



City of Medford
Administrative Regulation

Regulation No.: 00-4
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Subject Area: Human Resources
Date of Issue: May 1, 2000
Supersedes: 92-1

Title: Drug and Alcohol Free Workplace

Purpose

In recognition of the City's responsibility to maintain a safe, healthful and productive work environment and in recognition of the responsibility of each City employee, recognized employee organization and contractor to perform services for the public as safely, effectively and efficiently as possible, the City, and all parties listed above, commit that the work environment and the services performed shall not be adversely affected or impaired in any way by the use or presence of alcohol or drugs.

The City currently has the right and responsibility to eliminate any circumstance or activity that might impair or reduce the safe and effective performance of City services, under ORS 659.225; 659.227; and 279.213, and The Federal Drug Free Workplace Act of 1988. This policy should be read in conjunction with Administrative Regulation No. 00-5, which sets forth the additional required drug/alcohol testing requirements for employees who are commercial vehicle drivers, as set forth in the Omnibus Transportation Employee Testing Act of 1991, and implementing DOT regulations. In general, more stringent testing requirements are imposed by Federal regulations for DOT-covered employees.

Objectives

- To strengthen the leadership role for employees of the City, recognized employee organizations and contractors in ensuring a drug-free City work environment.
- To provide a safe, productive and healthy work environment.
- To provide efficient, safe and economical services to the public.
- To provide a City work environment free of any adverse effects caused by drug or alcohol use or abuse.
- To provide assistance toward rehabilitation for any City employee seeking help for a drug or alcohol related problem.

Definitions

For the purposes of this policy and Administrative Regulation 00-5, the following definitions apply:

1. "Alcohol" means any alcoholic beverage or alcoholic liquor as defined in ORS 471.001.
2. "City Property" means worksites, parking lots, city vehicles, including property assigned to or used by employees, such as desks, lockers and any storage containers. All City property is subject to search at anytime. Employees using personal locks to secure containers must provide the city, upon request, with a copy of the lock's combination or key.

3. “Contractor” is defined as any person or entity that enters into a contract with the City to provide services.
4. “Critical Incident” is defined as any incident that could have caused or caused injury to persons or property, while on duty with the City.
5. “Drug” means any controlled substance as defined in ORS 475.005.
6. “Illegal Drug Use” means the use of drugs that are unlawful to possess or distribute under Oregon law or a legal drug that has not been legally obtained or is being used in a manner for which it was not prescribed or intended. This term does not include the proper use of a drug taken under the supervision of a licensed health care professional and in accordance with the prescribed directions for consumption, or other uses authorized by law.
7. “On-Duty” for the City means the span of time between the time the employee reports for his/her work shift through the time the employee ends duty for the same shift, and also, while on paid standby duty.
8. “Reasonable suspicion” is defined as a good faith belief, based on facts or evidence, that a person may be under the influence of alcohol or drugs, while on duty with the City. Examples of suspect behavior include, without limitation:
 - a) Bizarre behavior at work such as slurred speech, substantial change in appearance, apparent confusion in orientation, emotional outbursts;
 - b) Substantial loss of productivity at work;
 - c) Repeated tardiness or absences from work;
 - d) Behavior that causes an on-the-job accident resulting in death or injury which requires medical attention or time off from work;
 - e) Within the 12-month period prior to a test, being under the influence of drugs or alcohol while on duty;
 - f) An admission by the individual that within the 12-month period prior to the test (s)he has illegally used drugs on duty;
 - g) Odor of alcohol while on duty or in the workplace;
 - h) Unsafe handling of equipment or tools; and/or
 - i) Actual observation of alcohol or drug use while on duty or in the workplace.
9. “Reduction in Job Performance” means the quality or quantity of an employee's performance on the job is less than should be expected or accepted, or less than his/her usual standard as judged against the past job performance of an individual employee.
10. “Under the Influence” means that a drug is present in the employee's bodily system in any detectable amount and/or alcohol is present in the employee's bodily system above the level set forth in an applicable collective bargaining agreement, or, where no collective bargaining agreement is applicable, a blood alcohol content of .02 or greater.
11. “Workplace” means any and all City property on which an employee is present and any place in which an individual is performing services for the City or is otherwise on duty.

Policy

A. City Employees:

It is the policy of the City of Medford that a City Employee (hereinafter referred to as “employee”) shall be responsible for the following:

1. An employee's job performance or safety shall not be impaired or affected in any way by the use or abuse of alcohol or drugs.
2. An employee shall not be under the influence of drugs or alcohol while on duty for the City, in the workplace, or on paid standby.
3. An employee shall not possess, manufacture, sell, offer for sale, obtain, or distribute alcohol or drugs while on duty, in the workplace or on paid standby. This prohibition does not apply to the possession of closed containers of alcohol in an employee’s personal vehicle parked in a City parking lot.
4. An employee shall notify his/her supervisor, before reporting for any City duties, of any medications, including those legally prescribed and those over the counter medications that (s)he is taking that may interfere with his/her safe job performance with the City. Forms are available in the Human Resources Department and/or with each department head. Such information will remain confidential and employees will not suffer any detriment in reporting such medication. However, an employee may be temporarily assigned alternate duties if the medication is likely to cause safety concerns. Failure to report the use of a prescribed medication, or over the counter medication, which the employee has reason to believe may affect his or her abilities to safely perform assigned duties, may subject the employee to disciplinary action.
5. If an employee is called back to work, and is under the influence of drugs or alcohol, the employee shall advise his/her supervisor, and another employee will be utilized. Employees are not subject to discipline for such an event and any information reported to the supervisor will remain confidential. Employees on paid standby, however, are prohibited from using drugs or alcohol during that paid time, except where the employee takes a prescribed drug as directed by a health care provider
6. Based on reasonable suspicion or a critical incident, an employee shall complete a drug and/or alcohol testing process when directed by his/her supervisor, department head, City Manager or designee, consistent with this policy and applicable State and Federal laws.
7. An employee shall notify the City, in writing, of any criminal drug or alcohol statute conviction, no later than five calendar days after such conviction.

Specific disciplinary actions that will be taken against employees for violations of this policy are referenced in the current City of Medford Rules and Regulations and appropriate Memoranda of Agreement (MOA) and employment contracts. Refusal to take a test following reasonable suspicion or a critical incident, or a violation of any other provision of this policy, will be treated as a disciplinary matter.

To the extent a provision in an applicable collective bargaining agreement conflicts with this policy, the collective bargaining agreement governs.

B. Positive Tests for Employees

If an employee tests positive for drugs or alcohol, the employee may be referred to counseling in lieu of discipline on the first occasion. The following procedure will apply:

1. All positive tests will be subjected to a secondary, confirmatory test on the same sample.
2. If the secondary test confirms the initial positive test result, the employee will immediately be suspended without pay for violation of City policy and implementing regulations. If the employee is under the influence of alcohol with a blood alcohol level of .02 but not greater than .04, (s)he will be immediately suspended without pay, and will be allowed to return to work after 24 hours subject to a clearance test under step 5 below. An employee who tests positive for being under the influence of drugs or with a blood alcohol level of .04 or greater, with City agreement, may have the opportunity to either sign a Last Chance Agreement and seek treatment, or sever his/her employment relationship with the City. The City has sole discretion as to whether a Last Chance Agreement is offered, or whether the employee is to be dismissed from employment immediately.
3. A Last Chance agreement is a contract between the employee and the City, requiring certain conditions imposed by an employer, as a condition of the employee's continued employment. A Last Chance Agreement must contain a commitment from the employee to remain drug free, attending, at a reasonable cost to the employee, rehabilitation, an employee assistance program or other similar program; submitting to random or periodic drug testing to demonstrate that the employee remains drug free; and paying a reasonable amount toward the costs of required drug tests, considering the frequency and total number of such tests. A Last Chance Agreement for an employee who tests positive for alcohol shall not require the employee to cease consumption of alcohol outside of work hours when such consumption does not interfere with work; shall not require the employee to attend alcohol treatment absent a showing that (s)he has a problem which currently requires treatment; and shall not require the employee to attend and pay for a particular treatment when other similar treatment is available at a lower cost.
4. An employee who enters a Last Chance Agreement, and is subject to treatment, is expected to meet with an accredited professional drug/alcohol counselor on a regular basis on a schedule to be determined by the counselor as part of a treatment program. Failure to complete the program or to cooperate with the counselor is considered a breach of the Last Chance Agreement, and will result in immediate dismissal from employment. The Human Resources Department shall be informed on a monthly basis whether the employee is in compliance with the treatment program. An employee's failure to cooperate with the counselor is to be reported by the counselor to the Human Resources Department within a reasonable period of time, but no later than 10 days after a missed appointment, unless rescheduled by the employee during that 10-day period. A rescheduled appointment does not have to be within the 10-day period, as long as the counselor reports the employee in compliance with the treatment program.

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5. Before returning to work, the employee will be required to submit to an alcohol and/or drug test. This test must show that the employee is drug free and not under the influence of alcohol in order to return to work. After returning to work, the employee will be required to submit to unscheduled periodic testing, at the City's discretion for a followup period not to exceed twenty four (24) months. Refusing to take a test during this period will be considered a breach of the Last Chance Agreement and will result in immediate dismissal from employment.
 6. An employee under a Last Chance Agreement who tests positive for alcohol or drugs during the 24-month followup period will be dismissed from employment. Only one Last Chance Agreement is allowed. After the expiration of the 24-month followup period, if an employee tests positive for drugs or alcohol in violation of this policy, the employee will not be offered a second Last Chance Agreement, and will be dismissed from employment. Medical benefits may cover some of the costs for this treatment. Any costs accrued that are not covered by insurance are the sole responsibility of the employee.
- C. Applicants for City Employment and Promotions to Safety-Sensitive Positions
1. An applicant for a position with the City may be required to participate in and successfully complete a drug test as part of the City's medical/physical pre-placement process. Failure or refusal to successfully complete the drug or alcohol analysis testing process will constitute disqualification of the applicant for the position or promotion. Any applicant required to undergo a drug test will only be required to do so after a conditional offer of employment is made in writing. In compliance with the Americans with Disabilities Act, the drug test will not be required until the offer has been made.
 2. This policy shall be distributed to all new employees at the time of appointment and basic information about this program shall be made available to applicants for City jobs or positions through the job announcement.
 3. If an applicant is required, after a conditional offer of employment, to undergo a medical/physical examination, the City will pay for the costs of such examination, including the costs of a pre-employment drug test.
 4. The City will employ no person until the City has been notified of the results of the medical/physical evaluation, including the drug screen if applicable. No person shall be employed who tests positive on a drug test or who refuses to take such test, and in such cases shall not be considered for employment in any other position until a period of 120 days has elapsed.
 5. Any person who attempts to produce a false test result or otherwise tampers with or interferes with the testing process will be permanently disqualified from employment with the City of Medford. A sample that fails an integrity test because it is either too dilute or contains foreign substance will constitute a failed test; but in such instances, one additional test will be permitted. A second failed integrity test will constitute a positive test result.

D. Contractor:

It is the policy of the City Council that, in order to attain or maintain a contract with the City, each contractor shall agree that while (s)he or the contractor's employees or agents are performing services for the City, or using City equipment, that the contractor or the contractor's employees or agents:

1. Shall not, in any way, be impaired or affected by the use or abuse of alcohol or drugs.
2. Shall not be under the influence of alcohol or drugs while in the workplace or on City property.
3. Shall not possess, manufacture, sell, offer for sale, distribute or otherwise be in any contact with alcohol or drugs while in the workplace or on duty for the City. This prohibition does not apply to the possession of closed containers of alcohol in a contractor's (or contractor's employee's) personal vehicle parked in a City parking lot or on City property. Each contractor must, prior to contract approval, provide to the City a copy of its Drug Free Workplace Program, which must include drug-testing components equal to or greater than the City's Drug Free Workplace Program requirements pursuant to the provisions of ORS 279.213.

This policy, as it relates to contractors, shall be implemented by requiring appropriate contract provisions to be included in any contract between the City and a contractor, including contractor's employees and agents.

E. Procedures to be Used When Sample is Given

1. Samples will be tested by a licensed clinical laboratory meeting the requirements set forth in ORS Ch. 438.
2. An employee who is required to give a sample based upon reasonable suspicion or a critical incident may be reassigned or placed on leave with pay pending receipt of test results.
3. Drug test results will be kept with the applicant's pre-employment medical file, or in the case of a current employee, in the employee's medical file.
4. The Human Resources Department will receive the results from the testing site, and inform the hiring department only that the applicant passed or failed. In the case of current employees, only the employee's immediate supervisor, or other person with need to know, will be advised that the employee passed or failed.
5. Only those persons authorized by the City and with a need to know the results will be informed. An applicant or employee may request results in writing from the laboratory.

F. Appeal Procedure for Employees and Applicants

An applicant or employee who has failed a drug or alcohol test, may, at his or her expense, seek retesting of the original sample. Such a request must be made in writing to the City Human Resources Department within 30 days of the date of notification of the original test results. The

employee or applicant may request that another licensed clinical laboratory conduct the test, subject to the City's approval of the lab. Accepted chain-of-custody procedures must be followed: at no time shall the employee receive the original sample to transfer or hold until the retest may be conducted. If the retest gives a negative result, the applicant or employee will be deemed to have passed the test. In such cases, applicants shall not be entitled to any position filled in the interim or to any other benefit except retention on an eligibility list. In the event the test is negative, the City will pay the costs of the test.

G. Positions Subject to Testing

The Human Resources Department, after consultation with the City Attorney's Office, shall develop, annually review, and maintain a list of positions for which pre-employment drug tests will be required. A copy of that list will be filed with this administrative regulation in each department.

City Manager Authorized Exceptions

During special, infrequent occasions, consumption of alcoholic beverages and, therefore, open containers of alcohol, may be allowed on City property, but only upon specific prior written authorization from the City Manager. On such authorized occasions, the consumption of alcohol must be limited to avoid any actual or perceived impairment or reduction in job performance if the person returns to work. This exception does not allow employees to become intoxicated or impaired to a point where it may become unsafe to the employee or others.

This exception does not apply to an employee who, upon returning to work, has a reasonable expectation of contact with the public wherein an odor of an alcoholic beverage on the employee's breath or clothing might impair the public trust and confidence in the sobriety of the employee.

The prohibitions in this policy do not apply to certified police officers engaging in approved police investigations, unless otherwise in violation of State or Federal law.

The foregoing employment policy and administrative regulation will be published and distributed to each employee of the city, and employees will be asked to acknowledge that they have received, read, understood and agreed to abide by such policy. The City reserves the right to revise this policy and administrative regulation at any time.

Approved:

/s/ Michael Dyal

5/1/2000

Michael Dyal, City Manager

Date