



## Human Resources Department

**DATE:** May 14, 2024

**FROM:** Leanne Schmidt, Human Resources Director

**ITEM:** Drug Free Workplace and Substance Abuse Screening Program

**REQUEST:**

Review and consider approval of the revised Drug Free Workplace and Substance Abuse Screening Program.

**BACKGROUND INFORMATION:**

The title has been updated and edits made to reflect the federal law language for compliance.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve revised and updated policy.

**STAFF CONTACT INFORMATION:**

Leanne Schmidt, Human Resources Director, 701-355-1332, [lschmidt@bismarcknd.gov](mailto:lschmidt@bismarcknd.gov)  
Julie Peplinski, HR Assistant, 701-355-1334, [jpeplinski@bismarcknd.gov](mailto:jpeplinski@bismarcknd.gov)

**ATTACHMENTS:**

1. DRUG FREE WORKPLACE POLICY and SUBSTANCE ABUSE SCREENING PROGRAM\_Draft
2. DRUG FREE WORKPLACE POLICY and SUBSTANCE ABUSE SCREENING PROGRAM\_Changes

## **DRUG FREE WORKPLACE POLICY and SUBSTANCE ABUSE SCREENING PROGRAM**

### **Introduction**

The safety and performance of all employees is of paramount importance to the City of Bismarck. The City is committed to providing an environment free of drug and alcohol abuse for its employees.

Persons under the influence of alcohol and/or drugs pose serious, often life threatening, safety and health risks, not only to themselves but also to others.

The City of Bismarck provides an Employee Assistance Program. Employees with drug and/or alcohol problems are urged to use the benefits available to them. However, any employee who reports to work or performs his/her duties while impaired or under the influence of drugs and/ or alcohol, will be subject to disciplinary action, up to and including termination.

The City of Bismarck will provide education for employees and supervisors as to the dangers of substance abuse, and will provide a fair, objective, and verifiable testing procedure for situations where there is probable cause that indicates substance abuse.

In the interest of a safe, productive, and substance free work environment, the City of Bismarck has established the following policies and procedures.

### **Policy**

In accordance with the Federal Drug-Free Workplace Act, the City of Bismarck is notifying all employees of its intent to maintain workplace environment free from all Schedule I Substances, in addition to mind altering drugs, abuse of legal drugs, illegal drugs and/or alcohol. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited on any work site and during all working hours by employees. Employees are hereby notified that compliance with this policy is a condition of employment. City employees must notify the City of a criminal drug statute violation conviction in writing within 5 calendar days of the conviction, per 41 US Code 8103 and 49 CFR Part 32. The City will notify federal agencies within 10 days of notice from employee. Employees who fail to comply with this policy will be subject to disciplinary action as set forth in paragraph 9-06-02 (Causes for Suspension, Demotion or Dismissal) of the Code of City Ordinance.

Employees shall notify their employer of any criminal arrest or charge involving drugs immediately. An arrest or charge of a crime involving drugs shall be deemed "cause" and the employee must submit to a drug test prior to returning to work. An employee shall notify the City of an alcohol related criminal traffic charge or conviction within five days. Appropriate disciplinary action for a criminal drug or alcohol arrest or charge will then be pursued by the employer. A probationary or non-civil service employee may be terminated. A non-probationary full-time employee may be afforded the opportunity to participate in the City's Employee Assistance Program per Code of City Ordinance paragraph 9-03-22. No employee will be allowed to perform job duties when impaired or under the influence of mind-altering drugs, illegal drugs and/or alcohol during working hours. The methods which will implement this policy shall include the following:

- Pre-employment/post offer testing for drugs and alcohol of finalists for all full-time positions and finalists for all positions requiring a commercial driver's license (CDL)
- Testing for drugs and alcohol of all current employees for cause when determined by two trained supervisors.
- Post-accident testing for drugs and alcohol conducted after accidents on drivers whose performance could have contributed to the accident and for all fatal accidents even if the driver is not cited for a moving traffic violation.
- Random testing for drugs and alcohol conducted on a random unannounced basis just before, during or just after performance of safety-sensitive functions. Random testing will be conducted on all employees required to have a CDL.
- Return-to-duty and follow-up testing for drugs and alcohol when an individual who has violated the prohibited substance conduct standards returns to performing safety-sensitive duties. Follow-up tests are unannounced and at least six (6) tests must be conducted in the first twelve (12) months after an employee return to duty. Follow-up testing may be extended for up to sixty (60) months following return to duty.
- Treatment and rehabilitation.

An employee's refusal to be tested may be considered cause for dismissal.

### **Prohibition**

The unauthorized use of alcohol, the abuse of legal drugs, and the use, purchase, transfer or possession of illegal drugs on any City of Bismarck property, worksite, and/or scheduled work time is strictly prohibited. Abuse of legal, illegal drugs or alcohol are prohibited while using City of Bismarck vehicles, as well as in private vehicles used for City of Bismarck business.

Any employee reporting to work or being at work while impaired by mind-altering drugs, abuse of legal drugs, illegal drugs and/or alcohol is in violation of City of Bismarck policy and is subject to immediate disciplinary action up to and including termination.

### **Definitions**

#### **“Alcohol”**

Includes all forms of beer, wine or distilled liquor containing alcohol or any substance containing alcohol.

#### **“Drug”**

This is any substance that has known mind or function altering effects on humans.

#### **“Under the Influence or Impaired”**

This means that an individual is affected by alcohol or a drug or a combination of both, such that the person is limited in the performance of his/her work in a safe and productive manner.

### **Program Components**

#### **Pre-employment/Post Offer Screening**

Finalists for all full-time positions and finalists for all positions requiring a commercial driver’s license (CDL) will be required to submit to pre-employment screening tests designed to detect the presence of drugs or alcohol. All employment applicants applying for a position that is subject to pre-employment will be informed of the drug/alcohol screening tests prior to actual testing. Any applicant who refuses to consent to pre-employment drug/alcohol testing, or who produces positive tests, will not be considered for employment with the City of Bismarck. All pre-employment testing will be coordinated by the Human Resources Department.

In the event that a position requires a CDL, the City of Bismarck will also obtain testing records and records of violations of DOT testing rules from previous employers for which the candidate performed safety sensitive functions during the past two years.

### **Current Employees – testing for impaired performance**

Drug/alcohol testing will be required when a supervisor (trained to detect drug and/or alcohol influence), with the concurrence of another supervisor or manager, determines that cause exists.

"**Cause**" is defined as facts and circumstances that would give a person reasonable grounds to believe a violation has occurred. This should be determined by an individual who has completed the training required by the City of Bismarck in the implementation of the Substance Abuse Screening Program in conjunction with Human Resources or the Legal department.

### **Post Vehicle/Equipment Accident Testing**

Post vehicle/equipment accident testing is required if any of the following circumstances apply:

- The accident involved a fatality,
- The driver was cited for a moving violation,
- Any vehicles involve towing,
- Any person requires medical care away from the scene.

### **Current Employees – annual random unannounced testing for those required to have a commercial driver's license (CDL)**

The Federal Highway Administration (FHWA) has issued a rule requiring alcohol and drug testing of drivers who are required to have a CDL. The DOT rules include procedures for urine drug testing and breath-alcohol testing. The urine drug testing procedures rule was issued in December 1989 and governs drug-testing programs. The 1994 amendments to Part 40 add breath alcohol testing procedures and additional urine specimen collection procedures that provide for split urine specimens. This rule covers safety sensitive employees in transportation who drive commercial motor vehicles requiring a CDL to operate and those employees required by the City of Bismarck to have a CDL.

### **Testing Standards**

An employee will be considered to have a positive test whenever the level of drugs exceeds the limits established by the Federal Guidelines, as determined by a physician trained as a Medical Review Officer in accordance with Department of Transportation (DOT) regulations. An alcohol test is not reviewed by a physician.

## **Testing Procedures**

- Following determination that cause exists, the employee will either be transported to the testing site for appropriate screenings, or an on-site test will be requested.  
Transportation will be provided by management personnel to the testing site and return transportation provided to worksite or home. Under no circumstances will the employee provide his/her own transportation.
- For City employees represented by a Union, certified by a NLRB case, a Union representative may, whenever practical, be present for establishing the immediate facts surrounding cause and may accompany the employee and supervisor to the test site.
- **Drugs:** Prior to testing, the employee will be asked to sign a consent form, authorizing the testing of urine for drugs. The sample is then drawn and tested. Should the test be positive for drugs, a confirmation test will be conducted. For drugs, the employee must request and pay for the testing of bottle 2 of the split specimen. In the event that the employee receives a positive test, the employee may not return to work until directed by the City.

**Alcohol:** Prior to testing, the employee will be asked to sign a consent form, authorizing the testing for alcohol by breath. Should the test be positive for alcohol, a confirmation test will be conducted. In the event that an employee receives a positive test greater than .04, the employee may not return to work until directed by the City.

Time off the job will be charged appropriately at the discretion of management. Should the drug test be positive, or alcohol in excess of .04, the City will institute appropriate discipline.

- Testing procedure for random testing is to be developed by the company providing the service in accordance with DOT guidelines.

## **Employee Assistance**

When a full-time, non-probationary employee receives a positive test, the employee will immediately be suspended. Following this suspension, the City will review the employee's past record of performance. Employees with satisfactory performance records will be referred to the City's Employee Assistance Program. Employees with

unsatisfactory past performance records may be referred to the Employee Assistance Program or terminated at the discretion of the City. If the employee is admitted to or referred to inpatient or outpatient treatment for addiction, the employee must successfully complete the program as a condition of continued employment. Unsatisfactory past performance shall include previous positive drug and/or alcohol testing or documented performance of deficient behavior. When a part-time or probationary employee receives a positive test, the employee will be terminated. When a finalist for a position with the City receives a positive test, post-offer pre-employment, then the offer of employment will be rescinded.

### **Confidentiality**

All test results will be held in the strictest confidence by the designated representative of the Human Resources Department.

### **Exceptions**

- The City will fully comply with Federal or State regulations and its employees will actively participate in all parts of the program.
- Any exceptions to these procedures must be approved by the Board of City Commissioners.

Approval Date: 01/28/97

Revision Date: 4/23/24, 09/12/23, 12/13/06, 07/10/03

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