

POLICY ON ALCOHOL AND ILLICIT DRUG TESTING

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

1.0 PURPOSE¹

The College of Charleston (“College”) recognizes the importance of maintaining and operating a drug-free Workplace. By providing such a Workplace, the College has the opportunity to maximize its levels of productivity, enhance its competitive position in the marketplace, and reach its desired level of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from substance abuse. Our students are also provided a safer environment in which to learn and enjoy the benefits of their education and Campus experiences.

It is the intention of this Policy to prevent, to the extent practicable, drug abuse and the tragedies associated with work-related accidents and to deter the corresponding losses in the form of workers' compensation claims, personnel, and economic productivity. It is the College's intent to achieve this purpose in a way that balances respect for individuals with the need to maintain a safe, productive, and drug-free learning and living environment. While the College will offer help to those who need it, the College does not tolerate the illegal use of nonprescription or prescription drugs, the use of controlled substances or the abuse of alcoholic beverages.

This Policy shall be provided to all employees immediately after its approval by the Board of Trustees. Thereafter, all new employees will receive a copy of this Policy and will sign an acknowledgement of receipt as a condition of employment or continued employment. This Policy is intended to supplement the College's Policy on *Employee Drug and Alcohol Abuse* and should not be deemed as replacing that latter Policy.

2.0 DEFINITIONS

The terms below shall have the meaning ascribed next to each –

2.1 Alcohol – shall mean any “alcoholic beverage” including any spirituous malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors or a compound or mixture of them by whatever name called or known which contains Alcohol and is used as a beverage.

2.2 Controlled Substance – shall mean a drug, substance, or immediate precursor in Schedules I through V in the following Sections of South Carolina law: S.C. Code Ann. §§ 44-53-190, 44-53-210, 44-53-230, 44-53-250, and 44-53-270, or a “controlled substance analogue”, as defined in S.C. Code Ann. § 44-53-110.

¹ Adopted from the Preamble to 1997 Act No. 92, effective, June 10, 1997, and S.C. Code Ann. § 41-1-15. See Appendix A.

Included within these definitions are such substances as marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines (including methamphetamine).

2.3 Designated Employee or Employee -- shall mean all employees and volunteers of the College who: (a) perform services on College owned or leased property ("College Property"); (b) represent the College at another location or are performing College work at another location; or (c) are attending a professional seminar or other event for which the College has paid or will pay part or all of the expenses associated with the employee or volunteer's travel, lodging or attendance.

2.4 Designated Employer Representative ("DER") – shall mean the College's Director of Environmental Health and Safety

2.5 Employee Assistance Program (EAP) -- shall mean a confidential assessment, referral, and short-term problem-solving service available to eligible employees and family members. Enrollment in the EAP is automatic as part of the health plan coverage. The EAP helps participants deal with problems affecting personal and work life, such as:

- (a) conflicts within the family and Workplace,
- (b) personal and emotional concerns,
- (c) Alcohol and substance abuse,
- (d) financial and legal problems,
- (e) elder and child care, and
- (f) career concerns and other challenges.

2.6 Employee Position Assessment – shall mean an assessment of an employee's employment position, as actually performed and as contained in the applicable position description, to determine if the nature and extent of the employee's job duties and responsibilities pose a significant threat to the safety or health of the employee or others if such duties or responsibilities are neglected or improperly performed. This assessment is to be made by the College's Director of Environmental Health and Safety.

2.7 Illicit Drug -- shall mean any Controlled Substance that is in the possession of or is consumed by a Designated Employee, or any prescription or non-prescription drug illegally in the possession of, or is consumed by a Designated Employee in contravention of law.

2.8 Law Enforcement Position -- shall mean the Chief of Campus Police and all of those College positions who report directly or indirectly through one or more Supervisors to the College's Chief of Police.

2.9 Management – shall mean those College employees who are managers or Supervisors at one or more reporting levels above a Designated Employee in the same supervisory chain.

2.10 Occupational Medical Clinic - shall mean that medical facility selected by the College from time to time to evaluate the nature and extent of physical injuries associated with workers'

compensation claims.

2.11 Safety Sensitive and High Risk Position -- shall mean those College positions in which the impaired performance of an incumbent would present a substantial risk of injury to self or others and includes positions that require one or more of the following activities: (i) driving or maintenance of powered vehicles; (ii) the operation or maintenance of boilers, elevators, construction equipment or similar dangerous machinery; (iii) the handling of hazardous materials (including, but not limited to, direct access to federally designated biological agents and toxins); (iv) dispensing Controlled Substances or prescription medications; (v) providing clinical services to students; (vi) being in an unsupervised setting with minor children; or (vii) being responsible for reporting on, inspecting, or furthering environmental or fire safety on College Property.

2.12 Supervisor – shall mean the College employee who directly supervises a Designated Employee and who is responsible for directing and evaluating that Designated Employee’s job performance.

2.13 Testing – shall mean the process of collecting and evaluating, through the use of generally accepted clinically methods, human fluids or breath in order to determine the presence and/or concentration of Alcohol and/or Illicit Drugs in the human body. By way of example, and not by limitation, the term includes the following:

- (a) Event-Related (Accident/Injury) Testing – As further described in Section 5.0, this is Testing of a Designated Employee in a Safety-Sensitive and High Risk Position or Law Enforcement Position that takes place after and as part of an accident or incident investigation when the event has occurred on College Property, has resulted in death or serious bodily injury or significant property damage, and involves the acts or omissions of such an Employee.
- (b) Pre-Employment or Testing After Hire – As further described in Section 6.0, Testing that takes place as a condition for either employment or entering duty in a position considered to be a Safety-Sensitive and High Risk Position or Law Enforcement Position, or the Testing of current College employees transferring into such a position.
- (c) Random Drug Testing – As further described in Section 7.0, this pertains to the Testing of Designated Employees occupying a Safety-Sensitive and High Risk Position or Law Enforcement Position while on the job.
- (d) Reasonable Suspicion Testing – As further described in Section 8.0, this means Testing based on a good faith reasonable belief that a Designated Employee has violated the College’s Policy on *Employee Drug and Alcohol Abuse* that is triggered by the first-hand observations of two or more supervisors or managers of those suspect behaviors and conditions listed in Section 8.1.

2.14 Workplace – shall mean the physical locations that are under the control of the College where Designated Employees perform one or more functions of their assigned job or volunteer

responsibilities or duties.

3.0 APPLICABILITY

This Policy applies to all Designated Employees of the College. In addition, Designated Employees who are employed by the College to operate commercial vehicles must also comply with the requirements implemented by the College under the *Federal Motor Carrier Safety Regulations* codified at Title 49 CFR Part 382 and the *South Carolina Commercial Driver License Act* (S.C. Code Ann. § 56-1-2005 et seq.).

4.0 TESTING

4.1 Limitation on Required Testing. In order to achieve the purposes of this Policy the College may *require* Designated Employees occupying a Safety-Sensitive and High Risk Position or Law Enforcement Position, or potential Designated Employees selected for employment with the College in a Safety-Sensitive and High Risk Position or Law Enforcement Position, to undergo Drug Testing for Alcohol or Illicit Drugs in certain defined circumstances.

4.2 Optional Testing. All Employees would be given an *option* to undergo Testing when the Employee's behavior and/or condition have been deemed suspect and have been witnessed and documented in accordance with this Policy.

4.3 Permitted Testing Circumstances. As further described in Sections 5.0, 6.0, 7.0 and 8.0, in total there are four situations when Testing is permitted:

- (a) Event-Related Testing
- (b) Pre-Employment Testing or Testing After Hire
- (c) Random Drug Testing
- (d) Reasonable Suspicion Testing

5.0 EVENT-RELATED (ACCIDENT/INJURY) TESTING

5.1 Criteria. A Designated Employee in a Safety-Sensitive and High Risk Position or Law Enforcement Position may be subject to event-related testing after and as part of an accident or incident investigation when the event has occurred on College Property. Event-related testing of Designated Employees will take place when the Chief of Police, the appropriate Executive Vice President and the Senior Vice President for Legal Affairs concur in a good faith determination that:

- (a) an event occurred on College Property and involved death or serious bodily injury or significant property damage, or the Designated Employee has received a citation in connection with the event or there is reasonable suspicion of impaired motor or sensory skills (as indicated by the types of observations listed in Section 8.1) by the Employee involved; **and**
- (b) the Designated Employee involved occupies a Safety-Sensitive and High Risk

Position or Law Enforcement Position.

5.2 Chief of Police. In the event that such Executive Vice President or the Senior Vice President are not available, the Chief of Police may make such determination based solely on his/her reasonable judgment.

6.0 PRE-EMPLOYMENT TESTING OR TESTING AFTER HIRE

6.1 Testing Requirement. Individuals selected for hire in Safety-Sensitive and High Risk Positions or Law Enforcement Positions, or current College employees transferring into such a position, shall be subject to a drug test for Alcohol or Illicit Drugs as a condition for either employment or entering duty in that position.

6.2 Notice to Job Applicants.

- (a) Position recruitment announcements for Safety-Sensitive and High Risk Positions or Law Enforcement Positions shall announce to potential applicants that the person selected for the position will be subject to Testing for Illicit Drugs and Alcohol and that such Testing is being required for the protection of the campus community and for self. The notice shall also specify that the position is subject to random and event-related testing after hire and that the applicant selected shall be requested to sign a statement acknowledging and consenting to the requirement for Testing under this Policy in the event that he/she is selected for the position. The failure to sign such a statement, or to agree to the terms therein, shall make the applicant not qualified for the position.
- (b) All job applicants shall be advised of the possibility of testing upon reasonable suspicion for a violation of the College's Policy on *Employee Drug and Alcohol Abuse*.

6.3 Time for Job Applicant Testing.

- (a) A person who is selected for a Safety-Sensitive and High Risk Position or a Law Enforcement Position and who is not a current College Employee shall be tested prior to entering into and performing the duties of such a position, except that the appropriate Executive Vice President may waive the requirement of pre-testing if such Executive Vice President determines, after diligent inquiry, that a delay in filling the position will present a higher risk to the Campus Community than the delay that would be occasioned by pre-testing and awaiting the test results. In that latter event, Testing shall be conducted no later than 15 workdays after the Employee begins performing the duties of the Safety-Sensitive and High Risk Position or a Law Enforcement Position.
- (b) A person who is selected for a Safety-Sensitive and High Risk Position or a Law Enforcement Position and who is a current College Employee shall be tested prior to entering into and performing the duties of such a position.

6.4 Responsibility of Human Resources.

- (a) From time to time, but no less frequently than annually, the Office of Human Resources, in consultation with the Designated Employer Representative, will publish on its official College web page a list of positions that are deemed to be Safety-Sensitive and High Risk Positions and Law Enforcement Positions. It shall also provide links on that web page to this Policy and to all of the statutes cited in this Policy.
- (b) Determinations made pursuant to the first sentence of subsection (a) of what positions should be regarded as a Safety-Sensitive and High Risk Positions or Law Enforcement Positions shall be made by the DER after conducting an Employee Position Assessment for each job or related groups of jobs under consideration.

7.0 RANDOM DRUG TESTING

All Employees occupying a Safety-Sensitive and High Risk Position or Law Enforcement Position shall be subject to Random Drug Testing while on the job. Such testing shall be subject to the following:

- (a) The determination of who is to be tested shall be based on a computer program designed to produce statistically random results and operated by one or more persons in the Office of Human Resources;
- (b) The Supervisor shall be timely and confidentially notified of those who are to be randomly tested so that arrangements can be made to perform the essential functions of the Employee's job during the time of testing;
- (c) To the extent practicable such Testing shall take place on campus; and
- (d) All Testing is to be conducted in a manner that is consistent with the provisions of Section 9.1 and that is otherwise fully respectful of the rights of the individual being tested.

8.0 REASONABLE SUSPICION PROCEDURE

8.1 Observations. A Designated Employee is subject to Testing based on a good faith reasonable belief that the Employee has violated the College's Policy on *Employee Drug and Alcohol Abuse*. This reasonable belief must be based on the first-hand observations of two or more supervisory or management personnel who have observed the Employee displaying one or more of the following behaviors or conditions:

- (a) altered or slurred speech or repetitively incoherent speech;
- (b) making statements divorced from reality without reasonable explanation;
- (c) unexplained and abrupt or radical changes in conduct such as violent outburst without reasonable explanation;
- (d) inability to walk steadily or in a straight line;
- (e) inability to perform normal functions of the Employee's position safely and with reasonable care because of obviously impaired motor skills or sensory perceptions;
- (f) the smell of Alcohol on the person of the Employee or at the Employee's workstation; or
- (g) the presence of Alcohol or Illicit Drugs or drug paraphernalia at the Employee's work station or on the Employee's person.

8.2 Removal from Work Area. If one or more of the behaviors or conditions described in Section 8.1 are observed the immediate Supervisor should direct the Designated Employee to a private area. The second Supervisor or Manager who witnessed the conduct or behavior should also proceed to that area. Thereafter, the observed behavior and condition shall be discussed with the Designated Employee and such Employee shall be given a reasonable opportunity to explain his/her behavior and condition.

8.3 At Least Two Witnesses. If both witnesses to the Designated Employee's behavior and condition believe that one or more of the circumstances described in Section 8.1 are evident, both witnesses must describe, in writing, the Employee's behavior and condition (see Appendix B). That description shall record behavior, physical conditions and other observations only and is not to speculate as to the causes for the behavior or conditions. The reporting Superior shall immediately notify the Director of Human Resources (the "Director") who shall, in turn, notify the Designated Employer Representative, the appropriate Executive Vice President in the supervisory chain, and the Senior Vice President for Legal Affairs. In the event that timely notification cannot be made under the circumstances to all such persons, the Executive Vice

President (or his/her designee at a level no lower than a Vice President) is authorized to make such a determination without consultation and based on his/her reasonable judgment.

8.4 Determinations. If the Director and the appropriate Executive Vice President determine Testing is appropriate, the reporting Supervisor and such other persons as may be designated by the Executive Vice President, shall accompany the Employee to a discrete location on campus for Testing. The test shall be administered and evaluated by the Occupational Medicine Clinic designated from time to time by the College.

8.5 Refusal; Lack of Cooperation. If the Employee refuses to proceed with the Testing, the Supervisor is to contact the Director of Human Resources. The Employee will be suspended immediately, without pay, pending an HR review of the incident. A determination of appropriate disciplinary action, if any, will follow. While immediate suspension means that the Employee must leave the Workplace, s/he should not be allowed to drive home alone. If the Employee refuses to use alternative transportation arrangements and leaves alone in his/her own vehicle, the Supervisor shall notify the College Department of Public Safety as soon as practicable. If possible, the Supervisor shall also obtain a witness to corroborate the refusal of alternative transportation and shall document that refusal.

8.6 Transportation after Testing. When Testing occurs, the manager/Supervisor is to make immediate arrangements, following Testing, for the Employee to return home (e.g. Supervisor, relative, another Employee, cab). The Employee should not be allowed to drive home alone. If the Employee refuses alternative transportation arrangements and leaves alone in his/her own vehicle, the Supervisor shall notify the College Department of Public Safety as soon as practicable. If possible, the Supervisor shall also obtain a witness to corroborate the refusal of alternative transportation and shall document the incident.

8.7 Actions after Testing. Upon receipt of the confirmed test results by the Designated Employer Representative, the DER will notify the persons designated in Section 9.5 and such persons shall, in turn, consider the appropriate course of action under the College's Policy on *Employee Drug and Alcohol Abuse*. If the test results are negative, the Designated Employee is to be returned to work at the next regular shift and shall be paid for that portion of the shift that was missed as a result of the Testing. A confirmed positive test result will result in immediate suspension, without pay, of the Designated Employee, as further described in Section 9.6.

8.8 President's Decisions Regarding Senior Management. The President may, in the exercise of his/her reasonable discretion, order the Testing of any Executive Vice President or Senior Vice President if the President has a good faith reasonable belief that such a vice president has violated the College's Policy on *Employee Drug and Alcohol Abuse*.

9.0 TESTING PROTOCOL

9.1 Drug or Alcohol Test Standards. Testing conducted under this Policy by the College's Occupational Medicine Clinic shall be performed in a manner that is consistent with regulations of the United States Department of Transportation (Title 49 Code of Federal Regulations Part 40), except that –

- (a) Testing for Illicit Drugs or Alcohol concentrations may take place using urine, saliva, or breath only. Instant qualitative Testing (to detect the presence of a substance only) is permissible, provided that a quantitative test is used to confirm all questionable qualitative tests, and suspected adulterated or substituted specimens; and
- (b) The Designated Employee who consents to being tested shall be required to sign the appropriate authorization to allow the Testing and to permit the sharing of test results with those employees and representatives of the College who have a need-to-know in order to perform their assigned employment responsibilities or duties.

9.2 Cutoff Levels. Confirmed concentrations at or above the cutoff levels listed below, or such other levels as may be from time to time promulgated by the United States Department of Transportation for application under 49 CFR Part 40 (“Cutoff Levels”), shall be deemed a violation of the College Policy on *Employee Drug and Alcohol Abuse*:

<u>SUBSTANCE</u>	<u>CUTOFF LEVELS</u>
Alcohol	0.02 g/210 liters breath
Marijuana	15 ng/mL^a
Cocaine	150 ng/mL
<u>Opiates</u>	
Morphine, Codeine	2,000 ng/mL
6-Acetylmorphine (6-AM)	10 ng/mL^b
<u>Amphetamines</u>	
Amphetamine	500 ng/mL
Methamphetamine	500 ng/mL^c
Phencyclidine (PCP)	25 ng/mL

^a Nanograms per milliliter. One nanogram equals one billionth of a gram.

^b Test for 6-AM when morphine concentration exceeds 2,000 ng/mL.

^c Specimen must also contain amphetamine at 200 ng/mL or higher.

9.3 Timing. Event-Related Testing and Reasonable Suspicion Testing shall take place within 4 hours of the event described in Section 5.1, or the reasonable suspicion determination made pursuant to Section 8.4, as may be relevant.

9.4 Re-Testing. The tested Employee may elect to have a second test, provided that such

test is conducted within the time period required under Section 9.3. If the second test results materially differ from the original test results, both tests results shall be deemed non-conclusive and no disciplinary action shall be taken against the Employee. In such an event, however, the Employee shall be sent home for the remainder of the shift/work period but, if the Employee is considered a non-exempt employee under the Fair Labor Standards Act, such Employee shall be paid for that time and the time expended for Testing.

9.5 Disclosure of Test Results.

- (a) The results of a test for Alcohol or Illicit Drugs shall be provided only to the Designated Employer Representative who, in turn, shall inform the following individuals of the confirmed results: (1) the Director of Human Resources; (2) the immediate Supervisor of the Employee; (3) the appropriate Senior or Executive Vice President and/or the President, as may be appropriate under the circumstances; and (4) to the Senior Vice President for Legal Affairs and to such law enforcement authorities as the Senior Vice President for Legal Affairs may deem appropriate under the circumstances.
- (b) In addition to the disclosures described in subsection (a) and under Section 14.0, such tests results may also be disclosed when, in the reasonable judgment of the Senior Vice President for Legal Affairs, the results are: (1) relevant to an administrative or judicial action that the Employee is taking or is threatening to take against the College as a result of anything arising out of the Testing or the attending circumstances; (2) subpoenaed or required to be disclosed pursuant to a Court order or other legal process; or (3) otherwise allowed to be disclosed under applicable law.

9.6 Confirmed Positive Test Results.

- (a) If an Employee tests positive for an Illicit Drug or has a breath Alcohol level above the Cutoff Levels and a medical clinician employed by the College's Occupational Medicine Clinic (the "Medical Review Officer" or "MRO") determines that no reasonable medical explanation exists to excuse the confirmed positive, adulterated or substituted specimen, the Employee shall be immediately suspended without pay by the College until such reasonable time as may be necessary to consider the imposition of disciplinary or other remedial actions.
- (b) If a successful job applicant for a Safety-Sensitive and High Risk Position or Law Enforcement Position tests positive for an Illicit Drug or has a breath Alcohol level above the Cutoff Levels, and the MRO determines that no reasonable medical explanation exists to excuse the confirmed positive, adulterated or substituted specimen, the job offer extended to that applicant shall be immediately withdrawn. If that applicant has already been hired pursuant to Section 6.3(a) as a contingent hire subject to such test results, such person shall be terminated from employment.

9.7 Cost of Testing. The College shall pay for the costs of Testing under this Policy, except that, the Employee shall pay for all (a) confirmed tests that produced a substance concentration level above the Cutoff Levels; and (b) Testing required as a condition for a Return to Duty determination under Section 10.0 including but not limited to participation in the EAP for a fixed period of time.

10.0 RETURN TO DUTY

An Employee suspended or disciplined due to a confirmed positive Illicit Drug or Alcohol test above the Cutoff Levels shall not be returned to duty in any capacity unless that person is re-tested and the results of the test are confirmed negative in accordance with the Cutoff Levels. In addition to the foregoing, the College may impose other restrictions for a return to duty including, but not limited to, evidence of rehabilitation or treatment.

11.0 DISCIPLINE; REFUSAL TO TAKE TEST

Employees who fail or refuse to report and reasonably cooperate with Testing under the conditions described in Section 8.0 may be evaluated for Alcohol abuse or the use of Illicit Drugs under the College's *Employee Drug and Alcohol Abuse Policy* on the basis of Management, Supervisor, employee and other observations only. In addition, those Employees occupying a Safety-Sensitive and High Risk Position or Law Enforcement Position who refuse to report and reasonably cooperate with Testing under Sections 5.0 (Event Related Testing) or 7.0 (Random Drug Testing) will be considered for disciplinary action, up to and including termination, for insubordination and refusal to comply with a material condition for continued employment.

12.0 APPEALS

All appeals from discipline taken as a result of enforcement of this Policy are subject to the appropriate grievance procedures of the College, provided that the Employee is otherwise entitled to a grievance procedure under law. All complaints of misuse of this Policy based on discrimination, retaliation, ethnic profiling, knowingly making a false statement, or similar inappropriate motivations, are also subject to such disciplinary actions and grievance procedures as are otherwise available.

13.0 TRAINING

No Superior shall be permitted to take any action under this Policy without first receiving such training as may be determined appropriate by the Director of Human Resources and the Designated Employer Representative.

14.0 RECORDS RETENTION

The Director of Human Resources shall maintain records of all determinations and Testing as may be conducted under this Policy ("Policy Records"). Except as otherwise specifically provided for herein, Policy Records shall be maintained on a strictly confidential basis and shall

be maintained separately from the official personnel file of an Employee. In addition to the persons designed in Section 9.5, such Policy Records shall not be made available to any person, other than the Employee to whom they pertain, to those authorized by the Employee to receive such information (evidence by a written "Employee Authorization"), to such employees of HR who have a need-to-know to perform the responsibilities or duties of their respective jobs. An Employee Authorization shall contain at least the following elements:

- (a) the name of the person who is authorized to obtain the information;
- (b) the purpose of the disclosure;
- (c) the precise information to be disclosed;
- (d) the duration of the consent;
- (e) the manner and effect of revoking the consent; and
- (f) the signature of the person authorizing release of the information.

15.0 NOTICE TO EMPLOYEES

The Director of Human Resources shall provide notice of this Policy to all members of the College Community. Members of the College Community shall be periodically surveyed to ascertain their experience with the Policy and their recommendations for such changes to the Policy as may be appropriate to further its purposes.

16.0 POLICY ADMINISTRATION

This Policy shall be maintained by the Director of Human Resources, in consultation with the Designated Employer Representative, who shall report periodically, but no less often than quarterly, to the President's Executive Team on all activities conducted pursuant to this Policy. In addition, the Director shall suggest such changes to the Policy as he/she may believe appropriate to further its purposes.

17.0 AMENDMENTS

This Policy may be amended at anytime in accordance with the College's *Campus-wide Policy Making Procedures*.

18.0 EFFECTIVE DATE

This Policy shall be deemed effective as of October 1, 2010.

Appendix A

S.C. Code Ann. § 41-1-15 (2007)

§ 41-1-15. Establishment of drug prevention program in Workplace; confidentiality of information concerning test results.

(A) Notwithstanding any other provision of the law, an employer may establish a drug prevention program in the Workplace pursuant to [Section 38-73-500\(B\)](#) which shall include:

(1) a substance abuse policy statement that balances the employer's respect for individuals with the need to maintain a safe, productive, and drug-free environment. The intent of the policy shall be to help those who need it while sending a clear message that the illegal use of nonprescription controlled substances or the abuse of alcoholic beverages is incompatible with employment at the specified Workplace; and

(2) notification to all employees of the drug prevention program and its policies at the time the program is established by the employer or at the time of hiring the employee, whichever is earlier.

(B) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse Testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding.

(C) Employers, laboratories, medical review officers, insurers, drug or Alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

(1) the name of the person who is authorized to obtain the information;

(2) the purpose of the disclosure;

(3) the precise information to be disclosed;

(4) the duration of the consent; and

(5) the signature of the person authorizing release of the information.

(D) Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

History:

Added by [1997 Act No. 92, § 2](#), eff June 10, 1997.

The Preamble of [1997 Act No. 92](#) provides as follows:

"Whereas, the members of the General Assembly recognize the importance of all employers and employees in the State to maintain and operate in a drug-free Workplace, and promote the participation of businesses in drug prevention programs. Through such participation, employers have the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work related accidents resulting from substance abuse by employees; and

"Whereas, nationally, the cost of substance abuse in the Workplace is estimated at a staggering one hundred billion annually, and this cost is paid by employers in many different ways; and

"Whereas, the intention of the act is to provide incentive for employers to prevent drug use and the tragedies associated with work related accidents and to deter the corresponding losses in the form of workers' compensation claims, personnel, and economic productivity; and

"Whereas, since workers' compensation insurers typically provide support services to employer-clients, the General Assembly believes that insurers will compete for the business of employers participating in drug prevention programs and will provide the appropriate premium credit for various classes of employment with a successful program due to the administrative cost savings in many ways including those from a reduction in work related accidents by employees with substance abuse and litigation expenses;"

APPENDIX B

BEHAVIOR/INCIDENT DOCUMENTATION FORM

Name of Observed Employee: _____

Location of Observations: _____

Time _____ A.M. _____ P.M. Date _____

WHEN THERE IS REASONABLE SUSPICION THAT AN EMPLOYEE AT WORK IS UNFIT FOR DUTY, THE SUPERVISOR OR MANAGER OBSERVING THE BEHAVIOR AS WELL AS ANOTHER SUPERVISOR/MANAGER AS WITNESS, IF POSSIBLE, MUST COMPLETE THE CHECKLIST BELOW. WHERE "OTHER" IS CHECKED, PLEASE DESCRIBE. DOCUMENT ONLY OBSERVED EVENTS OR CONDITIONS. DO NOT EXPRESS REASONS OR OPINIONS.

OBSERVATION CHECKLIST

Walking:

____ Holding on ____ Stumbling ____ Unable to walk
____ Unsteady ____ Staggering ____ Swaying
____ Falling
____ Other _____

Standing:

____ Swaying ____ Feet wide apart ____ Unable to stand
____ Rigid ____ Staggering ____ Sagging at knees
____ Other _____

Speech:

____ Whispering ____ Slurred ____ Shouting
____ Incoherent ____ Slobbering ____ Silent
____ Rambling ____ Mute ____ Slow
____ Other _____

Demeanor:

____ Cooperative ____ Calm ____ Talkative ____ Polite
____ Sarcastic ____ Sleepy ____ Crying
____ Sleeping on job ____ Argumentative ____ Excited
____ Other _____

Actions:

____ Hostile ____ Fighting ____ Profanity ____ Drowsy

Threatening Hyperactive Erratic Calm
 Resisting communication
 Other _____

Eyes:

Bloodshot Watery Droopy Dilated
 Glassy Closed
 Other _____

Face:

Flushed Pale Sweaty
 Other _____

Appearance:

Neat Unruly Messy Dirty

Clothing:

Stains on clothing Having odor Partially dressed
 Bodily excrement stains
 Other _____

Breath:

No alcoholic odor Faint alcoholic odor Alcoholic odor
 Sweet/pungent tobacco odor Heavy usage, breath spray
 Other _____

Movements:

Fumbling Jerky Nervous
 Slow Normal Hyperactive
 Other _____

Eating:

Gum Chewing Candy Mints
 Other _____

Miscellaneous:

Presence of Alcohol and/or drugs in associate's possession or vicinity
 On-the-job misconduct by employee
 Employee admission concerning Alcohol use and/or drug use or possession
 If there are witnesses to employee's conduct, list below:

Other Observations: (if accident, provide details)

Employee's Explanation of Reasons for His/Her Conduct:

ONCE ABOVE PORTION OF FORM HAS BEEN COMPLETED BY YOU AND A WITNESS, YOU ARE NOW READY TO TAKE A POSITION WITH THE EMPLOYEE. BE CERTAIN TO FOLLOW COLLEGE PROCEDURES AS OUTLINED IN OUR POLICY ON ALCOHOL AND ILLICIT DRUG TESTING

____ Employee **HAS** agreed to testing ____ Employee **HAS NOT** agreed to testing

Supervisor/Manager Signature

Date

Witness Signature

Date