

LCCS POLICY 423

Drug Testing Policy

Original Issue Date:	10/20/1995
Revision Dates:	2/5/1999, 7/6/2021
Revision Number:	2
Current Effective Date:	7/6/2021
Obsolete/Combined Date:	
Reason for Obsoleting/Combining:	
See new Policy #:	

Scope:	All Staff
Responsibility:	Agency Managers and Human Resource Division
Purpose:	To establish guidelines for testing when reasonable suspicion of drug or alcohol use exists.
Legal Cite:	Drug-Free Workplace Act of 1988, 21 U.S.C. 812, O.R.C. §§ 5153.10, 5153.16, 3719.01

POLICY STATEMENT

Use of controlled substances which cause intoxication or impairment on-the-job poses risks to the Employer, the affected employee, and his/her co-workers, clients and the public.

Recognizing that drug and alcohol abuse are treatable illnesses which should be dealt with initially by treatment and education, it is the Employer's policy to encourage rehabilitation when possible rather than terminate the employment of workers who are drug or alcohol dependent. However, employees who violate LCCS' Drug Free Workplace Policy are subject to discipline, up to and including termination of employment.

PROCEDURE - including required timeframes and documentation

The policy will be implemented in a consistent, nondiscriminatory manner. All employees will be provided a copy of the Employer's drug testing policy prior to its implementation. In addition, employees will be provided information concerning the impact of the use of drugs and alcohol on job performance. Supervisors will be trained to recognize the symptoms of drug abuse, impairment and intoxication.

All newly employed staff will receive the information in their orientation packet. No employee shall be tested until this information is provided to the employee.

Random drug and alcohol testing will not be permitted except for employees who have previously tested positive for drug or alcohol use in accordance with this policy. In that case,

employees who enter a treatment program shall be subject to random testing during the period the employee is in the treatment program and for a period of 12 months thereafter. Except as just noted, drug and alcohol testing may be administered only where there is a reasonable suspicion to believe that the employee to be tested is using, consuming or under the influence of an alcoholic beverage, non-prescription controlled substance (other than over the counter medications) and/or non-prescription or inappropriate use of prescription drugs while on duty and in post-accident situations as described in this policy.

REASONABLE SUSPICION TESTING:

The term “reasonable suspicion” shall be for the purposes of this policy be defined as follows:

Aberrant or unusual on-duty behavior of an individual employee which:

- Is observed on duty by the employee’s immediate supervisor or other management employee and confirmed, if possible, by the observation of a second supervisory/ management employee or guard trained to recognize the symptoms of intoxication, impairment or drug abuse. Observation of a B.U. employee must also be witnessed by a Union steward when possible.
- Is the type of behavior which is recognized and accepted as symptoms of intoxication or impairment caused by controlled substances or alcohol.
- Is not reasonably explained as resulting from some other cause such as, but in no way limited to, fatigue, lack of sleep or side effect of a prescription medication, or over the counter medication, reaction to non-toxic fumes or smoke, or other job-related cause or factor.

Reasonable suspicion must be based on specific personal observation by supervisors which must be documented in writing at the time of observation. Reports of drug abuse or abnormal behavior which are not confirmed in writing by supervisor shall not constitute reasonable suspicion.

POST ACCIDENT TESTING:

The Employer reserves the right to require all employees to submit to post-accident testing after a reportable accident. A “reportable accident” is defined as an at-fault accident that 1) person taking accident report believes test is necessary, or 2) where the Employer has previously documented substance abuse issues on the Employee, or as an accident which results in the death of a human being and/or bodily injury to a person who, as a result of the injury, received medical treatment.

No drug testing may be conducted without authorization of the Human Resources Division (or Executive Director/designee). The Human Resources Division must document in writing who is to be tested and why the test was ordered including the specific objective facts constituting reasonable suspicion. An “Observation Report for Substance Abuse Testing” must be initiated by the observing supervisor and completed by Human Resources Division. One copy of this documentation shall be given to the employee before testing and, in the case of B.U. employees,

one copy shall be provided to the Union immediately. The employee must be given sufficient time to read the documentation and told the reasons the test is to be given, but the reading time shall not unduly delay the test.

The employee will be given an opportunity to give an explanation of their condition to the Human Resources Division. A Union steward or representative may be present during such an explanation and shall be entitled to confer with the employee before the explanation is given.

If the Human Resources Division (or Executive Director/designee) after reviewing the Observation Report concurs that a reasonable suspicion exists and that the employee may be intoxicated or impaired, then by written order, the employee may be ordered to submit to a toxicology test designed to detect the presence of alcohol, marijuana, opiates, amphetamines, cocaine, phencyclidine in accordance with the procedure set forth below. The employee tested will be deemed to be on leave with pay for the balance of the work day.

Failure to follow any of the above steps shall result in elimination of test results as if no tests were administered. The test results will be destroyed and cannot be used to administer discipline to the affected employee regarding drug/alcohol use.

Refusal to submit to toxicology testing after being properly ordered to do so will result in disciplinary action up to and including termination.

ALCOHOL TESTS:

- All alcohol tests will be conducted in accordance with the Breath Analyzer Methodology in effect.
- A positive test for alcohol shall be .05 grams/210 liters.

DRUG TESTING:

The following test procedure shall apply to urine tests administered to employees:

The Employer may require urine samples only. Urine specimens shall be collected at the laboratory or hospital where the specimen is to be tested.

A Union Steward or representative shall be allowed to accompany the employee and management representative to the test and observe bottling and sealing of the specimen. Collection of urine specimens must allow individual privacy unless there is clear and convincing reason to believe that a particular person may alter or substitute the specimen. If specimen collection is directly observed by a non-medical person, the person must be of the same gender as the employee. The following circumstances are the only grounds to believe a person may alter, or may have altered or substituted a specimen:

- The urine specimen is outside the normal temperature range (32°-38° C, 90°-100° F) and the employee will not allow an oral body temperature to be taken, or the oral body temperature is 1° C/1.8° F different from the temperature of the specimen;

- The collection site person observes behavior that clearly indicates an attempt to alter or substitute a specimen; or
- The employee has previously been determined to have used a controlled substance and the test is a follow-up test after return to service.

Employee shall choose 3 specimen containers. All specimen containers, vials, or bags used to transport them shall be sealed with evidence tape and labeled in the presence of the employee and Union Steward or representative.

The testing shall be done by a laboratory certified by the State of Ohio as a medical and forensic urine drug testing laboratory, and/or a laboratory which has a forensic urine drug testing certification by the College of American Pathology which complies with the scientific and technical guidelines for federal drug testing programs and Standards for Urine Drug Testing for Federal Agencies issued by the Alcohol, Drug Abuse and Mental health Administration of the U.S. Department of Health and Human Services in effect at the time of the test, or comparable scientific and technical guidelines.

The Union and the Employer shall choose a list of laboratories to be utilized for toxicology testing.

The National Institute on Drug Abuse (NIDA) standards shall be used to determine what levels of detected substances shall be considered positive. The NIDA levels currently in effect are:

Drug Group	Screening	Confirmation
Amphetamine	1,000 ng/ml “	500 ng/ml “
Cocaine Metabolites	300 ng/ml	150 ng/ml
Marijuana metabolites	50 ng/ml	15 ng/ml
Opiate metabolites	2000ng/ml “	2000 ng/ml “
Phencyclidine	25 ng/ml	25 ng/ml

Tests which are below the levels set for the above shall be determined as negative. If test results are negative, all documentation regarding supervisor’s observations and testing will be destroyed. Any detection of substances below confirmation levels will result in an automatic referral to EAP. Participation in EAP, however, is voluntary.

At the time specimens are collected for any drug testing, specimens must be immediately sealed, labeled and initialed by the employee to ensure that the specimens tested by the laboratory are those of the employee. The required procedure is as follows:

For reasonable suspicion testing, urine should be secreted first. The urine specimen shall be taken promptly with as little delay as possible. The employee has an obligation to identify each specimen and initial same. The container shall be sealed in the employee’s presence and the employee given an opportunity to initial the container and witness his/her social security number placed on the container. The container shall be sent to the designated testing laboratory.

At the time the urine specimen is collected three samples will be taken. Two samples will be sent to the laboratory to be tested at the Employer's expense. In order to be considered positive, both samples must be tested separately, in separate batches and show positive results on a GCMS confirmatory test. All test results are to be reviewed by a toxicologist or physician before released.

Test results must be completed by the lab and provided to the Employer and Union as soon as possible.

The third sample will be collected in a separate container and shall be sealed in the presence of the Employer and Union witnesses who will sign the evidence tape. This third sample shall be held by the laboratory and made available to the employee for testing by a laboratory chosen by the Employee (and Union) from the mutually approved list. The cost of testing the third sample shall be borne by the employee. All test results shall be treated as confidential medical records except where contrary to law.

LABORATORY REQUIREMENTS:

- Urine Testing - In testing urine samples, the testing laboratory shall test specifically for alcohol and those drugs and classes of drugs listed employing the test methodologies specified.
- Specimen Retention - All specimens deemed "positive" by the laboratory, according to the prescribed guidelines, must be retained at the laboratory for a period of one (1) year.
- Laboratory Testing Methodology - All samples will be tested according to specified Drug Testing Requirements.
- Prescription and Non-Prescription Medications - If an employee is taking a prescription or non-prescription medication in the appropriate prescribed manner and has informed the Employer prior to being tested, he/she will not be disciplined. The Employer reserves the right to require proof that the prescription has been properly obtained. Medications prescribed for another individual, not the employee, shall be considered to be illegally used and subject the employee to discipline.

Positive results of the tests administered to the on-duty employee shall be cause to initiate appropriate disciplinary action in accordance with the following procedure:

- The employee, and if BU, the Union, shall be given a copy of the laboratory report of both specimens before discipline is imposed.
- The Union and employee shall have 72 hours after the receipt of the laboratory report, to present the Employer with different results from the test of the third sample conducted by a laboratory chosen by the Employee/Union from the mutually approved list. Failure of the Union or employee to have a third test performed shall not be used against the employee as a basis for discipline or in any grievance proceeding.

After considering the positive test results, the Employer may discipline the employee. Any discipline imposed for the first offense in any 24 month period and any grievance filed in

response thereto shall be held in abeyance pending completion by the employee of a substance abuse treatment program mutually agreed upon between the Union the Employer and employee, the cost of which shall be covered by the Employer's group health insurance as any other illness. The discipline process will then proceed following the employee's completion of the treatment program. If the discipline proceedings result in an oral or written reprimand, the reprimand will expire after 12 months from the effective date providing there are no intervening disciplinary actions. If the discipline proceedings result in a suspension of 5 days or less, the reprimand will expire after 24 months providing there are no intervening disciplinary actions after the effective date.

Employees who are not observed to be under the influence/impaired and who seek voluntary assistance for drug or alcohol abuse may not be disciplined for seeking such assistance. All requests from such employees for assistance shall remain confidential. Such employees at their option shall be entitled to take accrued sick leave, vacation leave, compensatory time or leave without pay during absences required as part of the rehabilitation process when supported by medical documentation and in accordance with FMLA provisions.

Unless all safeguards and procedures specified herein are followed, test results may not be relied upon or serve as the basis of any discipline or referral to rehabilitation.

Any disputes which may arise over compliance with this policy shall be resolved through the grievance and arbitration provisions of the parties collective bargaining agreements or through the non-bargaining grievance process.

CASE PRACTICE GUIDES

RELATED POLICIES and FORMS