

GENERAL POLICY

The purpose of this policy is to implement the Federal Drug Free Workplace Act of 1988 by providing for a safe and productive work environment that is free from impaired performance caused by employee use or abuse of alcohol, controlled substances, and/or medication.

EMPLOYEE RESPONSIBILITIES

- A. No employee shall unlawfully manufacture, dispense, possess, use, or distribute any controlled substance, medication, or alcohol.
- B. Any employee convicted under a federal or state statute regulating controlled substances shall notify the Town Administrator within five (5) days after the conviction.
- C. Employees are prohibited from consuming alcoholic beverages within four (4) hours of work, during work hours, or while at work during breaks or lunches.
- D. No employee shall be impaired by alcohol, illegal drugs, or medication during work hours.
- E. No employee shall represent the Town of Allenstown in an official capacity while impaired by alcohol, illegal drugs, or medication.
- F. No employee using medication that may impair performance shall operate a motor vehicle or engage in safety sensitive functions while on duty for the Town.
- F. If an employee is using prescription or non-prescription medication that may impair the ability to safely perform duties, the employee shall report that fact to their Department Head or the Town Administrator prior to performing any work.
- G. An employee who has reason to believe that the performance of another employee is impaired by alcohol, illegal drugs, and/or medication shall immediately notify the Department Head or Town Administrator.

DISCIPLINARY ACTION

Because of the serious nature of illegal use or abuse of alcohol, controlled substances, and/or medication, violations of this policy will lead to appropriate disciplinary action, up to and including termination.

ALCOHOL & DRUG TESTING**A. PURPOSE:**

Town government provides a variety of public services. The employees of the Town are its most valuable resource, since it is through their work that services are provided. When delivering services, the health and safety of the public and the residents of the Town's facilities and the health and safety of employees are of paramount importance.

Drug and alcohol abuse is a problem of serious concern and one that affects all segments of the community, including the workplace. Such behavior poses risks to members of the public and to Town employees. Employees have the right to work in an alcohol and drug-free environment. Residents and members of the public have the right to be free from the harmful effects of alcohol and drug abuse in the provision of public services. The objective of the Town is to provide a safe work environment and to protect the public by ensuring a drug-free workplace.

B. POLICY:

It is the policy of the Town of Allentown not to test employees for the use of drugs and/or alcohol other than as provided herein. Employees who display job difficulties may be required, upon reasonable suspicion, to undergo testing as set forth in this policy for substance use or abuse. Such testing shall include Reasonable Suspicion testing, and Post Accident testing.

Employees of the Town who are required to have a Commercial Driver's License (CDL) as part of their jobs are subject to drug and alcohol testing as required by the U.S. Department of Transportation through the Federal Highway Administration ("FHWA"). CDL employees, in addition to Reasonable Suspicion and Post Accident testing, shall be subject to Pre-employment testing, Random testing and Return to Work testing. Pursuant to NH Admin. Rule Saf-C 1801.02(a)(1), for purposes of this policy, the term "CDL employee" shall not include fire service personnel driving emergency vehicles assigned or registered to the Town Fire Department in pursuit of fire service purposes.

In addition, all job applicants for Town positions that are considered a "Safety Sensitive Position", shall be subject to Pre-Employment Drug Testing. For purposes of this policy "Safety Sensitive Position", means a position that requires an employee to: carry a firearm; work closely with an employee who carries a firearm; perform life-threatening procedures; work with heavy or dangerous machinery; work directly with elderly residents; work directly with children; work with detainees in the correctional system; work with confidential information or documents pertaining to criminal investigations; work with controlled substances; hold a position in which a momentary lapse in attention could result in injury or death to another person; or a position requiring a Commercial Driver's License (CDL).

Treatment and Rehabilitation. The Town provides an Employee Assistance Program for employees needing treatment or rehabilitation as well as medical plan coverage for both inpatient and outpatient treatment. Accrued leaves may be used for treatment and rehabilitation purposes. Treatment and rehabilitation is entirely the financial responsibility of the employee. Employees who think they may have an alcohol or drug usage problem are urged to voluntarily seek confidential assistance from the Employee Assistance Program, if available.

Prohibitions. This policy prohibits the following:

1. The unauthorized use, possession, manufacture, distribution or sale of an illegal drug, controlled substance or drug paraphernalia on Town property or while on Town business, in Town supplied vehicles or during working hours.
2. The unauthorized use, possession, manufacture, distribution, or sale of alcohol on Town premises or while on Town business, in Town supplied vehicles or during working hours.
3. Storing any illegal drug, drug paraphernalia, any controlled substance whose use is unauthorized, or any container of alcohol, in or on Town property (including vehicles).
4. Reporting to work, or working, while under the influence of illegal drugs or the illegal use of

legal drugs or alcohol, whether on Town premises, on Town business, or in Town supplied vehicles.

5. Failing to notify the employee's supervisor before beginning work that the employee is taking medications or drugs that may interfere with the safe and effective performance of duties.
6. Refusing to immediately submit to an alcohol and drug test when requested by a supervisor, in accordance with this policy.
7. Failing to provide, by the next workday following a request, their valid prescription for any drug or medication identified when the results of a drug test are positive.
8. Refusing to submit to an inspection as described in the Enforcement section when requested by a supervisor, in accordance with this policy.
9. Failing to adhere to the requirements of any drug or alcohol treatment program in which the employee is enrolled as a condition of continued employment.
10. Violating any criminal drug or alcohol statute while working. Conviction under any criminal drug statute.
11. Failing to notify the Town Administrator of any arrest or conviction under any criminal drug or alcohol statute by the next workday following the arrest or conviction.

Enforcement. When there is a reasonable suspicion to believe that an employee's job performance may be impaired by drugs or alcohol, the supervisor may: (a) direct the employee to submit to a drug/alcohol test; and/or, (b) search, with or without employee consent, all areas and property in which the Town maintains control or joint control with the employee.

C. TESTING:

Drug and Alcohol Testing. A test under this policy is a urinalysis (for drugs) and an evidential Breathalyzer test (for alcohol) administered under approved conditions and procedures conducted for the sole purpose of detecting drugs and alcohol. Other FHWA approved methods to detect the presence of alcohol may be added later, including blood/alcohol and saliva tests. The test will be conducted by a Town appointed medical laboratory and paid for by the Town.

An employee ordered to submit to a test or an applicant for employment directed to test by the Town Administrator or Department Head shall not refuse. A refusal will equal a positive test. Following authorization for reasonable suspicion or post-accident drug testing, the supervisor or other authorized person will transport the employee, as necessary, to the designated test site.

Pre-Employment Testing. The Town requires that drug tests shall be conducted before applicants for Safety Sensitive Positions are hired, or after an offer to hire but before Safety Sensitive functions are performed for the first time. Testing is also required when employees transfer to a Safety Sensitive Position. The test will be administered after a conditional offer of employment has been made and before any tentative start date. All offers of employment or transfer to a Safety Sensitive Position shall be subject to a negative drug test result under this category.

This test will be conducted under the SAMHSA (Substance Abuse Mental Health Services Administration) standards and protocols. The test will involve an unobserved urine sample collection for drug testing. All

urine drug testing will be conducted by a SAMHSA certified laboratory.

A positive test will exclude an applicant from being hired or transferred.

Reasonable Suspicion. "Reasonable Suspicion" is a belief based on objective facts sufficient to lead a reasonable person to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or that the employee's ability to perform his/her job safely is reduced. For example, any of the following, alone or in combination, may constitute reasonable suspicion:

1. Slurred speech;
2. Irregular or unusual speech patterns;
3. Impaired judgment;
4. Alcohol odor on breath;
5. Uncoordinated walking or movement;
6. Unusual or irregular behavior such as inattentiveness, listlessness, hyperactivity, hostility or aggressiveness;
7. Possession of alcohol or drugs;

Random Testing. During the calendar year, 50% of CDL holders will be tested on a random basis for the presence of drugs and 25% for the presence of alcohol. Approximately quarterly, although testing could occur anytime during the year, names of CDL holders will be drawn randomly to select individuals for drug and alcohol testing. These individuals will be scheduled for testing. All individuals will be required to go to a collection site for drug and alcohol testing. No advance warning will be given to employees regarding the date and time of the random test.

Post-Accident. Post-Accident drug or alcohol testing is testing based on an accident or observation of unsafe work practices when the employee's performance either contributed to an accident or cannot be discounted as a contributory factor to an accident or based on an accident which could have reasonably resulted from an employee's performance. Any accident involving a Town vehicle must be reported as soon as possible by the employee to his/her supervisor. The supervisor should investigate the circumstances of the accident and determine if there is reasonable suspicion to require a drug and alcohol test. An employee shall have a drug or alcohol test when the employee is involved in a workplace accident and if there is reasonable suspicion that the employee caused or contributed towards the cause of the accident. In addition, testing is mandated in the following circumstances:

- A) An accident that has resulted in the loss of human life.
- B) An accident in which the CDL driver receives a citation and there is an injury requiring medical attention away from the scene of the accident.
- C) An accident in which the CDL driver receives a citation and any vehicle in the accident must be towed from the scene.

A post-accident drug and alcohol test should be completed immediately. Drug testing must occur no later than 32 hours after the accident. Alcohol testing must occur no later than 8 hours after the accident. In the instance of a CDL driver, if more than two hours elapse before an alcohol test is administered, the Town is required to prepare and maintain on file an explanation of why a test was not promptly administered for the FHWA. If alcohol testing is not administered within 8 hours following the accident, the Town shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.

A driver is prohibited from consuming alcohol for 8 hours after an accident or until he/she has taken a drug and alcohol test.

Note: a police officer investigating an accident has legal authority under certain circumstances to order a blood sample to be taken for drug and alcohol testing.

Return to Work Testing. When a CDL employee has tested positive for drugs or alcohol during a random or post-accident test the provisions in the section below on Discipline and/or Treatment/Rehabilitation will apply. In addition, the following specific rules apply:

- 1) Employees will be referred to the Employee Assistance Program or to the Substance Abuse Program as part of their return to work requirements.
- 2) The employee must comply with any recommended rehabilitation.
- 3) The employee must have a negative retest before being permitted to return to work.
- 4) Unannounced follow-up tests will be conducted at least 6 times within the first 12 months after an employee returns to work. The follow-up tests will be at the expense of the employee.
- 5) Testing may be extended for a period of up to 60 months after return to work.

D. PROCEDURES:

The laboratory shall test for the following:

Amphetamines
Cocaine
Opiates
PCP (Phencyclidine)
THC (Marijuana)
Alcohol*

* Tested through an evidential Breathalyzer instrument at a level of .02 alcohol/breath concentration or greater, expressed in terms of grams per 210 liters of breath.

Pre-Duty Use of Alcohol. Employees are prohibited from consuming alcohol for 4 hours before going on duty or before operating a commercial motor vehicle. This regulation from the FHWA applies to scheduled shifts and all callout situations. If an employee cannot meet this requirement, it is his/her responsibility to tell their supervisor, or person initiating the callout, that they cannot report to work.

Impairment. The supervisor shall directly observe the employee's behavior and document in writing the facts constituting reasonable suspicion. When circumstances permit, a second person shall also observe the employee to verify that there is a reasonable basis to believe that drug or alcohol impairment may be present. If possible, the supervisor shall question the employee with regard to the situation. When a determination is made that an employee may be impaired because of drug or alcohol use, the employee shall be relieved of his/her duties and placed on paid leave status.

The supervisor shall immediately notify the Department Head who shall then notify the Town Administrator. Upon review, the Town Administrator may authorize the Department Head to require

testing. In no case shall the time for review exceed two hours.

The individual shall appear at the designated test site at the time instructed by the Department Head. A refusal to do so will be deemed a positive result.

Evaluation of Legal Drug Use. The subject (employee or applicant) will be interviewed by testing personnel prior to the sample collection to determine whether the subject is currently using drugs under medical supervision and/or taking over-the-counter medications which might reasonably impact the test.

In the case of prescriptive drug use that may affect an employee's ability to perform his/her job safely, the Town will require the subject to provide by the next scheduled work day a bona fide verification of a valid current prescription for the drug identified. The applicant shall be dropped from eligibility or the employee will be subject to disciplinary action when:

- (a) Verification of a valid prescription is not provided and the employee has not previously notified his or her supervisor;
- (b) The prescription provided is not in the subject's name.

Specimen samples shall be sealed and labeled. Samples shall be stored in a secure and refrigerated atmosphere. A large enough sample will be taken to allow for a second, follow-up test.

Any sample that has been adulterated or is shown to be a substance other than urine shall be reported as such. Any applicant or employee providing false information about a urine or breath specimen or who attempts to contaminate such sample shall be subject to removal from consideration for hiring or terminated.

Results of Drug Testing. All laboratory results will be reported by the laboratory to a Medical Review Officer (MRO) designated by the Town. The MRO will review the results of the test and determine if the sample contains any illegal drug, legal drug or alcohol at levels that would cause impairment or reveal its use in an illegal manner. The MRO will also review the medical history made available by the subject when a confirmed positive test could have resulted from a legally prescribed medication.

The results shall be forwarded immediately to the Town for further review. The Town Administrator will send a copy of the drug testing results to the employee's home address upon request.

Positive Results. When there is a confirmed presence of alcohol at the .04 level or greater or any legal drug, for which in the opinion of the Town no reasonable explanation or proof is provided, the subject shall be deemed to have failed the test. The employee shall be subject to disciplinary action as outlined in the personnel policies of the Town up to and including termination.

In addition, when there is a confirmed presence of alcohol at the .02 level or greater, the employee is deemed unable to safely operate a motor vehicle, operate machinery or perform safety-sensitive work. If these tasks are part of an employee's job (in the opinion of the supervisor), he/she shall be considered unable to work and will be sent home for the remainder of his/her work shift. The individual shall be required to take leave without pay. The employee shall not be permitted to take sick leave or vacation time. The employee shall return to work after a period of 24 hours or at the beginning of their next workday or shift (whichever period is greater). Under this policy, a Breathalyzer test of between .02 and .39 would be considered a positive test and may result in further disciplinary action other than taking leave without pay for the remainder of his/her work day(s) or shift.

Notification:

Job Applicants. In the case of job applicants, the Town shall notify the applicant. An opportunity to have the original urine sample retested at the applicant's expense shall be afforded. The applicant must request a re-test within 72 hours. If there is a confirmed positive retest, the Town Administrator shall notify the Department Head and the applicant shall be removed from eligibility for hire.

Employees. The Town shall advise the employee of the positive test result. The employee shall be afforded the opportunity to have the original urine sample retested. Retests must be requested within a period of 72 hours after notification of an initial positive test by the Town Administrator.

Retesting of Employees: The original lab (at the Town's expense) will do a re-test unless the employee wishes to pay for a re-test at a different laboratory. The second test must be done by a SAMHSA certified lab. If the Employee declines a re-test, or, the re-test confirms the results of the initial test, the Town Administrator shall be notified. The Town Administrator shall notify the Department head of the results and a determination of appropriate action made.

Discipline. As with any issue of employee misconduct, an appropriate investigation and assessment of circumstances needs to be made with guidance from the Town Administrator and the Board of Selectmen. Advice from medical professionals may be sought. A decision to refer for substance abuse evaluation, treatment and/or discipline may be made depending on the nature and severity of misconduct, the employee's work history, and other pertinent facts and circumstances. In certain situations, follow-up drug testing may be recommended and conducted to ensure the employee remains drug and alcohol free. Rehabilitative treatment and follow-up testing shall be the financial responsibility of the employee.

A referral for evaluation by a substance abuse professional is mandatory for CDL holders when there is a positive test. The evaluation by the substance abuse professional shall be the financial responsibility of the employee.

Any disciplinary action will be carried out in accordance with Town Personnel Policies.

Negative Test Results. Employees who have been tested for drugs and alcohol, where no substance abuse was found, shall receive notice of such findings from the Town. A copy of this notice and a record of the negative results shall be placed in a confidential folder in a separate, secured file maintained by the Town Administrator.

In the case of job applicants, the Town Administrator shall notify the Department Head and Board of Selectmen that the applicant is clear for hire.

Confidentiality. Laboratory reports of positive test results shall not appear in an employee's general personnel folder. Information of this nature will be placed in a separate confidential medical folder that will be maintained by the Town Administrator.

The positive reports or test results shall be disclosed only on a need-to-know basis. Disclosures without employee/applicant consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the Town and the employee; (3) the information is to be used in administering an employee benefit plan such as for drug or alcohol treatment; (4) the information is needed by medical personnel for the diagnosis or treatment of the patient (employee) who is unable to authorize disclosure.

No records containing information required by this policy will be released except as provided as follows:

- 1) Upon written request of the employee.
- 2) Upon written authorization of the employee, records will be disclosed to a subsequent employer subject to use as specified by the employee.
- 3) Upon specific, written authorization by the employee, records will be released to an identified person, for use only as specified by the employee.

Records may be disclosed to a decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee, including, but not limited to, a worker's compensation, unemployment compensation or other proceeding relating to a benefit sought by the driver.

Independent Contractors. Independent contractors and their employees who must hold a CDL for the contracted activity are subject to the requirements of 49 CFR Part 382 and are responsible for compliance with that and related laws. The Town will not provide or pay for tests, evaluation or rehabilitation for independent contractors or their employees. The Town shall make compliance with the law a condition of any contract which requires a CDL driver.

Record Retention Requirements. The Town shall maintain all records related to drug and alcohol testing for each employee in a secure location with controlled access. The Town shall keep all documents sent by the laboratory or the collection site.

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