

CITY OF APPLETON POLICY		TITLE: DRUG FREE WORKPLACE ACT OF 1988 And 49 CFR Part 40
ISSUE DATE: 1988	LAST UPDATE: July 2003 January 2004 May 2005 June 2009 May 2010 September 2015	SECTION: Safety
POLICY SOURCE: Human Resource Dept.	POLICY APPLICATION: All City employees who have a Commercial Drivers License	TOTAL PAGES: 10
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I. PURPOSE:

The purpose of this policy is to help prevent accidents and injuries resulting from the use or misuse of alcohol or use of controlled substances by any City employee. This policy is intended to be consistent with and in compliance with the Drug Free Workplace Act of 1988 and 49 CFR part 40.

II. POLICY:

The City is committed to maintaining a drug free workplace for all employees. Employees are expected to report to work free from any substances that could inhibit their ability to perform their duties. The use of illegal drugs on or off duty is prohibited.

Failure to comply with this policy shall lead to disciplinary action up to and including discharge. A discharge for illegal drug use could impact eligibility for benefits under Unemployment Compensation.

III. DISCUSSION:

This policy outlines the requirements mandated by the Drug Free Workplace Act of 1988 and the United States Department of Transportation regulations 49 CFR part 40 and deals strictly with commercial driver regulations.

IV. DEFINITIONS:

- A. Safety Sensitive Position – includes all employees who regularly or occasionally operate a commercial motor vehicle, including mechanics and supervisors who are required to have a CDL.
- B. Safety Sensitive Function – means any of the following on-duty functions:

1. All time waiting to be dispatched;
2. All time inspecting, servicing or conditioning any commercial motor vehicle;
3. All driving time, i.e. 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;
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;
6. All time spent making reports and other activities in an accident scene in which the driver was involved;
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

C. Shall – is interpreted to mean required.

D. Should – is interpreted to mean recommend but not required.

E. BAT – Breath Alcohol Tester.

F. EBT – Evidential Breath Testing Device.

G. CDL – Commercial Driver’s License.

H. SAP – Substance Abuse Professional.

I. FHWA – Federal Highway Administration

J. DER – Designated Employer Representative

K. EAP – Employee Assistance Program

L. DHHS – Department of Health and Human Services

V. PROCEDURES

A. **PROHIBITED CONDUCT FOR COMMERCIAL MOTOR VEHICLE OPERATORS**

As part of Federal Regulations (49 C F R part 40) of the Omnibus Transportation Testing Act of 1991, all employees who operate a commercial motor vehicle on a full time, casual, intermittent or occasional basis are prohibited from engaging in the following conduct:

1. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.02 grams of alcohol in 210 liters of that person’s breath or greater;
2. Being on duty or operating a commercial motor vehicle while possessing alcohol, or using alcohol while performing safety-sensitive functions.
 - a. Note: Federal regulations include non-prescription and prescription medications containing alcohol in the substances banned from use or possession in the workplace. Therefore, employees should not report for duty while using or possessing prescription or non-prescription medication if such medication contains any measurable amount of alcohol.

3. Performing safety sensitive functions within four (4) hours after using alcohol or performing such duties under the influence of alcohol.
4. Using alcohol within eight (8) hours following an accident, if the employee was required to be tested, unless an earlier test results in a reading of less than 0.02 grams of alcohol in 210 liters of that person's breath.
5. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when using any controlled substance, unless the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle;
6. Reporting for duty, remaining on duty or performing a safety sensitive function if the employee tests positive for controlled substances.
7. Manufacturing, distributing, dispensing, possessing or using a controlled substance, alcohol or drug paraphernalia in the workplace.
8. Deliberately misusing this policy in regard to subordinates.
9. Refusing to submit to any alcohol or drug testing required by this policy.
10. Providing false information in connection with a test, or falsifying test results through tampering, contamination, use of drug masking products, alteration or substitution.

B. TESTING FOR CDL USERS

1. Testing will be conducted in the following situations for all employees who operate a commercial motor vehicle on a full time, casual, intermittent or occasional basis and anyone applying for a job driving a commercial motor vehicle.
 - a. **Pre-employment** - Any individual not currently employed but who is applying for a position requiring a CDL shall be required to undergo drug and alcohol testing after a conditional offer of employment has been made.
 - b. **Reasonable Suspicion** – In cases in which an employee is acting in an abnormal manner or appears unfit to perform his/her duties in a safe manner and a supervisor has reasonable suspicion to believe the employee is using or is under the influence of alcohol or drugs, the employee shall be taken to a properly authorized testing facility for alcohol and drug testing. Reasonable suspicion means suspicion based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. These observations may include indications of the chronic and withdrawal effects of controlled substances. Once the test has been completed and the employee has been taken home, the supervisor must complete an "Observed Behavior Reasonable Suspicion Record" (Exhibit #1). This document is to be completed in carbon form and can be obtained from the Human Resources Department. The "Observed Behavior Reasonable Suspicion Record" must be done prior to receiving the test results and within 24 hours of the testing.
 - c. **Random Testing** - Random alcohol and drug testing will be conducted just before, during, or just after an employee's performance of safety sensitive duties. The employee will be randomly selected for testing from a "pool" of employees subject to testing. The testing dates and times are unannounced and will occur with unpredictable frequency throughout the year. Once the supervisor notifies the employee of his/her appointment time, the employee must

report to the medical site stipulated by the City at the specific time indicated. There can be no deviation once the employee has been notified.

In the event an employee tests positive for either alcohol or controlled substances, the employee will be subject to disciplinary action up to and including discharge.

- d. **Post-Accident Testing** for a commercial motor vehicle accident - As soon as practicable following an accident involving a motor vehicle, the City of Appleton shall test the employee driver for alcohol and controlled substances in the following situations:
- 1) The accident involved the loss of human life; or
 - 2) The employee receives a citation under state or local law for a moving traffic violation arising from an accident and if the accident involves either a bodily injury with immediate medical treatment away from the scene or disabling damage to any motor vehicle requiring towing; ~~or~~
 3. ~~Damage of greater than \$500 to a vehicle or property.~~

The alcohol breath test must be administered as soon as possible, but no later than eight (8) hours following the accident and the drug test must be administered within thirty-two (32) hours of the accident. If the alcohol test is not administered within two (2) hours of the accident, the supervisor will complete a report explaining the reasons for the delay in conducting the test. If the alcohol test is not administered within eight (8) hours of the accident or if the drug test is not administered within thirty-two (32) hours of the accident, the supervisor will complete a report explaining why the test was not conducted. This report will be submitted with the accident investigation report to Human Resources.

An employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the City of Appleton to have refused to submit to testing.

- e. ~~**Post Accident**—Employees who are operating a motor vehicle or City equipment and are involved in an accident may be required to submit to testing based on the circumstances.~~

f. **Return-to-Duty/Follow-Up Testing -**

1. The City of Appleton (DER) will ensure that, before an employee returns to duty requiring the performance of a safety-sensitive job function after engaging in conduct prohibited by Federal Regulations, the driver shall undergo a return-to-duty alcohol and/or controlled substance test with a result indicating an alcohol concentration of less than 0.02 and a verified negative result for controlled substance use. In any event, an employee will not be allowed to return to duty without first having been evaluated by a Substance Abuse Professional provided through the City of Appleton's Employee Assistance Program in order to determine the employee's fitness-for-duty. Such follow-up activity may be required if an employee has engaged in conduct prohibited by City policy as outlined under Prohibited Conduct (V. Procedures).
2. Following a determination that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the City of Appleton (DER) will ensure that the employee is subject to unannounced follow-up alcohol and/or controlled substance testing in consultation with a Substance Abuse Professional. Consequently, the employee will be given at least six (6) random tests during the twelve (12) month period after returning to duty with the possibility of follow-up testing for up to sixty (60) months after the employee returns to duty.

C. DRUG AND ALCOHOL TESTING PROCEDURES

1. The City will use a drug and alcohol collection site that meets the standards established in 49 CFR Part 40 and a laboratory that is certified by the U.S. Department of Health and Human Services (DHHS). All drug and alcohol testing will be conducted in conformance with the procedures and rules established by the federal Omnibus Transportation Employee Testing Act of 1991 including any revisions since the implementation of the law.
 - a. **Alcohol Testing** – In accordance with 49 CFR Part 40, employees will be required to submit to breath testing using an approved evidential breath testing (EBT) device.
 - b. **Results of Positive Test** – Except as explicitly modified by a labor agreement, any employee who tests positive for alcohol concentrations of 0.02 grams of alcohol in 210 liters of that person's breath or higher is subject to discipline, up to and including termination. (Taking someone else's medication is not a valid reason nor acceptable for a positive test). If a confirmation alcohol test measures 0.02 grams of alcohol in 210 liters of that person's breath or greater, the City of Appleton (DER) shall:
 - 1) Remove the employee from the safety-sensitive position.
 - 2) Before returning the employee to duty:
 - a) Refer the employee to the City of Appleton EAP for an alcohol assessment and a determination of whether participation in a treatment program is necessary.
 - b) Obtain a verification from a Substance Abuse Professional that the employee has complied with any required rehabilitation or treatment program; and
 - c) Retest to verify that the employee's alcohol concentration is below 0.02 grams of alcohol in 210 liters of that person's breath.
 - 3) The employee will be subject to additional tests as recommended by the rehabilitation program or a minimum of six (6) random tests during the next year.
 - 4) If the confirmation test level is between 0.02 grams of alcohol in 210 liters of that person's breath and 0.039 grams of alcohol in 210 liters of that person's breath, the employee will be removed from the safety-sensitive position for a minimum of 24 hours following the administration of the test.
 - 5) In the event that an employee is required to comply with breath testing as a result of a law enforcement investigation, the employee must submit to the examination. The test will be considered enforceable for purposes of this policy, if the testing officer is a qualified BAT and the State of Wisconsin or a local law enforcement agency has certified the EBT that was used for the test.
2. **Testing for Controlled Substances** - For purpose of this policy and the Federal Regulations, the City of Appleton will utilize a five-panel drug screen consisting of the following drugs:

	<u>Positive Levels are:</u>
- Tetrahydrocannabinol (Marijuana)	15 ng./ml. in urine
- Cocaine	150 ng./ml. in urine

- Amphetamines	500 ng. /ml. in urine
- Opiates (including heroin)	300 ng. /ml. in urine
- Phencyclidine (PCP)	25 ng. /ml. in urine

- a. In instances where there is reason to believe an employee is abusing a substance other than the five drugs listed above, the City reserves the right to test for additional drugs under the City's own authority using standard laboratory testing protocols.
 - b. Drug testing is conducted by analyzing an employee's urine specimen (through a certified testing lab). This procedure will include use of a split specimen testing procedure. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Both bottles will be sent to a certified lab. Only the "primary" specimen bottle is opened and used for the urinalysis. The split specimen bottle will remain sealed and is stored at the lab. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee has 72 hours to request the split specimen be retested at the same lab or be sent to another DHHS certified laboratory for analysis, at the employee's expense. An employee who fails to notify the Medical Review Officer (MRO) within 72 hours of receiving the results of the positive test of the employee's desire to have the split specimen tested shall be deemed to have waived the employee's right to seek testing of the split specimen.
3. **Preparation for Drug Testing** - The following procedures summarize the procedures established by the FHWA regulations implementing drug testing under the federal law. These procedures are subject to change in the event the FHWA or other government agency changes the regulations on drug and alcohol testing of employees in safety-sensitive positions.
- a. When the employee enters the collection site, the employee will be required to provide positive identification (i.e. photo I.D. or employer identification).
 - b. The employee will be instructed to provide at least 45 ml of urine under the split sample method of collection. This will be done in a specifically designated "donor" bathroom.
 - c. If an employee is unable to provide at least 45 ml, they will be instructed to drink not more than 24 ounces of fluids during a period of up to two (2) hours. A fresh collection container will be used to collect the new sample.
 - d. If the employee is still unable to provide the required specimen, the test will be discontinued and the Human Resources Department notified. The employee must see the Medical Review Officer (MRO) as soon as possible for a medical evaluation to determine whether the employee's inability to provide a specimen is genuine or constitutes a refusal to submit to a drug test. If there is no medical reason, the test is then considered positive.
 - e. Once the sample is collected the collection site personnel shall divide the sample into a primary specimen (30-ml) and a split specimen (15-ml.)
 - f. If the test result of the primary specimen is positive, the employee may request within 72 hours of receiving the positive test result, that the Medical Review Officer (MRO) direct that the split specimen be tested in the same or a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen, at the employee's expense.
 - g. An employee will be removed from the safety-sensitive position pending the result of the test of the split specimen.

- h. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test.
- i. Employees will be required to complete and sign various forms used to document the testing and chain of custody process. Refusal to sign the test form(s) will be regarded as a refusal to take the test.
- j. Refusal by an employee to complete and sign the test and chain of custody forms, to provide an adequate amount of urine/breath (to be decided on a case-by-case basis), failure to remain at the collection site until the collection process is complete, failure to immediately report to the collection site, failure to comply with direct observation or monitored collection process, tampering with or attempting to substitute or adulterate urine specimens, or otherwise failure to cooperate with the testing process in a way that prevents the completion of the test will be considered grounds for disciplinary action, up to and including termination.

In the event of conflicting results between the initial test and the confirmation test, the confirmation test results will determine the outcome of the test.

- 4. **Results of a Positive Test** – As with an alcohol misuse violation, the City of Appleton is required to act upon a positive drug test result in the following manner:
 - a. Remove the employee from the safety-sensitive position. This removal will only take place after the employee has been allowed to meet or speak with a Medical Review Officer (MRO) in order to determine that the positive drug test did not result from the authorized use of a controlled substance;
 - b. Refer the employee to the City of Appleton's EAP for assessment and subsequent compliance with recommended rehabilitation after a determination of a drug problem has been made;
 - c. Employee must be evaluated by substance abuse professional or MRO and determined to be fit to return to work prior to their release of the employee;
 - d. Employee must have a negative result on a return-to-duty drug test. Follow-up testing to monitor the employee's continued abstinence from drug use will be required if the employee is determined as needed rehabilitation.

D. CONFIDENTIALITY OF RECORDS

- 1. The City respects the confidentiality and privacy rights of all of its employees. Accordingly, the results of any test administered under this policy and the identity of any employee participating in the City's EAP or other assessment or treatment program will be communicated to the department director and supervisor but not to anyone else except as required by law. The City will release an employee's records as directed by the expressed written consent of the employee authorizing release to an identified person. The lab or testing agency will 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 or subpoenas.
- 2. The MRO will not reveal individual test results to anyone except the City of Appleton Human Resources Department, unless the MRO has been presented with a written authorization from the tested employee.
- 3. All records related to drug and alcohol tests of individual employees will be

maintained in medical 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.

E. REPORTING OF CONVICTIONS

As a condition of employment, all City employees shall abide by the City's Drug and Alcohol Free Workplace Policy and notify the City (your immediate supervisor and the Human Resources Director) of any criminal drug statute conviction and driving while intoxicated violations no later than five (5) days after such conviction.

F. 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. For more details on this program, contact the Human Resources Department.

G. LEAVE OF ABSENCE PRIOR TO TESTING

An employee shall be permitted to take a leave of absence for the purpose of undergoing treatment pursuant to an approved treatment program for alcoholism or drug use as verified by the City. The leave of absence must be requested prior to the commission of any act subject to disciplinary action, and will be in compliance with City policies.

Employees requesting to return to work from a leave of absence for drug use or alcoholism treatment shall be required to submit to three testings without prior notice on the following basis:

1. Two tests to occur within six months of the employee's return to employment.
2. One test to occur within six to twelve months after the employee's return to employment.

A positive test result or a refusal to submit to any of these three tests shall lead to disciplinary action up to and including discharge.

H. PRESCRIPTION DRUGS

1. Before performing work-related duties, employees must notify their supervisor in writing (Exhibit 2) if they are taking any legally prescribed medication, therapeutic drug, or any non-prescription drug which contains any measurable amount of alcohol or which 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. This notification (Exhibit 2) must be signed by the employee and his/her physician and is to be filed by the supervisor with the Human Resources Department. This notification may be shared with the City's occupational health provider.
2. 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 drugs while performing City business is prohibited by City policy.

EXHIBIT 1**OBSERVED BEHAVIOR
REASONABLE SUSPICION RECORD**

NAME:	DATE OBSERVED:
ADDRESS OF INCIDENT: Street _____ City _____ State _____ Zip Code _____	TIME OBSERVED: FROM _____ a.m. p.m. TO _____ a.m. p.m.

Record employee observed behavior for reasonable suspicion for the use of alcohol or controlled substances. According to 49 CFR §382.307 Reasonable Suspicion Testing, the employer shall require the driver to submit to a controlled substance or alcohol test if a supervisor or company official who is trained in accordance with §382.603 determines that reasonable suspicion exists.

Reasonable suspicion determined for:	<input type="checkbox"/> Alcohol	<input type="checkbox"/> Drugs	
Mark items that apply and describe specifics			
1. WALKING/BALANCE:			
____ Stumbling	____ Staggering	____ Falling	____ Unable to Stand
____ Swaying	____ Unsteady	____ Holding on	____ Rigid
____ Sagging at knees	____ Feet wide apart		
2. SPEECH:			
____ Shouting	____ Whispering	____ Slow	____ Rambling
____ Slurred	____ Slobbering	____ Incoherent	
3. ACTIONS:			
____ Resisting communications	____ Insulting	____ Hostile	____ Drowsy
____ Fighting/insubordinate	____ Profanity	____ Threatening	____ Erratic
____ Hyperactive	____ Crying	____ Indifferent	
4. EYES:			
____ Bloodshot	____ Watery	____ Dilated	____ Glassy
____ Droopy	____ Closed	____ Wearing Sunglasses	
5. FACE:			
____ Flushed	____ Pale	____ Sweaty	
6. APPEARANCE/CLOTHING:			
____ Disheveled	____ Messy	____ Dirty	____ Partially dressed
____ Having odor	____ Stains on clothing		
7. BREATH:			
____ Alcoholic odor	____ Faint alcohol odor	____ No alcohol odor	____ Marijuana odor
8. MOVEMENTS:			
____ Fumbling	____ Jerky	____ Slow	____ Nervous
____ Hyperactive			
9. EATING/CHEWING:			
____ Gum	____ Candy	____ Mints	____ Tobacco
____ Other			

Other observations: _____

Did employee admit to using drugs or alcohol? ____ Yes ____ No

When: _____ Substance: _____

How much: _____ Where taken: _____

WITNESSED BY:

_____ Signature	_____ Title	_____ Preparation Date	_____ Time
_____ Signature	_____ Title	_____ Preparation Date	_____ Time

THE ALCOHOL TEST MUST BE ADMINISTERED WITHIN EIGHT HOURS FOLLOWING A REASONABLE SUSPICION DETERMINATION.

CITY OF APPLETON MEDICATION REPORTING FORM

Date: _____

Employee Name: _____ Department: _____

Drug Name	Dose	Anticipated Length/Period of Authorization

☐ Employee Name is able to safely perform a safety sensitive function/job while taking the medication/dose noted above.

☐ Employee Name is not able to safely perform a safety sensitive function/job while taking the medication/dose noted above.

☐ I have discussed the nature of my work with my physician.

Employee Signature _____ Date _____

Physician Signature _____ Date _____
(the physician signature is not needed for over the counter medications)

This notification may be shared with the City's occupational health provider.