



City of Medford  
Administrative Regulation

Regulation No.: 00-5  
Page: 1 of 9  
Subject Area: Human Resources  
Date of Issue: May 8, 2000  
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Title: Drug and Alcohol Testing for Commercial Vehicle Drivers

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***Purpose***

Since January 1, 1996, the City of Medford has been required to comply with the United States Department of Transportation regulations implementing the Federal Omnibus Transportation Employee Testing Act of 1991. Specifically, the City must comply with regulations of the Federal Highway Administration (FHWA), including adoption of a drug and alcohol testing policy for drivers of commercial vehicles. This policy sets forth the rights and obligations of employees covered by the drug and alcohol testing requirements. This policy should be read in conjunction with Administrative Regulation No. 00-4, which sets forth the City's Drug and Alcohol Free Workplace Policies and provides definitions for terms used in this policy.

***Policy***

A. Employee Questions

Employees having any questions regarding rights and obligations under this policy may request information from the Human Resources Department.

B. Definitions

Terms used are as defined below, in Administrative Regulation 00-4, or in Federal regulations (49 CFR Parts 40 and 382).

C. Covered Employees

As defined in the FHWA regulations, a "covered employee" is an individual employed by the City who operates any of the following commercial motor vehicles to transport passengers or property:

1. a vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
2. a vehicle with a gross vehicle weight of at least 26,001 pounds;
3. a vehicle designed to transport 16 or more passengers, including the driver; or
4. a vehicle of any size used to transport those hazardous materials found in the Hazardous Materials Transportation Act.

Drivers include regular full-time employees; casual, intermittent or occasional drivers; and leased drivers. Employees are required to have Commercial Driver's Licenses to operate vehicles meeting the above specifications. Employees in the job classifications (if assigned to

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drive or otherwise work on vehicles meeting the above specifications) listed below are “covered employees” subject to all the provisions of this policy:

Auto Service Clerk  
Equipment Mechanics I, II, III  
Laborer/Equipment Operator  
Senior Traffic Signal Technician  
Temporary Laborer  
Traffic Signal Technician  
Utility Locator  
WRD Operator

Covered employees may not be under the influence of or in possession of drugs or alcohol during work hours. Further, certain conduct is prohibited (see Section E below) while performing and prior to performing safety-sensitive functions. For purposes of this policy, “safety sensitive function” means all time from the time a driver begins work or is required to be in readiness to work until the time (s)he is released from work and includes:

1. All time at an employer or shipper, plant, terminal, facility, or any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City;
2. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations, or otherwise inspecting, servicing or conditioning any commercial motor vehicle at any time;
3. All time spent at the driving controls of a commercial motor vehicle in operation;
4. All time, other than driving time, spent on or in a commercial motor vehicle, except for the time spent resting in a sleeper berth;
5. All time loading or unloading a commercial motor 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; and
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

E. Prohibitions

The following conduct is prohibited and may result in discipline, up to and including termination:

1. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration level of 0.02 or greater;
2. Performing a safety-sensitive function within four hours of using alcohol;

3. Using alcohol while performing safety-sensitive functions;
4. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions when the employee used any controlled substance, except if 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 vehicle (the employee may be required to furnish a physician's statement of such non-effect to the employee's supervisor);
5. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions if the employee tests positive for controlled substances;
6. Refusing to submit to any alcohol or controlled substances test required by this policy. A refusal to submit to an alcohol or controlled substances test required by this policy includes, but is not limited to:
  - a. A refusal to provide a urine sample for a drug test;
  - b. Failure to provide a urine sample without valid medical explanation;
  - c. Refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in a way that prevents the completion of the test;
  - d. Failure to provide breath, or to provide an adequate amount of breath, for alcohol testing without a valid medical explanation;
  - e. Tampering with or attempting to adulterate the urine specimen or collection procedure;
  - f. Not reporting to the collection site at the time allotted by the supervisor or manager who directs the employee to be tested; or
  - g. Leaving the scene of an accident without a valid reason as to why authorization was not obtained from a supervisor or manager responsible for determining whether to send the employee for a post-accident drug and/or alcohol test.
7. Consuming alcohol during the eight hours immediately following an accident, or until the employee undergoes a post-accident alcohol test and is released from duty, whichever occurs first.

In addition to the above prohibitions, all employees covered by this policy have also been provided with a copy of the City's Drug and Alcohol Free Workplace Policy (Administrative Regulation 00-2), and have signed an acknowledgment that they have read the policy and agreed to comply with it.

F. Consequences for Employees Found to Have Alcohol Concentrations Levels of 0.02 or Greater but Less than 0.04

An employee whose alcohol test indicates an alcohol concentration level of 0.02 or greater and less than 0.04 will be suspended without pay from his or her safety-sensitive function for at least 24 hours. The employee will also be required to take a "return to duty" test under section G. 5. below. The employee will receive a written reprimand indicating that a subsequent such violation of this policy will result in disciplinary action (up to and including termination), and will also be required to undergo follow-up testing as required under section G. 5. However, the employee shall not be required to sign a "Last Chance Agreement" as that term is used in Administrative Regulation 00-2.

G. Circumstances Under Which Drug and/or Alcohol Testing Will be Imposed on Covered Employees

1. Pre-Employment Testing

As part of the City's pre-employment medical/physical evaluation process, each candidate for employment in a job classification listed in Section C, including an employee transferring into such position from a classification not listed as a "covered employee," shall be required to submit to pre-employment/pre-duty controlled substance testing as required by Federal regulations (49 CFR Part 382). Applicants will not be hired or promoted into such position, or assigned to a safety-sensitive function if they do not pass the required tests.

2. Post-Accident Testing

Post-accident drug and alcohol testing will be conducted on covered employees following any accident involving a commercial vehicle on a public road where:

- a. the accident involved the loss of human life; or
- b. the driver of the commercial vehicle is cited by a law enforcement agency for a moving violation contributing to the accident, and the accident involved:
  - 1) bodily injury to a person requiring medical attention away from the scene of the accident; or
  - 2) damage to any vehicle involved in the accident requiring the vehicle to be towed from the scene.

The City will attempt to arrange for a post-accident alcohol test within two hours following an accident. If no such testing can occur within that time period, the City will continue for a period of an additional six hours to have the employee tested. No alcohol test may be administered after eight hours following the time of the accident. A post-accident drug test shall be conducted within 32 hours following the accident. If the City is unable to administer an alcohol or drug test within the requisite 2, 8, or 32 hour time period, the City will create and retain a record as to the reason the test was not conducted.

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the City to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured persons following an accident, or to prohibit a driver from leaving the scene of an accident for the time necessary to obtain assistance in responding to it, or to obtain necessary emergency medical care.

### 3. Random Testing

Covered employees will be subject to random alcohol and drug testing as follows:

A random alcohol or drug test, or both, will be administered just prior to an employee's performing a safety-sensitive function (e.g., driving), while the employee is performing a safety-sensitive function, or just after the employee has stopped performing a safety-sensitive function. The City will participate in a random selection program meeting the requirements of Federal regulations (49 CFR Part 382) for the number of covered employees to be tested for random alcohol and drug testing each year. Some employees may be tested more than once in a year, while others are not tested at all depending on the random selection.

On the date an employee is selected for random testing, his/her supervisor will ensure that the employee's duties are covered. The employee will receive a written note indicating the time and location he/she is to report for testing, and the employee shall proceed to the test site immediately.

### 4. Reasonable Suspicion Testing

Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances. The observation must be based on short-term indicators, such as blurry eyes, slurring, or alcohol on the breath. The supervisor may not rely on long-term signs, such as absenteeism or tardiness, to support the need for a reasonable suspicion test.

Reasonable suspicion testing for alcohol is only permissible if the observation was made during, just preceding, or just after the performance of safety-sensitive functions.

The reasonable suspicion alcohol test should be administered within two hours of the observation. No test will be administered after eight hours following the observation. If the test is not administered, the City shall maintain a record of why the test was not promptly administered.

Even if a reasonable suspicion alcohol test is not conducted, no covered employee may report for duty or remain on duty requiring the performance of safety-sensitive functions while under the influence of alcohol, as shown by the behavioral, speech, and performance indicators, until:

- 1) an alcohol test is administered and the employee measures less than 0.02; or
- 2) 24 hours have elapsed since the reasonable suspicion determination.

No disciplinary action will be taken against an employee based solely on an employee's appearance and behavior of alcohol use, in the absence of an alcohol test.

A written record shall be made of the observations that lead to a reasonable suspicion drug test. The record shall be signed by the supervisor or City official who made the observations within 24 hours of the observed behavior, or before the results of the drug test are released, whichever is earlier.

To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion drug and/or alcohol test will attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

#### 5. Return to Duty/Follow-up Testing

A covered employee who has violated any of the prohibitions of this policy (see Section E) must submit to a return to duty test before he/she may be returned to his/her position. The test result must indicate an alcohol concentration of less than 0.02 or a verified negative result on a controlled substances test. The type of test administered is based upon whether the violation was drug or alcohol related. In addition, because studies have shown that the relapse rate is highest during the first year of recovery, the employee will be subject to follow-up testing which is separate from the random testing obligation. The employee will be subject to at least six unannounced drug/alcohol tests during the first year back to the safety-sensitive function position following the violation. The substance abuse professional may terminate the need for follow-up testing at any time after the first six tests have been administered, if a determination is made that such testing is no longer necessary. Follow-up alcohol testing may only be administered when the employee is performing safety-sensitive functions, just prior to performing such functions, or just after the functions have been completed.

#### H. Procedures to Be Used for Detection of Drugs and Alcohol

##### 1. Alcohol Testing

Alcohol testing will be conducted by using an evidential breath-testing device (EBT) approved by the National Highway Traffic Safety Administration. Non-EBT devices may be used for initial screening tests.

A screening test will be conducted first. If the result is an alcohol concentration of less than 0.02, the test shall be considered a negative test. If the alcohol concentration level is 0.02 or more, a second confirmation test will be conducted.

The procedures to be used for collection and testing of the specimen shall conform to the regulations set forth at 49 CFR Part 40.

## 2. Drug Testing

Drug testing will be conducted pursuant to the requirements of Federal regulations (49 CFR Part 40), which provide in part:

- a) The urine specimen will be split into two bottles labeled “primary” and “split” specimen. Both bottles will be sent to the lab.
- b) If the test is positive for one or more of the drugs specified in subsection (f), a confirmation test will be performed on the primary specimen using gas chromatography/mass spectrometry analysis.
- c) If a test is positive, and before those results are released, the physician (or medical review officer “MRO”) will first contact the employee to determine if there is an alternative medical explanation for the positive test results. If documentation is provided and the MRO certifies that there was a legitimate medical use for the prohibited drug, the test results may be reported to the City as “negative.” If the MRO is unable to reach the employee, the MRO shall contact the employer and have the employer direct the individual to contact the MRO as soon as possible.
- d) The MRO may only verify a test as positive without communicating directly with the employee if:
  - 1) the employee expressly declines to speak with the MRO;
  - 2) neither the MRO nor the City, after making reasonable efforts to do so, are able to contact the employee within 14 days of when the MRO confirmed a positive result; or
  - 3) the employee fails to contact the MRO within 5 days of being notified by the employer to do so.
- e) If the urinalysis of the primary specimen tests positive for the presence of illegal, controlled substances, the employee has 72 hours to request that the split specimen be analyzed by a different certified lab.
- f) The urine sample will be tested for the following: marijuana, cocaine, opiates, amphetamines, and phencyclidine.
- g) All drug test results will be reviewed and interpreted by a physician before they are reported to the employee and then to the City.
- h) Before an MRO obtains any related medical information from an employee as part of the verification process, the employee shall be informed that information may be disclosed to third parties. The MRO may only disclose such medical information to the City if:
  - 1) an applicable DOT regulation requires disclosure;

- 2) in the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT rule;
- 3) in the MRO's reasonable medical judgment, continued performance by the employee could lead to a significant safety risk.

Employees are entitled to the results of a drug or alcohol test upon written request.

I. Refusal to Submit to an Alcohol and/or Drug Test

A covered employee who refuses to submit to any required drug/alcohol testing will be treated in the same manner as an employee who tested 0.04 or greater on an alcohol test or tested positively on a controlled substances test.

J. Consequences of Failing an Alcohol and/or Drug Test

A positive result from a drug or alcohol test will result in disciplinary action, up to and including termination. A positive drug test or test showing a blood alcohol level of 0.04 or greater will result in a decision by the City, under Administrative Regulation 00-2, whether to offer the employee a "Last Chance Agreement" or to proceed with action to dismiss the individual from employment. Disciplinary issues shall be governed by applicable collective bargaining agreement terms and/or Regulation No. 00-2. All employees in violation of this policy shall be provided with information regarding resources available in evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances.

If the employee is not to be terminated, (s)he shall:

- a) Be immediately removed from performing any safety-sensitive function upon notification to the City of a positive test.
- b) Submit to an examination by a substance abuse professional. Upon a determination by the substance abuse professional, the employee may be required to undergo treatment for his/her alcohol misuse or drug use. The City is not required to pay for this treatment, although the employee's insurance may cover a portion of the costs. The treatment may be provided by the City, by a professional under contract with the City, or an unaffiliated professional. The choice shall be made in accordance with applicable bargaining agreements and City policies.
- c) Not be returned to his/her former safety-sensitive position until the employee submits to a return-to-duty controlled substance and/or alcohol test (depending on which test the employee failed) that indicates an alcohol concentration level of less than 0.02 or a negative result on a controlled substance test.
- d) Be required to submit to unannounced follow-up testing after he/she has been returned to his/her safety-sensitive position [see Section G. 5. above]. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty.

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K. Information Concerning the Effects of Alcohol and Controlled Substances and Available Methods of Intervention

Employees covered by this policy are to be furnished with educational materials addressing the effects of alcohol and various controlled substances that are tested for under this policy. Further, the City has established an Employee Assistance Program to help employees who may need assistance with alcohol and controlled substance abuse. For details, contact the Human Resources Department.

L. Dissemination of Policy

The foregoing employment policy and administrative regulation will be published and distributed to each covered employee within 30 days of adoption, and employees will be asked to acknowledge that they have received, read, understood and agreed to abide by such policy. New employees will receive a copy of the policy during the employee's orientation by the Human Resources Department. The City reserves the right to revise this policy and administrative regulation at any time.

**Approved:**

/s/Michael Dyal

5/8/2000

Michael Dyal, City Manager

Date

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