

ORANGE COUNTY GOVERNMENT SUBSTANCE ABUSE POLICY

Orange County Government is committed to providing a drug and alcohol free work environment for its employees. It is the County's intent to maintain a healthy and safe workplace for its employees with the expectation that all employees will discharge their duties at an acceptable performance level and be unimpaired by drug and/or alcohol use. Substance abuse by an employee can endanger the employee's safety and also the safety of fellow employees. In addition, it can subject the general public to unacceptable safety risks and undermine the County's ability to operate efficiently and effectively.

The unlawful manufacturing, distribution, dispensation, possession, sale or use of a controlled substance in the Orange County workplace is strictly prohibited. Any employee who violates this prohibition is subject to disciplinary action up to and including discharge. In addition, any employee who is convicted of any criminal drug statute for a violation occurring in the workplace must notify his/her department head no later than five (5) days after such conviction.

In addition, the County has established an alcohol and drug free awareness program. All supervisors and managers will be required to attend training on the signs and symptoms of drug and alcohol abuse and the County's overall substance abuse program. The County will also periodically require employees to attend training sessions at which the dangers of drug and alcohol abuse, the County's substance abuse program, and the County's Employee Assistance Program will be discussed. New employees will attend this session as part of their orientation program.

In furtherance of this policy, the County has negotiated the following Drug and Alcohol Testing language with CSEA as outlined in Schedule "O" of the CSEA Agreement:

DRUG TESTING

SECTION I - DEFINITIONS

A. Illegal substance - any drug or controlled substance listed in Public Health Law Section 3306 (Schedules I through V), including but not limited to heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (angel dust), opium, opiates, methadone, cocaine, quaaludes, amphetamines, seconal, codeine, phenobarbital and valium for which an employee does not have proper medical authorization.

B. Proper medical authorization - a prescription or other writing from a licensed physician or dentist for the use of a drug in the course of medical treatment.

C. Drug - any prescription or over the counter medication not included in Definition I (A) above.

D. Drug use - The use, possession, distribution or sale of any illegal substance during work hours; the use of any illegal substance prior to reporting for duty which impairs to any degree an employee's ability to perform his/her job duties; the use of any drugs prior to reporting for work or during work hours which impairs to any degree an employee's ability to perform his/her job duties; and an employee who tests positive for illegal substances or drugs through a drug testing is presumed in violation of the policy pursuant to the procedure set forth in Section V below.

E. Alcohol abuse - a reading of .05 or more alcoholic content determined by breathalyzer test.

SECTION II - DRUG/ALCOHOL TESTING

(1) Reasonable Suspicion: Testing may be done if there is reasonable suspicion to believe that an employee is guilty of alcohol, illegal substance or drug use in violation of this policy. There is reasonable suspicion to believe an employee is guilty of alcohol, illegal substance or drug abuse if any of the following standards is met:

(a) Where there is:

- * direct observation of use of an illegal substance or alcohol while on duty;
- * direct observation of use of an illegal substance or alcohol at such time prior to reporting for duty that there is a reasonable belief that the employee has reported for duty under the influence of an illegal substance or alcohol in violation of this policy as defined in Section I above;
- * direct observation of use of a drug (as defined in Section I(C)) on duty such that there is a reasonable belief that the employee is impaired by the drug in violation of this policy as defined in Section I above;
- * direct observation of the use of a drug on such a basis prior to reporting for work that there is a reasonable belief that the

employee has reported for work in an impaired condition or is impaired on duty in violation of this policy as defined in Section I above.

(b) Based on observation of the employee's conduct, performance, appearance, behavior, speech, body odors, or erratic behavior while on duty or at such time prior to reporting for duty that it is reasonably believed that the employee has used or is under the influence of an illegal substance, alcohol or drugs including observation of a pattern of conduct including absences or lateness for work;

(c) Information is provided from a reliable and credible source that the employee is engaging in illegal use, possession, distribution, or sale of an illegal substance or drug while on duty; or is under the influence of an illegal substance, alcohol or drugs while on duty, or at such time prior to reporting for duty, in such a manner or on such a basis that there is a reasonable basis to believe that the employee is reporting for work or working under the influence of alcohol or drugs;

(2) The determination as to whether there is reasonable suspicion to test is to be made by the Department Head or his/her designee. The factual information provided to the Department Head and/or direct observations of the Department Head shall be reduced to writing by the Department Head. The writing shall include a specific statement as to what conduct has been observed or what information was provided and by whom and whether the source was reliable.

(3) After suspension or reassignment due to alcohol or drug use: If any employee has been suspended or reassigned due to alcohol or drug use, testing will be done once prior to his/her return to duty and on a random basis for a twelve (12) month period after return to duty, not to exceed six (6) tests after his/her return to duty.

SECTION III - TESTING PROCEDURES

A. Alcohol Testing: Alcohol testing will be done by a breathalyzer test. In lieu of a breathalyzer test, a urine screening may be performed. A urine test will be conducted in accordance with the procedures set forth under subsection B herein for drug testing. A breathalyzer test will be conducted in accordance with the following procedure:

The breathalyzer test will be given according to its operating instructions by an officer certified by New York State to perform the test. A breathalyzer Operational Checklist form will be completed by the police officer administering the test, indicating the name of the employee tested, date and time of test, blood/alcohol content registered, name of officer administering the test and location of test. The supervisor will place the checklist in an envelope marked with the employee's name and social security number. The employee will be requested to sign his/her name to the front of the envelope, indicating that the completed form was placed in the envelope. However, an employee's refusal to sign, if any, shall not invalidate the test results. The supervisor will sign the envelope and will date the signatures and provide same to the Commissioner of Human Resources or his/her designee.

B. Urine Testing: Urine testing will be done in a hospital, medical office/clinic or laboratory site to be chosen by the County, after consultation with CSEA, which, from time to time, or depending on the day of the week or hour of the day may change.

The employee will be transported to the testing site by a supervisor. The employee will complete a chain of custody form as directed by the lab technician. The employee will provide his or her urine specimen in private and the providing of the sample will not be observed. The employee will fill the specimen container and close it immediately after giving the specimen. The employee will initial and date the security tape and seal the specimen bottle. The employee will give the sealed specimen container to the technician who will log it and secure it for screening. The employee will complete information requested on the chain of custody form and sign it and date the form. However, an employee's refusal to follow the chain of custody procedures shall not invalidate test results. The laboratory's chain of custody procedures will be followed if different from the procedures set forth herein.

The sample given shall be tested at a laboratory selected by the County which has Substance Abuse and Mental Health Services Administration (SAMHSA) certification. The sample test results shall be read in accordance with standards utilized by the certified laboratory. The laboratory shall acknowledge that the sample was securely sealed when received.

The designated laboratory shall initially perform the enzyme multiplied immunoassay test (EMIT) on a split sample for the presence of drugs and illegal substances. A sample which tests positive shall be retested by the laboratory using the gas chromatography mass spectroscopy test (GC-MS). A sample shall be deemed positive for the presence of drugs if both the EMIT test and confirmation GC-MS test are positive.

In the event the EMIT test or confirmatory GC-MS test result is negative, then the sample shall be deemed negative for the presence of intoxicating substances. A negative report shall be provided to the Human Resources Commissioner, who shall so inform the employee of the test results.

If the results of the EMIT and confirmatory GC-MS test result are positive, the laboratory shall provide copies of the test results to the Human Resources Commissioner. The Department Head shall advise the employee within 24 hours of receipt of the results thereof.

Urine testing for alcohol shall be done in accordance with general standards utilized by the certified laboratory.

Positive results may result in disciplinary or other action as set forth in Sections V and VI below.

After the employee receives notice of a confirmed positive test from the Human Resources Commissioner, the employee may make a written request within five (5) calendar days to the Human Resources Commissioner for a retest of the remaining portion of the split sample. The employee may then, at his or her own expense, have the sample retested by the laboratory that performed the initial test or by a different duly licensed laboratory selected by the employee. The selected laboratory shall be responsible for pick-up and transport of the sample back to the initial laboratory and it shall ensure chain of custody. The employee shall be responsible for all costs associated with the second test and shall make arrangements for payment with the laboratory performing the retest. However, if the retest by the employee proves negative (both screening and GC-MS or equivalent) and the County determines that the employee's retest is accurate and there is a question of the validity of the County's initial test, which proved positive, the County may, in its discretion, pay the cost for the

employee's retest. The results of the retest shall be sent to the Human Resources Commissioner, who will then provide a copy of the test results to the employee.

SECTION IV - REASSIGNMENT PENDING TEST RESULTS AND DISCIPLINARY ACTION

Any employee who is suspected of using an illegal substance, drugs and/or alcohol in violation of this policy may, in the discretion of the Department Head or his/her designee, be immediately removed from duty pending the results of the drug/alcohol test and be charged his or her leave accruals for the period that the employee is so removed. In lieu of removal the Department Head or his/her designee may, in his/her discretion, reassign the employee to such duty as is determined by the Department Head or his/her designee. Where the results are negative then the employee shall be placed back on regular assignment and leave accruals shall be restored. Where the results of the test are positive, or if an employee fails or refuses to submit to an ordered test, the employee shall be subject to discipline up to and including discharge.

SECTION V - DISCIPLINARY PROCEDURE/PENALTIES

A. The use of alcohol during a tour of duty or at such times prior to reporting for duty as may impair to any degree the performance of job assignment is prohibited. A breathalyzer test reading of 0.05 or more is presumed to be a violation of this Policy and will result in disciplinary action as set forth below.

B. Use of any illegal substance during work hours as provided in Section I(A) of this policy, is strictly prohibited and will result in disciplinary action as set forth below. Use of or abuse of any illegal substance off-duty where the employee reports for work under the influence of said substance or use of any drug off-duty or during work hours so that the employee's ability to perform his/her job assignment is impaired to any degree, is deemed a violation of this policy and will result in disciplinary action. On duty possession of substances or prescription drugs not properly medically authorized and/or illegal distribution or sale of illegal substances or prescription drugs while on duty is prohibited and will result in disciplinary action as set forth herein up to and including dismissal from service. An employee who tests positive for drug use through drug screening user analysis done pursuant to this policy, through a positive drug

screening (EMIT) and positive gas chromatography mass spectroscopy test (GC-MS) is presumed to be in violation of this policy and impaired.

C. Nothing in this policy shall prohibit the County from seeking disciplinary penalty against an employee for violation of this policy where the County has not conducted a drug or alcohol test pursuant to this policy or based upon the results of a drug or alcohol test performed while the employee is on duty or resulting from on-duty conduct pursuant to New York State statutory law.

D. An employee ordered to submit to a drug or alcohol test pursuant to this policy may consult with an available union representative after being ordered to submit to said test.

E. Refusal or failure to take a breathalyzer test or drug screening urine analysis as required pursuant to this policy shall be admissible evidence at a disciplinary hearing and will create a presumption of use of alcohol or drugs in violation of this policy. In addition, refusal or failure to take a test as required pursuant to this policy shall subject the employee to a charge of insubordination and disobeying an order in addition to charges for alcohol or drug abuse and use. Tampering with or adulterating a sample will result in disciplinary action up to and including dismissal from service as set forth herein. An invalid drug test (i.e., The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.) will also result in disciplinary action up to and including dismissal from service. If an employee is not able to provide a sufficient urine sample, the procedures outlined in Section 40.193 of the federal regulations, Trans. Workplace Drug and Alcohol Testing Programs will be followed. (49 CFR Part 40)

F. Employees deemed to have violated this alcohol/drug policy who are entitled to a hearing pursuant to Section 75 of the Civil Service Law shall be afforded said hearing in compliance with the Collective Bargaining Agreement between the parties. This alcohol and drug policy shall not be construed to and does not create any hearing rights for employees not otherwise entitled to a hearing as provided for in Section 75 of the Civil Service Law.

G. Penalties. An employee found guilty of violating this policy shall be subject to disciplinary penalties as set forth in Section 75 of the Civil Service Law including suspension and dismissal and in addition, may be required to participate in drug and/or alcohol counseling as set forth in Section VI below.

H. The results of any breathalyzer test or urine analysis/drug screening that are positive shall be made part of the employee's personnel file. If the results of the above tests are negative, said results shall not be placed in the employee's personnel file unless specifically requested by the employee or if the County obtains the employee's consent to file said results. This shall not preclude the County from keeping a separate record of negative test results on file in the Employee's Department, apart from the employee's personnel file, should the fact of a negative alcohol or drug test be deemed necessary by the County for the defense of the County in litigation that may result due to the employee's conduct or involvement in an occurrence or incident which resulted in the drug or alcohol screening.

I. In addition to disciplinary action, nothing in this alcohol/drug policy shall be deemed to prevent the Employer from referring the results of a positive alcohol or drug test to the appropriate police or other law enforcement agency for purposes of criminal action, if the conduct which resulted in the test constitutes criminal conduct.

SECTION VI - ALCOHOL/DRUG REHABILITATION PROGRAM

Where a permanently appointed employee, on his or her own behalf, or someone on his or her behalf, voluntarily informs the Department Head that he or she is experiencing problems with alcohol or drug use, who has not previously been the subject of a disciplinary penalty, following applicable due process procedures, if any, for alcohol or drug use and has not been involved in any conduct or occurrence which would require the employee to be tested pursuant to this policy, that employee will be afforded the opportunity to participate in an alcohol or drug rehabilitation program, rather than being subjected to disciplinary action. The particular program in which the employee will participate must be a program approved by New York State and must be approved by the County. Enrollment in an alcohol or drug program in lieu of

disciplinary action shall only be available where the employee has never tested positive for drug or alcohol use while employed by the County.

A leave of absence for treatment on an in-patient or out-patient basis will be granted for a period not to exceed sixty (60) calendar days. However, the Commissioner of Human Resources, after consultation with the Department Head, may approve an additional leave of thirty (30) calendar days in his/her discretion. While on leave of absence, the employee may use accumulated sick time, vacation time, holidays and other accrued leave time. Otherwise, said leave of absence is without pay. The terms of the policy relative to said absences are not meant to affect or diminish those rights an employee would otherwise be entitled to pursuant to Sections 72 and 73 of the Civil Service Law.

An employee who chooses to participate in an outpatient program and who does not wish to take a leave of absence, may, in the discretion of the Department Head, continue with his or her duties either on regular assignment, reassignment or limited duty as deemed appropriate by the Department Head in his/her sole discretion. Nothing herein, however, shall be deemed to create a right on the part of an employee to limited, reassigned or light duty. Such reassignment, light or limited duty shall only be provided if the Department Head deems it available within the Department.

An employee is responsible for all costs for and associated with any treatment program in which he or she participates. The County shall bear no responsibility for any such costs, except for those benefits normally provided to Unit members pursuant to the Collective Bargaining Agreement.

An employee participating in a program must sign a Release for the County to be provided with information by the program with regard to testing done by the program and the employee's participation and performance in the program. Return to work after completion of the program may only occur upon certification from the program that the employee has satisfactorily participated in the program, that the program recommends return to regular assignment and that there is proof of no alcohol or drug use for a period of two (2) weeks prior to return to work. Upon return to work, the employee shall be subject to testing as set forth in Section II above. The final decision as to whether to permit an employee to return to work shall be made by the

Human Resources Commissioner after consultation with the Department Head but no later than two (2) weeks after receipt of the information discussed above. In the event the Human Resources Commissioner determines not to permit the employee to return to work, any action taken by the County to implement this determination must be in accordance with any rights the employee has pursuant to New York State Civil Service Law and/or the Collective Bargaining Agreement.

Any employee who voluntarily chooses to participate in a program but fails to successfully complete the program or be recommended for return to work by the program or the Human Resources Commissioner, shall be subject to other appropriate action, including disciplinary action, and sanctions pursuant to Section 75 of the Civil Service Law, up to and including termination, as ordered by the Human Resources Commissioner. Prior to such action being taken or commenced by the Human Resources Commissioner, there shall be a meeting with the employee, a Union Head and the Human Resources Commissioner or his/her designee and Department Head to discuss the employee's failure to complete the program.

Where an employee has not voluntarily sought treatment and is the subject of disciplinary action, in lieu of or in addition to the penalties as set forth in the Civil Service Law and this agreement, the employee may be required to participate in an alcohol or drug rehabilitation program. The employee will only be permitted to return to regular assignment upon the recommendation of the accredited alcohol or drug abuse program and with the approval of the Human Resources Commissioner, subject to any rights provided for in New York State Civil Service Law. Failure to participate in and satisfactorily meet the requirements of the program will result in disciplinary action pursuant to Section 75 of the Civil Service Law. Prior to such action being taken or commenced by the Human Resources Commissioner, there shall be a meeting with the employee, a union representative, if so requested by the employee, the Department Head and the Human Resources Commissioner or his designee to discuss the employee's failure to complete the program.

For employees in the Office of the Sheriff represented by COBA, PBA, or SOA, reference the drug and alcohol testing provisions of the applicable union Agreement.

PROCEDURES TO FOLLOW WHEN SUPERVISOR HAS REASONABLE SUSPICION TO TEST EMPLOYEE:

- 1.) Department heads should establish a chain of command within their departments for the reporting of potential substance abuse problems.
- 2.) Testing may be done if there is reasonable suspicion to believe that an employee is guilty of alcohol, illegal substance or drug use in violation of the standards outlined in Section II, Drug/Alcohol Testing of Schedule O of the CSEA Agreement.
- 3.) Document observations/behavior on the Reasonable Suspicion – Drug and Alcohol Testing Form at time of incident or as soon as possible after the incident has occurred. If the employee is part of the D.O.T. drug and alcohol testing pool (employees who are required to hold CDL licenses as part of their job duties), this document must be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier (49 CFR 391.99 (d).)
- 4.) Supervisors should report the situation and submit the Drug and Alcohol Testing Form to the appropriate management/supervisory personnel in his/her department who are responsible for or charged with determining if reasonable suspicion exists to test.
- 5.) Advise the employee of the need to speak with him/her in a private location with the Department Head and/or his/her designated official who are charged with determining if reasonable suspicion exists to test the employee.
- 6.) Confront the employee regarding his/her behavior/performance and your concern about his/her fitness to perform his/her job.
- 7.) Give the employee an opportunity to respond. Document all conversations and observations.
- 8.) If the Department Head or his/her designee determines that the employee's behavior/performance does not warrant reasonable suspicion testing, document your reasons why on the Reasonable Suspicion – Drug and Alcohol Testing Form.
- 9.) If the Department head or his/her designee determines that the employee's behavior/performance does warrant reasonable suspicion testing, give the employee a direct order that he/she is to submit to testing.
- 10.) An employee ordered to submit to a drug or alcohol test may consult with an available union representative after being ordered to submit to said test.
- 11.) If the employee refuses to be tested, state very clearly that you are ordering the employee to submit to a substance abuse test. Advise them that their failure to

comply is a very serious act of insubordination and is grounds for termination from the County.

- 12.) Contact the Office of the Sheriff (Sergeant on duty, tel. No. 291-7695, 7694, or 7693) for testing arrangements if the employee is ordered to submit to a breathalyzer test. Contact Partners In Safety (tel. No. 341-0515 for 24-hour service) for testing arrangements if the employee is ordered to submit to a drug test. If the employee is part of the D.O.T. drug and alcohol testing pool (employees who are required to hold CDL licenses as part of their job duties), contact Partners to arrange for the alcohol and/or the drug test. Notify the Department of Human Resources that the employee has been ordered to submit to a drug and/or alcohol test (291-2717, 291-2735, 291-2737, or 291-2008; for incidents that occur after 5 p.m., please call 291-2717 and leave a message).
- 13.) The Department Head or his/her designee shall reduce to writing on the Reasonable Suspicion – Drug and Alcohol Testing Form the factual information provided to the Department head and/or direct observations of the Department head. The writing shall include a specific statement as to what conduct has been observed or what information was provided and by whom and whether the source was reliable.
- 14.) An employee who has been directed to submit to a test should not be permitted to consume any substance including but not limited to liquids, food, candy, gum and/or chemical solutions prior to the conduct of the test. A supervisor must transport the employee to the testing site. A union representative may also accompany the employee or meet the employee at the testing site. Remain at the testing site with the employee.
- 15.) If the employee is submitting to a breathalyzer test, it will be given in accordance with operating instructions by an officer certified by New York State to perform the test. The supervisor will place the Breathalyzer Operational Checklist (includes the name of the employee tested, date and time of test, blood/alcohol content registered), which is to be completed by the officer administering the test, in an envelope marked with the employee's name and social security number. The employee will be requested to sign his/her name to the front of the envelope, indicating that the completed form was placed in the envelope. However, an employee's refusal to sign, if any, shall not invalidate the test results. The supervisor will sign the envelope and will date the signatures and provide same to the Commissioner of Human Resources or his/her designee.
- 16.) Whether the employee agrees to/refuses to submit to the test, make arrangements to have the employee taken home. Do not permit him/her to go home or drive alone. If the employee refuses any assistance, make sure you document that the employee refused assistance. If the employee leaves the worksite or testing facility and you believe s/he may be operating a motor vehicle, contact the Office of the Sheriff immediately and provide them with as much information as possible.

- 17.) Any employee who is suspected of using an illegal substance, drugs and/or alcohol and is required to submit to a test, may, in the discretion of the Department Head be immediately removed from duty. The employee may be assigned duty as determined by the Department Head. The reassignment may continue pending the results of the alcohol and/or drug test.
- 18.) If the drug/alcohol test result is positive, the employee shall be disciplined in accordance with the terms of this policy. Contact the Department of Human Resources for guidance on the appropriate steps to be taken (291-2717, 291-2735, 291-2737 or 291-2008).

4/17



COUNTY OF ORANGE
DEPARTMENT OF HUMAN RESOURCES

STEVEN M. GROSS, COMMISSIONER OF HUMAN RESOURCES

**Please read the attached information, and then sign this form.
Detach the signed form and return it to your supervisor.**

**I have received and read a copy of the “ORANGE COUNTY
GOVERNMENT SUBSTANCE ABUSE POLICY”.**

Name (Print)

Signature

Department

Date