



CITY OF CHEYENNE

DRUG AND ALCOHOL TESTING POLICY

49 C.F.R. PARTS 40, PART 29, and 655 as Amended, FMCSA 382

Table of Contents

1.0 Policy	3
2.0 Purpose	3
3.0 Designated Employer Representatives	3
4.0 Information, Signs, and Symptoms Regarding Substance Abuse	3
5.0 Employee Assistance Program (EAP) and Accommodation of Treatment of Addiction	3
5.1 Substance Abuse Professional (SAP)	4
6.0 Training Requirements Regarding Substance Policy	4
7.0 Designation of Safety-Sensitive Position	4
8.0 Prohibited Substances	5
9.0 Prohibited Conduct	6
9.1 Manufacture, Trafficking, Possession and Use of Illegal Drugs	6
9.2 Intoxication/Under the Influence	6
9.3 Alcohol Use	6
9.4 Compliance with Testing Requirement	7
9.5 Commercial Driver License’s Penalty on a Positive Test	7
9.6 Treatment Requirements	7
9.7 Notifying the City of Criminal Drug Conviction	8
9.8 Proper Application of the Policy	8
10.0 Types of Substance Testing	8
10.1 Pre-employment Substance Testing	8
10.2 Post-Accident, -Incident, -Injury, -Shooting Substance Testing	8
10.3 Mandatory Substance Testing	8
10.4 Procedures of Substance Testing	9
10.5 Reasonable Suspicion Substance Testing	9
10.6 Procedures for Random Substance Testing	10
11.0 General Substance Testing Procedure	11
12.0 Discipline Regarding Substance Abuse	12
13.0 Maintenance of Records	12
14.0 Supervisor and Employee Training	12

1.0 POLICY

The City of Cheyenne (City) provides safe, dependable, and efficient public services to the citizens of Cheyenne. The City's goal to provide a safe, healthful, and satisfying working environment which promotes personal opportunities for growth.

2.0 PURPOSE

Per the Federal Drug Free Workplace Act of 1988, the City is committed to being a Drug-Free Workplace for all employees. This will be accomplished through employee education, employee counseling and through various types of substance testing including pre-employment, reasonable suspicion, post-accident/incident and random screenings for safety-sensitive employees.

3.0 Designated Employer Representatives

Director of Human Resources

Human Resources Office Manager

Human Resources Specialist II

Safety Manager

4.0 Information, Signs, and Symptoms Regarding Substance Abuse

Alcohol and substance abuse are a complicated problem calling for specialized supervision and care. The treatment and counseling of persons with a substance abuse problem should be left to professionals. The person with a problem may be evaluated by a professional, such as a physician, psychologist, or other person with knowledge of abuse and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders.

An employee should not help or aid a person who appears to have an alcohol or drug abuse problem by making excuses or doing work for the employee to compensate for the employee's performance problems. Employees are encouraged to inform their immediate supervisor if they believe that a fellow employee has a substance abuse problem. Ignoring the problem only serves to continue the abuse problem and does not allow the abusing employee to face the consequences of the employee's abuse and performance problems.

The consequences of alcohol and illegal drug abuse extend far beyond the individual user. Impaired employees put themselves, fellow workers, and other users of our roads in danger. Employees with drugs or alcohol in their systems are less productive and more likely to injure themselves or other employees in the form of higher health insurance rates. Alcohol and drug abuse are costly to both the employer and the employee.

5.0 Employee Assistance Program (EAP) and Accommodation of Treatment of Addiction

The City encourages employees who have a substance abuse problem to voluntarily report such to their supervisor. Upon request, the City will make every reasonable attempt to assist the employee by referral to appropriate counseling/treatment professionals. While the City may support an employee in obtaining assistance with an abuse or dependence problem, any work-related performance problems will be addressed through normal procedures.

An employee who violates this policy may be required to be evaluated by the City's Employee Assistance Program (EAP). The employee may be required to participate in a treatment program. The costs associated with counseling or treatment is the responsibility of the employee. Most treatment programs are covered by the employee's medical insurance and some resources are offered by the EAP free of charge.

If an employee chooses to seek help without notifying a supervisor, EAP resources are available on a confidential basis to any employee or family member who chooses to take advantage of this benefit. Information on an employee's visit will be reported to the City only upon the written approval of the employee. Medical insurance coverage for drug and alcohol treatment is also included under medical plans provided by the City.

Employees wishing to obtain more information on any of these benefits should contact the Human Resources Department. Requests to accommodate treatment for addiction should be made to the employee's supervisor or the Human Resources Director or Designee.

5.1 Substance Abuse Professional (SAP)

Please see the most current EAP located on the City website under Human Resources.

DOT Substance Abuse

List provided upon Request from HR

6.0 Training Requirements Regarding Substance Policy

Supervisors of employees holding Commercial Driver Licenses (CDLs), shall have at least one (1) hour of training on alcohol abuse and one (1) additional hour of training on controlled substance use annually based on DOT regulations. Training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. CDL holders will receive annual education on alcohol and controlled substance abuse.

All other City employees, including supervisors, are required to attend training on alcohol and substance abuse.

7.0 Designation of Safety-Sensitive Position

The Human Resources Department consults on an ongoing basis with City departments to identify positions that may be classified as safety sensitive. Positions and essential job functions will be reviewed on a case-by-case basis to determine whether the position is safety sensitive and whether random substance screening or some other type of increased should be implemented for that position.

Safety-Sensitive means anyone within certain departments that hold commercial driver's licenses (CDL), excluding transit employees, that perform, are ready to perform or are immediately available to perform the following on-duty functions:

- Waiting to be dispatched
- Inspecting, servicing, or conditioning any equipment, or commercial motor vehicle; or
- Controlling or driving a commercial vehicle.

City of Cheyenne's positions under this definition are as follows:

- Fleet Maintenance – All personnel except Office Manager and PT Parts Runner
- Forestry – All personnel
- Parks – Foremen only
- Sanitation – All personnel except Office personnel
- Landfill – All personnel
- Street and Alley – All personnel

Safety-Sensitive under the Federal Transit Administration (FTA) means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

- Operating a revenue service vehicle, including when not in revenue service
- Operating a non-revenue service vehicle, when required to be operated by a holder of a CDL
- Controlling dispatch or movement of a revenue vehicle.

City of Cheyenne’s positions under this definition are as follows:

- Fleet Maintenance * - Mechanic and Senior Mechanic
- Transit – All personnel except Transit Operations Assistant and Maintenance

*Mechanics and senior mechanics that are subject to drug and alcohol testing as part of Federal Motor Carrier Safety Administration (FMCSA) program, who also provide services to the transit system, are subject to FTA regulations while performing FTA-defined safety-sensitive functions. The Fleet Manager will determine which administration regulates the majority, (50 percent) and therefore, primary.

Police Officers and Firefighters who are not covered by FTA or FMCSA regulations will not be sent for DOT tests. These employees will be subject to non-DOT testing.

8.0 Prohibited Substances

Prohibited substances, for the purposes of this program, include but are not limited to:

- Marijuana this includes CBD
- Amphetamines
- Opiates
- Phencyclidine (PCP)
- Cocaine
- MDMA
- Heroin
- As well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.

Additionally, beverages containing alcohol and prescription or non-prescription medications containing alcohol are prohibited. Covered employees may be tested for these drugs any time while at work.

9.0 Prohibited Conduct

Use of any illegal drug or substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined by 21 C.F.R. §§ 1300.11 through 1300.15 and the Wyoming Controlled Substances Act, Wyo. Stat. § 35-7-1031, et seq., is always prohibited unless a legal prescription has been written for the substance.

Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

9.1 Manufacture, Trafficking, Possession and Use of Illegal Drugs

City employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances while on duty and on City property, in City vehicles, in uniform (including clothing indicative of employment with the City) or while on City business. Employees who violate this provision will be subject to disciplinary action as prescribed by the Rules and Regulations. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

9.2 Intoxication/Under the Influence

City employees are prohibited from being intoxicated, impaired or under the influence of a prohibited substance. Employees who are reasonably suspected of being under the influence of a prohibited substance are not fit for duty and shall be removed from driving or safety sensitive functions pending an investigation and verification of condition.

Safety-sensitive employees who fail or refuse a DOT drug test shall be removed from duty without pay, referred to an SAP and subject to disciplinary action as prescribed by the Employee Handbook.

A drug test is considered positive if an individual has a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 C.F.R. Part 40, as amended.

9.3 Alcohol Use

No employee shall use alcohol on duty or in uniform. No employee shall use alcohol within four hours of reporting for duty, or during the hours that they are on call. Violation of these provisions is prohibited and punishable by disciplinary action as prescribed by the Rules and Regulations; this policy is issued under City authority.

No employee will be allowed to report for duty within four hours of using alcohol. No employee will be allowed to remain on duty when his/her ability to drive a commercial motor vehicle (CMV) or perform assigned safety-sensitive functions is adversely affected by alcohol or when his/her breath alcohol test is positive. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

Employees with a BAC of 0.02 or greater and less than 0.04 will be removed from safety sensitive duty for 8 hours or until a retest result in a concentration of less than 0.02. Failure to comply with this provision shall result in disciplinary actions prescribed by the Employee Handbook. Any employee who tests positive will be subject to disciplinary action under the Rules and Regulations.

Employees with a BAC of 0.04 or greater will be removed from duty immediately then referred to an SAP for evaluation. The employee will be required to submit to a return to duty test and/or undergo treatment, as prescribed by the SAP, before returning to duty.

9.4 Compliance with Testing Requirement

All DOT drivers, any employee and temporary employees covered by this policy including full-time and part-time, unless otherwise specified; and employees performing safety-sensitive function listed in paragraph 7.0, will be subject to urine drug testing and breath alcohol testing. Any employee who refuses to comply with a request for testing may be removed from duty and is subject to disciplinary action as prescribed by the Rules and Regulations.

A dilute specimen is a specimen with creatinine and specific gravity values that are lower than expected for human urine. If the test is reported as a DILUTED POSITIVE, the test will be treated as a verified positive test result. If the test is reported as NEGATIVE DILUTE, the employee will be required to take another test and the results of the second test will be accepted. The retest will not be conducted under direct supervision.

9.5 Commercial Driver License's Penalty on a Positive Test

Will be reported to the Clearinghouse and affect your license until you have completed an outpatient treatment center. Any employee who tests positive is subject to disciplinary actions under the Rules and Regulations.

9.6 Treatment Requirements

All employees are encouraged to make use of available resources for treatment of alcohol misuse and illegal drug use problems. Full-time employees with positive drug or alcohol test results, and those who have an alcohol test result of 0.02 or greater, however, will be required to submit to testing upon return to duty as set forth in § 10.6. Full-time employees with positive drug or alcohol test results who complete a prescribed treatment program or obtain a release from a substance abuse professional will be subjected to follow-up testing as prescribed in § 10.6 under Procedures for Random Substance Testing.

The City may make future employment of full-time employee's contingent upon participation in and successful completion of a treatment program. The cost of any treatment or rehabilitation services will be paid for by the full-time employee or his/her insurance provider subject to the health insurance policy provisions. Full-time employees will be allowed to take accumulated sick leave, vacation leave and Family and Medical Leave Act leave to participate in the prescribed rehabilitation program (subject to legal limitations).

Part-time employees who test positive are subject to disciplinary action under the Employee Handbook pertaining to part-time employees.

Any employee who refuses or fails to comply with City requirements for treatment, after care or return to duty shall be subject to disciplinary action as prescribed by the Rules and Regulations.

Employees who make self-referrals (e.g., no management involvement or positive results) will be allowed to take accumulated sick leave and vacation leave to participate in a treatment program (subject to legal limitations). The cost of any treatment or rehabilitation services will be paid for by the full-time employee and/or his/her insurance provider subject to the health insurance policy provisions.

9.7 Notifying the City of Criminal Drug Conviction

All employees are required to notify the City of any criminal drug statute conviction for a violation occurring in the workplace within five (5) days of such conviction. Failure to comply with this provision shall result in disciplinary action as prescribed by the Rules and Regulations.

9.8 Proper Application of the Policy

The City is dedicated to assuring the fair and equitable application of this substance abuse policy. Therefore, supervisors are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy regarding subordinates, shall be subject to disciplinary action, up to and including termination. A notice regarding substance abuse testing shall be posted in conspicuous locations on City premises. This policy shall be made available to employees and job applicants in the Human Resources office.

10.0 Types of Substance Testing

10.1 Pre-employment Substance Testing: After receiving a job offer and before starting work, all applicants must pass a pre-employment alcohol and drug screen. The types of screening and the levels of the substances, which constitute a positive screen, will be determined administratively after consultation with the City medical service providers. Announcements for positions with the City will state that both screenings will be part of the pre-employment process. In addition, when reporting to the medical facility, applicants will be required to sign a consent form. If applicant cannot produce enough specimen or any specimen after two (2) tries will be required to return within 24 hours. Applicants who refuse to consent to substance screening or who attempt to tamper with the screening sample will not be eligible for City employment for one year. If a positive substance screen is confirmed, the applicant will be disqualified for consideration for employment for the period of one year. If the applicant is disqualified, the Human Resources Director or Designee will notify the appropriate supervisor and applicant that they are not eligible for hire.

10.2 Post-Accident, -Incident, -Injury, -Shooting Substance Testing: An employee who is involved in an accident or an incident involving property damage or injury to the employee, or another person shall immediately report such occurrence to the supervisor. Supervisor will then notify the Safety Officer of the accident.

10.3 Mandatory Substance Testing: Any employee whose order, action or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading up to or causing an incident or accident should be tested for alcohol and drugs when the following

incidents occur on duty:

- An employee is involved in an incident or accident and the employer requests a drug and alcohol test; or,
- An employee whose performance could have contributed to an incident or accident in which a person is injured or requires immediate treatment away from the scene or accident, or a motor vehicle or equipment is damaged to the extent that it must be towed from the scene or is rendered inoperable and requires more than simple repairs.
- An employee covered under Part 382, when the driver receives a citation under State or local law for a moving traffic violation arising from the accident.
- Employees tested under this provision will include all employees, not only personnel with CDL's, and any employee performing a safety-sensitive function who could have contributed to the accident. This determination shall be made based on the facts and circumstances surrounding the accident.

Testing is mandatory unless a supervisor or higher Manager determines that the employee's actions were not a causative or contributing factor. Such decision may be made only after consulting with Human Resources to determine whether testing is not required under the circumstances. Testing is required unless such consultation occurs. Failure to comply with a mandatory test may result in termination.

10.4 Procedures of Substance Testing: If an employee is to be tested pursuant to this policy, testing for both drugs and alcohol should be conducted as soon as possible after the occurrence. The employee's immediate supervisor should contact Human Resources to obtain authorization. An employee required to be tested under these circumstances may be transported to the testing site by the employee's supervisor. If an employee fails or refuses to take an alcohol test within two (2) hours after the accident, the supervisor or any supervisor should prepare and keep a memorandum stating why the test was not taken within two (2) hours. If the alcohol test is not administered within eight (8) hours after the accident, the supervisor shall cease attempts to require the test and shall describe the reasons the test was not administered in a memorandum. If an employee fails or refuses to take a drug test with thirty-two (32) hours after the accident, the supervisor shall cease attempts to require the test and shall prepare a memorandum stating why the test was not administered. The employee shall remain available for testing after an accident or shall be considered as having refused to be tested. An employee who required testing may leave the scene of the accident to obtain emergency assistance or to obtain medical attention. However, the obligation remains upon the employee to be available for testing as soon as possible after the accident.

10.5 Reasonable Suspicion Substance Testing: An employee shall be tested for alcohol and drugs at any time while on duty if the supervisor has "reasonable suspicion" that the employee has engaged in conduct prohibited by this policy regardless of whether the employee is "under the influence" of substances. Employees in possession of illegal drugs while on duty, unless required in the performance of their duty, will be tested.

- **Observation to Determine Reasonable Suspicion Substance Testing:** Reasonable suspicion is a belief based on objective facts sufficient to lead a reasonably prudent

person to suspect that an employee has engaged in conduct prohibited by this policy. The supervisor shall base the decision on specific, present, and observations of the employee's appearance, behavior, speech, or body odors, including indications of the chronic and withdrawal effects of alcohol and illegal drugs. Observations which constitute a factual basis for determining reasonable suspicion may include, but are not limited to, the following behaviors or signs: odor of an alcoholic beverage, slurred speech, erratic behavior, violent mood swings, excessive or unexplained absenteeism, including tardiness, or an accident which was caused by the apparent action or inaction of the employee.

- **Who to Consult Before Making Final Decision:** The supervisor shall make a reasonable effort to consult with a member of Human Resources or his/her department head before ordering a reasonable suspicion test. If unable to contact any of the above group, the supervisor is responsible for making the decision to test based on direct observation as outlined in the above paragraph.
- **Reasonable Suspicion Testing Procedures:** The supervisor, manager or director must observe the person that reasonable suspicion is in question. An employee who is tested based on reasonable suspicion shall be transported to the test site and then to the employee's home or another safe place by the supervisor or a responsible person designated by the supervisor.
- **Reasonable Suspicion Testing Time Limits:** The employee who is suspected of prohibited conduct regarding use or abuse of alcohol or drugs can only be tested if the observations are made during, immediately before, or immediately after the employee's work time. If the employee fails or refuses to be tested for alcohol or drugs within two (2) hours of the observations, the supervisor should prepare a memorandum stating why the test was not promptly administered. After eight (8) hours, the supervisor shall cease attempts to require an alcohol test and shall prepare a memorandum stating the reasons for not administering the test. A drug test may be administered more than eight (8) hours after the observations if the supervisor provides written justification for the delay. After thirty-two (32) hours, the supervisor shall cease attempts to require a drug test and shall prepare a memorandum stating the reasons for not administering the test.
- **No Work Following Reasonable Suspicion Observations:** If the supervisor requires that a reasonable suspicion test be performed, the employee shall not be permitted to work until negative results of all tests are received or the employee's division manager has approved his/her return to duty, after consult with the Human Resources Director or Designee.

10.6 Procedures for Random Substance Testing: Random drug and alcohol screening of employees working in safety-sensitive positions shall be conducted according to the selection processes and procedures set forth herein.

- **Random Substance Testing Selection Method:** Employees will be selected for random testing and will only be sent when on duty. Each employee has an equal chance of being tested each time a selection is made. There are no limits on the number of times an employee may be randomly selected for testing. Fifty percent (50%) of all employees in

safety-sensitive positions that are not covered by the Federal Department of Transportation regulations will be randomly selected annually for controlled substance and alcohol testing.

- Notification: When the Human Resources Department receives notice that employees have been randomly selected for testing, the supervisors of the employees will be notified. The supervisor shall notify each employee when the employee is selected for a random test.
- Random Substance Testing Procedures: CDL employees performing a safety-sensitive function when notified of a random test shall cease work and proceed to the test site immediately. If an employee tests positive for alcohol, the employee's supervisor shall arrange to transport the employee home or to another safe place.
- Return to Work After Positive Test: If an employee is permitted to return to work after a violation of this policy, the employee must be tested for alcohol and drugs. The test results must indicate an alcohol concentration of less than point zero two (.02) BAC and be negative for drugs before the employee returns to work or released by a Substance Abuse Professional (SAP) before returning to work.
- Follow-up Testing Pursuant to Continued Employment: When an employee tests positive for either alcohol or drugs, they will be evaluated by SAP. If the substance abuse professional recommends that the employee needs assistance in dealing with an alcohol and/or drug abuse problem, and if the employee is permitted to return to work, the employee shall execute an agreement that addresses conditions of continued employment, including mandatory treatment and unannounced follow-up alcohol or drug tests. There will be up to six (6) tests in the first twelve (12) months following the employee's return to work. Follow-up testing may occur up to sixty (60) months after the date of the employee's return to duty. Follow-up alcohol and substance tests shall be in addition to, and not a substitute for, any other testing required or permitted by these rules.

11.0 General Substance Testing Procedures

The testing facility will collect samples in such a manner as to ensure a high degree of security for the sample, and to ensure the sample is free of contamination. Trained professional technicians will conduct the collections following procedures intended to preserve the employee's right to privacy as much as possible under the circumstances.

- Split Specimen Substance Collection: A split specimen collection will be done by dividing the urine into two specimen bottles. The initial test and confirmatory test will be performed on the first specimen and, if requested by the employee, an independent test will be performed on the second specimen at the employee's cost. Should the second test invalidate the first the City will reimburse the employee for the cost of the second test.

12.0 Discipline Regarding Substance Abuse:

If an employee tests positive after taking a drug or alcohol test, the Department Head or Designee may impose disciplinary measures up to and including termination. Past work performance and violations of City department rules or standard operating procedures will be considered prior to the implementation of disciplinary measures. Aside from these considerations, discipline will be applied uniformly for all personnel who test positive for drugs or alcohol.

13.0 Maintenance of Records:

All information from an applicant's or an employee's drug and alcohol tests will be confidential to the extent required by law.

Records will be maintained in a secure manner so that disclosure of confidential information to unauthorized persons does not occur.

14.0 Supervisor and Employee Training:

Supervisors will annually receive two (2) hours of training in the detection and reporting of substance abuse and subsequent reasonable suspicion testing and locations for testing as provided in this policy.

Employees will annually receive one (1) hour of training on the requirements of this policy and controlling Federal regulations.