



SAMPLE LANGUAGE FOR EMPLOYER SUBSTANCE ABUSE POLICIES

Policy Statement

It is the policy of (EMPLOYER) to provide a safe and healthy work place for all employees. Employment with this organization can include some dangerous activities. Moreover, employment in general is regulated by a variety of Local, State and Federal regulations and statutes, including laws that require employers to provide and maintain a safe work place. This policy is intended to enhance our team efforts to provide a safe and accident-free work place. It is also intended to promote a working environment free from the influences of alcohol and/or illegal drugs which can affect safety as well as productivity, efficiency and quality of work.

Coverage

This policy applies to all employees (add additional categories as appropriate.)

Zero Tolerance Language

This is a zero tolerance policy.

Useful Definitions

Where used in this policy, "**drug**" includes any substance which may impair mental or motor function and includes, but is not limited to, illegal drugs, substances controlled under federal or state law, synthetics, designer, "look-alikes," inhalants, prescription drugs which are not used in accordance with the prescription, or other similar substances. Prescription drugs not used in accordance with medical authorization are subject to regulation under this policy as well.

Where used in this policy, "**alcohol**" includes any beverage or substance containing alcohol including ethanol, isopropanol or methanol.

Where used in this policy, "**under the influence**" means having any detectable level of a drug or alcohol in one's system (including but not limited to blood and urine). It also includes having consumed alcohol or drugs so recently that there is a reasonable possibility of impairment to safe and efficient functioning, including being hung over.

Where used in this policy, "**on duty**" includes breaks, rest or meal periods taken during the work day as well as time on Employer's premises preparing for work, waiting to be assigned to work, or time spent after work preparing to leave. "On duty" also includes the time an employee is representing the company.

Where used in this policy, "**premises**" includes all company property, buildings, furniture, equipment, company vehicles, parking lots, and any location at which company business is conducted regardless of ownership.

Where used in this policy, a "**confirmed negative**" shall mean a test result establishing that no detectable level of alcohol or drugs appears in the specimen (as determined by the testing laboratory using such procedures and cut off levels as the laboratory deems proper) on any test, provided that the specimen has been given in accordance with this policy and has not been adulterated or diluted or otherwise subject to tampering.

Prohibitions

The following acts are strictly prohibited:

- **Active use or possession.** The use or possession of alcohol, drugs, or other controlled substances (including marijuana and narcotics) while on duty, on Company premises or job sites, at Company sponsored events, or at locations under the Company's control (including parking lots). For purposes of this policy, "on duty" includes breaks taken during the work day.
- **Being under the influence.** Reporting to work, being on the premises, or working, while under the influence of alcohol or illegal drugs.
- **Manufacturing or trafficking.** The manufacture, purchase, sale, distribution, dispensation or transfer of possession of illegal drugs on Company premises, job sites, at Company sponsored events, or at locations under the Company's control.
- **Interference.** Interfering with the administration of this policy including but not limited to the search or testing process. This includes refusing to be tested, refusing or failing to cooperate during collection or testing processes, adulteration, dilution, or other forms of specimen tampering, refusal to drink liquids when otherwise unable to give a specimen, or any other conduct which has the purpose or effect of adversely affecting the Company's enforcement of this policy.

Reminder of Criminal Authority

In addition to any disciplinary action under this policy, the Company reserves the right to involve the police or other authorities to address any conduct which may also be a violation of state or federal criminal laws.

General Testing Provisions

General statement and "savings clause": The Company reserves the right to test applicants and employees in accordance with the following; however, any testing will comply with any limitations imposed by state or local law and the Company will not do any form of testing that is

prohibited by the applicable jurisdiction. Testing for alcohol will be done only on reasonable suspicion.

Testing methodology. The Company will use those testing methods which are recommended by its testing laboratories including but not limited to testing of breath, blood, saliva, hair or urine, so long as those methods are acceptable in the applicable jurisdiction.

Requirement to cooperate with procedures. Applicants and employees will as a condition of employment or continued employment be required to execute such consent forms as are necessary or appropriate to ensure that this policy is followed, that testing may be carried out, and that the Company receives information from the collection and testing facilities and Medical Review Officer relevant to the enforcement of this policy. *[delete reference to MRO if one will not be used]*

Paid work time. Time spent by employees being tested will be considered work time and employees will be compensated for such time at their normal rates of pay in addition to their actual expenses for transportation. Employees who are held off work pending confirmation or retesting will be reimbursed for lost time if the final result is a confirmed negative. Employees who are required to be tested shall be tested either during the normal work day or immediately before or after normal work hours.

Preemployment testing. All employment is subject to the applicant's successful completion of a drug test on or before the first day of actual work. Any result other than a confirmed negative shall result in the withdrawal of the offer of employment (if the applicant has not yet been hired), or termination of employment (if the applicant has been hired)

Post-accident testing. Where a work-related accident has occurred which has resulted in equipment or property damage of \$200 or more, or which has resulted in personal injury requiring off site medical attention or other than first aid, employees who the Company reasonably believes may have contributed to the accident will be tested. *(Consider limiting to drugs unless there is evidence of alcohol involvement).*

Random testing. The Company may conduct random drug testing of employees. This testing will be conducted pursuant to computer generated random selection. Employees will be notified by a supervisor or manager within 72 hours of computer selection, and must be tested within 24 hours of notification. Failure to complete the steps necessary to be tested within 24 hours of notification shall be considered a refusal to test. Where the computer generated random selection identifies employees not then working (due to vacation, sick leave, layoff, personal leave or other reasons), the Company will notify the employee within 72 hours of his/her return to work and the employee shall complete the test at that time.

Suspicion testing. Where the Company reasonably believes that an employee's performance may be impaired as a result of alcohol or drug use, it may suspend that employee pending receipt of test results. Employees whose test results in a confirmed negative will be reimbursed for time lost.

Site, job or work-group testing. The Company, at its sole discretion, require all employees at an identified job site or within an identified work group to be tested for illegal drugs.

New assignment testing. Employees who are to move to a different job assignment may, at the Company's sole discretion, be tested for illegal drugs as a condition of the move.

Split specimens and retesting. All specimens will be split, with a part of the original specimen retained in the event a retest should be requested by either the Employer or Employee. Employees who have a positive result or result other than a confirmed negative may request that the specimen be retested in accordance with this policy. Retesting must be done at a facility approved by the Company and is at the Employee's expense.

Medical treatment. No specimens will be taken from an employee while he or she is unconscious for purposes of testing under this policy. However, if tests are performed by medical professionals in the course of medical treatment, the Company may consider the results of those tests in enforcing compliance with this policy.

Results to be given to employee. An employee, on request, will be given a copy of the written test results.

Obligation to report irregularities. Employees who believe there has been an irregularity in the collection of a specimen (for example, failure to check I.D., failure to perform a temperature or specific gravity check, failure to complete chain of custody documentation) or in the testing process must notify the Company within 24 hours of the event.

Retesting of retained split specimen. In the event a test results in a positive result, or the testing shows the presence of adulterants, the employee may request that the retained portion of the original specimen be retested. A request for a retest must be received by the Company no later than 72 hours after the original results are reported to the employee. Any retesting must be done by either the same testing laboratory or, at the employee's option, a laboratory with equivalent qualifications as identified by the Company, and will be at the employee's expense. If the retest results in a confirmed negative, that result will be accepted and the employee will be reimbursed for time lost and the cost of the retest.

Use of Medical Review Officer

Automatic. All test results will be reported directly to the Medical Review Officer and to the employee. The employee must contact the Medical Review Officer within 72 hours of being notified of the test results. The Medical Review Officer shall make a determination as to the result and make a final report to the Company.

Upon employee's request. All test results will be reported directly to the Company. Any employee with anything other than a confirmed negative result (*alternative:* an employee with a positive result) may request an opportunity to discuss the results with a Medical Review Officer. The employee must make this request, and contact the Medical Review Officer, within 72 hours of being notified of the test results by the Company. The Medical Review Officer shall make a

determination as to the result and make a final report to the Company. If the employee requests a retest of a split specimen, he or she may also request an opportunity to discuss the results with the Medical Review Officer. However, in such a case to avoid duplication of effort, the contact with the Medical Review Officer should normally take place after the second test has been completed.

Right to Search

Employees and their property (including but not limited to lunch boxes and toolboxes) are subject to search while on company premises, or job sites, at Company sponsored events, or at locations under the Company's control (including parking lots). Searches may be conducted without advance notice (this policy will serve as notice) and may include entire work groups or individuals. At the Company's option, it may use dogs trained to detect controlled substances in these searches, or may contract with outside services or sources to perform the searches. Where outside services or sources are used, a Company supervisor will be present during the search. Employees may be asked to empty pockets or remove bulky outerwear.

No employee will be detained and forced to submit to a search. Employees are physically free to leave at any time. However, refusal to cooperate in a search under this policy may result in the same level of disciplinary action as would apply to the discovery of contraband.

The Company will not do any form of search or surveillance that is prohibited by state or local law.

Notification requirements.

Convictions. Employees must notify the Company's Human Resources Department of any criminal conviction arising out of drug or alcohol related conduct occurring in the workplace. This notification must be given no later than five days after the conviction.

Prescription medication. The Company recognizes that while prescription drugs are normally used for therapeutic reasons, they also may result in the same risks as use of illegal drugs. Accordingly, use of prescription drugs is also covered by this policy. It is the employee's responsibility in the first instance to inquire of his or her physician whether the drugs will affect his or her ability to work safely and productively. If the drug in question may impair mental or motor functions, the employee shall notify the Company's Human Resources Manager *[or other employee who is responsible for medical records; do not require reporting to a supervisor]* of the use in advance of beginning work. The Company reserves the right to reassign employees using prescription drugs to a position that is less critical or safety sensitive, or initiate a medical leave until the employee is no longer required to take the drugs. If the Human Resources Manager is not available, the employee must notify a supervisor or manager. The employee is asked to keep the nature of the drugs and the condition for which they are prescribed confidential and is not required to provide information other than to advise that he or she is taking prescription drugs which may impair performance or safety. Unless otherwise authorized, employees should bring no more of their medication to the job site than is reasonable necessary for use during their work shifts. Employees taking drugs prescribed for others, or taking

prescribed drugs not in accordance with the dosage recommendations identified by the prescribing physician shall not be given the benefit of this provision.

Because marijuana remains an illegal drug under federal law, there is no exception for marijuana use under this policy. *Alternate: employees who are authorized to use medical marijuana under state law provisions must notify the Human Resources Manager before any use. The Company will evaluate the situation and if the employee is an individual with a disability the Company will explore whether a reasonable accommodation is available to address such use.*

Discipline.

Employees who violate this policy (including a test resulting in other than a confirmed negative) will be subject to disciplinary action which can include probation, suspension, termination of employment, or a requirement that the employee enroll in a rehabilitation, treatment or counseling program. Employees who refuse to test, or who interfere with or subvert the testing process, will be subject to at least the same level of discipline they would experience for a positive test result.

Social Events.

When approved by Company management, employees may consume moderate amounts of alcohol at Company sponsored social events outside normal working hours and away from work sites. Under no circumstances should this provision be used as an excuse or explanation for intoxication.

Rehabilitation and Eligibility for Rehire.

Employees are encouraged to seek professional help for a drug or alcohol problem. Employees who do so before their drug or alcohol problem leads to performance problems will be supported in their efforts to seek help; employees who delay seeking help will not be excused from the consequences of their performance deficiencies. Employees should contact their union representatives *[if any]* or the Company's benefit manager for information about available coverage or the use of sick time, personal leave, or state or federal medical leave to participate in treatment.

Where in the Company's sole discretion it appears that rehabilitation is likely, the Company may require an employee to participate in an education or rehabilitation program as an alternative to discipline. In such cases, employees will normally be required to execute a "return to work" agreement which will include mandatory participation in a treatment or education program approved by the Company and regular unannounced testing (in addition to that required in this policy) for a specified period of time upon reemployment. Any return to work agreement shall be in addition to and not a substitute for otherwise applicable standards of performance and behavior.

Employees violating this policy (including testing positive on any test) will not be eligible for rehire with the Company for 180 days from the date of separation or withdrawal of a job offer.

That period may be shortened to 90 days, however, if the individual provides proof that he or she has completed a rehabilitation, counseling or education program satisfactory to the Company. However, if an employee violates this policy on two separate occasions, he or she shall be ineligible for rehire.

Employee Confidentiality.

The Company will treat communications and information received in conjunction with the administration of this policy as confidential as possible. Disclosures may be made to the employee or applicant or his/her designee, those Company employees involved in the supervision of the employee or in the administration of this policy, a fact finder (arbitrator, mediator, court, jury or government agency) involved in any employment related issue to which the information is relevant.

Need for Accommodation.

Employees who have disabilities which affect their ability to be tested in accordance with this policy should notify the Company at once so that arrangements can be made to determine whether a reasonable accommodation to testing procedures is possible.

Note: The language in these excerpts should be used as an aid in drafting workplace policies, but please don't make it a substitute for good legal advice. Laws change quickly and there can be local regulation that might be applicable.