will be reinstated with back pay if the outcome of the requested confirmatory retest is negative.

Discipline and Discharge

DVHHS will not discharge an employee for a first confirmatory positive test unless the following conditions have been met:

1. DVHHS has first given the employee an opportunity to participate in either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by DVHHS after consultation with a certified chemical use counselor or physician trained in the diagnosis and treatment of chemical dependency. Participation by the employee in any recommended substance abuse treatment program will be at the employee's own expense or pursuant to the coverage under an employee benefit plan. The certified chemical use counselor or physician trained in the diagnoses and treatment of chemical dependency will determine if the employee has followed the rehabilitation program as prescribed; and
2. The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a refusal to test or 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.

Nothing in this policy limits the right of DVHHS to discipline or dismiss an employee on grounds other than a positive confirmatory test result, including conviction of any criminal drug statute for a violation occurring in the workplace or violation of other DVHHS policies.

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.

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 result in 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

11/09/2017