

## **Rule # 4-50**

### **Drug and Alcohol Use and Testing**

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#### **§ 4-50-005 Applicability**

This rule applies to all employees, but does not amend or supersede any collective bargaining agreement.

#### **§ 4-50-010 Drug Free Workplace**

The county, in accordance with the Drug Free Workplace Act of 1988, is committed to establishing and maintaining a work-place that is free of alcohol and drugs and free of the effects of alcohol and drug abuse. The purpose of this policy is to promote a safe and productive working environment and prevent accidents, injuries and property damage, which may result from drug and alcohol abuse.

#### **§ 4-50-015 Definitions**

**Alcohol:** Ethyl alcohol and all beverages or liquids containing ethyl alcohol.

**Controlled Substance:** All forms of narcotics, depressants, stimulants, analgesics, hallucinogens, and cannabis, as classified in Schedules I - V under the Federal Controlled Substances Act (21 USC § 811-812) as modified under ORS 475.035, whose sale, purchase, transfer, use, or possession is prohibited or restricted by law.

**Drug Paraphernalia:** Drug paraphernalia means any and all equipment, products, and materials of any kind, as more particularly defined in ORS 475.525(2), which are or can be used in connection with the production, delivery, or use of a controlled substance.

**Drug Test:** Any test designed to identify the presence of certain prohibited drugs or their metabolites in the body.

**Drugs:** Controlled substances, designer drugs (drug substances not approved for medical or other use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration), and/or over-the-counter preparations available without a prescription from a medical doctor that are capable of impairing an employee's mental or physical ability to safely, efficiently, and accurately perform work duties.

**Manager:** Includes both supervisor and manager job profiles. See definition in MCPR 1-10-040,

**Medical Review Officer (MRO):** A medical doctor trained in toxicology who contracts with employers primarily to review positive preliminary drug test results with employees.

**On-Duty:** The period of time during which an employee is engaged in activities which are compensable as work performed on behalf of the county, or the period of time before or after work when an employee is wearing a uniform, badge, or other insignia provided by the county, or operating a vehicle or equipment which identifies Multnomah County.

**Prescription Medication:** A medication for which a person is required by law to have a valid, current prescription.

**Substance Abuse Professional (SAP):** A licensed physician, or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

#### **§ 4-50-020 Commercial Driver and Other Professional Requirements**

Employees who are required to maintain a commercial drivers license or other professional licensure as a condition of employment must comply with all laws, county rules and procedures related to their ability to be eligible for and maintain their licensure.

#### **§ 4-50-030 Work Rules**

All employees are required to follow the work rules listed below.

- A. This rule applies regardless of whether the employee is on paid time. "County premises" includes all property, owned, rented, leased or controlled by the county including parking lots and adjacent areas. It also includes county equipment and vehicles on or off county property.

1. Employees must not possess, consume, manufacture, solicit, distribute, buy, or sell drugs, drug paraphernalia or alcohol on county premises or while off county premises doing county work, except when lawfully required as part of the job. An exception will be made for alcohol containers that are sealed and for gift purposes. Managers must be notified when such containers will be brought to the work place.
  2. Employees must not solicit, distribute, dispense, or sell prescription medications except when lawfully required as a part of the job.
  3. Employees must not possess or consume prescription medications without a valid prescription.
- B. While off duty, but on county premises, employees will not use or distribute alcohol without authorization.
- C. General fitness for duty:
1. Employees must not report for duty or access or use county work areas or property while “under the influence” of drugs or alcohol. An individual is considered to be “under the influence” of alcohol if a breathalyzer test indicates the presence of alcohol at or above the .04% level. An individual is considered to be “under the influence” of drugs when testing indicates the presence of controlled substances at or above the levels applying to CDL holders.
  2. Employees must not render themselves unfit to fully perform work duties because of the use of alcohol or illegal drugs, or because of the abuse of prescription or non-prescription medications.
  3. Employees must comply with legally mandated occupational requirements, whether or not they are specifically included in this policy. For example, by law holders of commercial drivers licenses (CDL) may not perform safety sensitive functions, such as driving, at or above the .02% level.
  4. Employees must not be absent from work because of the use of alcohol or illegal drugs, or because of the abuse of prescription or non-prescription medications, except when absent to participate in a qualified assessment and rehabilitation program while on approved leave.
  5. Employees will inform themselves of the effects of any prescription or non-prescription medications by obtaining information from health care providers, pharmacists, medication packages and brochures, or other authoritative sources in advance of performing work duties.
  6. Employees must notify their managers in advance when their use of prescription or non-prescription medications may interfere with the safe and efficient

performance of duties or impair their ability to perform the essential functions of their position that will result in a direct threat to others. Such employees include, but are not limited to, sworn officers, holders of a commercial drivers license and those operating equipment or handling hazardous materials. For example, corrections or law enforcement lieutenants should report when they are taking medications that may affect their ability to use a firearm or to perform other essential functions of their job. Similarly, employees who drive a motor vehicle as part of their job, whether it is a county vehicle or their personal vehicle, should report when they are taking medications that may impair their ability to drive.

#### **§ 4-50-040 Employee Cooperation Required**

- A. Employees must not interfere with the administration of this rule. Examples include but are not limited to the following: tainting, tampering, or substitution of urine samples; falsifying information regarding the use of prescribed medications or controlled substances; or failure to cooperate with any tests outlined in this rule to determine the presence of drugs or alcohol.
- B. Employees must provide to human resources within 24 hours or one business day of request a current valid prescription in the employee's name for any drug or medication that the employee alleges gave rise to reasonable suspicion of being under the influence of alcohol or drugs.
- C. Employees must respond fully and accurately to inquiries from the county's Medical Review Officer (MRO) and authorize MRO contact with treating health care providers upon request.
- D. Employees must complete any assessments or treatment programs required under this Rule.
- E. Upon request, employees must sign a waiver authorizing treatment providers to disclose confidential information necessary to verify successful completion of any assessment or treatment program required under this rule.
- F. Employees must promptly and fully disclose to their manager on the next working day:
  - 1. All drug or alcohol-related arrests, citations, convictions, guilty pleas, no contest pleas or diversions which resulted from conduct which occurred while on duty, on county property, or in a county vehicle; or,
  - 2. Any other violation of laws regulating use of alcohol and controlled substances which adversely affects an employee's ability to perform major job functions, specifically to include loss or limitation of driving privileges when the employee's job is identified as requiring a valid driver's license.

## **§ 4-50-050 Disciplinary Action**

- A. Employees are subject to discipline in accordance with these rules. Probationary/Initial Trial Service employees violating work rules are subject to immediate termination. Employees who refuse a test directed under this policy are subject to discipline, up to and including termination.
- B. Employees are not subject to discipline or removal from the On-call and/or Temporary employee lists for seeking treatment for alcohol or drug dependency. However, employees are held fully accountable for their behavior. Seeking treatment will not mitigate discipline for rule violations or other unacceptable conduct caused by such dependency.
- C. Some duties create a higher standard of accountability which may result in greater discipline for lack of compliance with this rule than others. These duties include but are not limited to the following:
  - 1. Carrying firearms
  - 2. Work in the criminal justice system
  - 3. Responsibility for public safety or the safety of co-workers
  - 4. Handling narcotics or other controlled substances
  - 5. Handling hazardous equipment or materials
  - 6. Influencing the behavior of minors
  - 7. Holding a commercial drivers license
- D. In instances in which the county determines that an employee's conduct warrants termination, the county may offer regular employees continued employment under the terms of a Last Chance Agreement if there are mitigating circumstances, such as substance abuse dependency or other good cause. Such agreements will include at least the following:
  - 1. The requirement that the employee enroll, participate in, and successfully complete a treatment program recommended by a Substance Abuse Professional (SAP).
  - 2. The right of the county to administer any number of unannounced follow-up drug or alcohol tests at any time during the work day for a period of two years from completion of any required treatment program.
  - 3. The signatures of the employee's Director and Manager, Labor Relations, and the employee.

- E. The offer of a Last Chance Agreement does not set a precedent for the discipline of other employees. Any discipline incorporated in a Last Chance Agreement may not be appealed to the Merit System Civil Council under MCPR 2-20.

#### **§ 4-50-060 Mandatory Assessment and Treatment**

- A. Employees who are disciplined for conduct related to the use of alcohol or drugs may be required to undergo assessment and complete a treatment program prescribed by a SAP selected by the county. Employees who test positive for alcohol or controlled substances are required to undergo assessment at the earliest opportunity, regardless of whether disciplinary action has been taken.
- B. The county will verify employees' attendance, and that the assessment and treatment have been completed. This verification and any other information concerning alcohol and drug dependency will be treated as confidential medical information under state and federal law.
- C. Policy on the use of leave for assessment and treatment will be the same as for any other illness.
- D. If the employee changes treatment providers, they must notify the County's Drug and Alcohol Policy Coordinator within three (3) working days.

#### **§ 4-50-070 Return to Work Testing**

Employees who test positive for being "under the influence" of alcohol or drugs will be required to test negative before returning to work.

#### **§ 4-50-080 Basis for Testing**

- A. All employees may be tested:
  - 1. Based on reasonable suspicion of being "under the influence" of alcohol or prohibited drugs.
  - 2. Before returning to work after testing positive for being "under the influence" of alcohol or drugs.
  - 3. As part of a program of unannounced follow-up testing provided for in a Last Chance Agreement.
- B. An employee applying for a different county position will be subject to testing on the same basis, and using the same procedures and methods, as outside applicants.

- C. Consistent with federal law, employees in positions that are designated as safety sensitive, including but not limited to, holders of commercial drivers licenses and bridge operators, will be subject to the testing requirements of federal law, in addition to the requirements herein which apply to all employees. For example, unlike other employees, employees in safety sensitive positions will be subject to legally required random testing and testing following certain kinds of accidents.
- D. Reasonable suspicion is a set of objective and specific observations or facts, no particular one to be controlling, that lead a Director or manager to suspect that an employee is under the influence of drugs, controlled substances, or alcohol. Examples include, but are not limited to:
1. Slurred speech,
  2. Alcohol on breath,
  3. Loss of balance or coordination,
  4. Dilated or constricted pupils,
  5. Apparent hallucinations,
  6. High absenteeism or persistent pattern of unexcused absenteeism,
  7. Erratic work performance,
  8. Persistent poor judgement,
  9. Difficulty concentrating,
  10. Theft from office or from other persons,
  11. Unexplained absences from duty, or
  12. Employee's admission of use of prohibited substances
- E. Manager Training: The county will provide training to all Directors and managers on establishing reasonable suspicion and the nature of alcohol and drug dependency. Only the Chair, Directors and managers that have been trained have the authority to direct employees to be tested on the basis of reasonable suspicion of being under the influence.
- F. Application of the "Reasonable Suspicion" standard to any employee covered by this rule will include the following additional precautions:
1. Directors and managers will articulate orally a summary of the specific facts which form the basis for believing that the employee is under the influence of drugs or alcohol; and

2. Directors and managers will provide upon request, within within two (2) business days of the oral determination of "reasonable suspicion", a written specification of the grounds for reasonable suspicion; and
3. Except in field or shift circumstances, which render contact difficult, no manager will refer an employee for a drug or alcohol test based on "reasonable suspicion" unless the manager has consulted with a manager or the County Attorney regarding the grounds for the suspicion.

#### **§ 4-50-090 Testing Methodology**

- A. Testing procedures for all employees are governed by the same standards as apply to CDL drivers under federal law. These standards include, but are not limited to, those governing sample acquisition, the chain of custody, laboratory selection, testing methods and procedures, and verification of test results.
- B. In accordance with CDL standards, the county will contract with a medical doctor trained in toxicology to act as a Medical Review Officer (MRO). The MRO will attempt to contact employees to review preliminary positive test results with employees and any relevant health care providers before the results are reported to the county. Based on professional judgment, the MRO may change the preliminary test results to negative. The county will not be able to distinguish a test result that is negative by MRO intervention from any other negative result.
- C. The MRO or the testing laboratory will issue test results only to the designated persons in Central Human Resources. The results will be sent by certified mail or hand-delivered to the employee within three working days of receipt of results by the county.
- D. If an employee disagrees with the results of any blood or urine alcohol or drug test, the employee may request, in writing within five days of receipt of test results, that the original sample be re-tested at the employee's expense by the testing laboratory. The result of any such retest will be deemed final and binding and not subject to any further test. Failure to make a timely written request for a retest is deemed acceptance of the test results. If an employee requests a retest, disciplinary action will be stayed pending receipt of the results of the re-testing. The retesting provisions do not apply to breathalyzer tests.
- E. Test reports are confidential medical records and will be kept in a separate medical file for the employee according to applicable state and federal law.

#### **§ 4-50-100 Sample Last Chance Agreement**

##### **Last Chance Agreement**

The following agreement is entered into between Multnomah County and the Employee. Failure on the part of the employee to meet the expectations below will result in the termination of the employee's employment with the County.

1. I agree to be evaluated by a qualified alcohol/substance abuse counselor, and if required, I shall immediately enroll and continue in a bona fide alcohol/drug inpatient or outpatient rehabilitation program approved by the County. I fully understand that should I fail to complete either the inpatient or outpatient program, or fail to stay in good standing with the maintenance and/or aftercare program, my employment with the County will be terminated.
2. I agree to comply with and complete the conditions of my "Treatment Plan," which may include participation in a maintenance or aftercare program, as recommended by my treatment counselor. If I must be absent from my aftercare or maintenance program, I must notify the County. The County has my permission to verify my attendance at required meetings. If I do not continue in the aftercare or maintenance program, I understand that my employment will be terminated.
3. I understand that the signing of this agreement shall allow the County the right to communicate with my physician and/or counselors regarding my status and progress of rehabilitation and aftercare. I further agree to sign any authorization or release of information necessary to allow for such communication.
4. I agree to submit to periodic, unannounced, unscheduled drug or alcohol testing (urinalysis and breath test) by the County for a period of twenty-four (24) months from the date of this agreement or when I return to work if I am participating in an inpatient treatment program. This time period will increase accordingly if I am absent from work, for any reason, for a cumulative period of one (1) month or more. I understand that if I refuse to take a drug and/or alcohol test or if a test is positive, my employment will be terminated.
5. I agree to return to work upon successful completion of an alcohol/drug rehabilitation program if my substance abuse counselor requires inpatient treatment. If enrolled in outpatient treatment, I may return when I am substance free and in good standing in my maintenance program, at such time as recommended by my treatment counselor.
6. It is understood that this agreement constitutes a final warning, and as such, lasts for the duration of my employment at the County. Should I terminate employment, and then return to work in a position with the County, the terms of this Agreement will continue to be in effect.
7. I understand the Employee Assistance Program is available to me should personal problems arise in the future that may have an effect on my ability to remain in compliance with the drug and alcohol policy and/or this agreement.

8. I realize that violation of the drug and alcohol rules and/or policies at any time in the future is cause for termination without a pre-termination hearing.
9. I realize that my employment will be terminated if I fail to meet the expectations outlined in this Agreement and the letter attached.

**Disciplinary Action**

I understand that the disciplinary action imposed in the attached letter may not be appealed to the Merit System Civil Council under MCPR 2-20.

**Personal Commitment**

I pledge and agree to abide by the terms of this agreement. I understand that a violation of or noncompliance with any of these terms will result in my being terminated without the right to a pre-termination hearing. Further, I pledge to remain free of all illegal drugs and also not to abuse legal drugs (including alcohol). I hereby consent to the County's contacting any treatment or health care provider who may have information on my alcohol or drug dependency condition and/or compliance with the terms of this agreement and authorize the provider to furnish such information to the County.

I understand the terms and conditions of this letter. I also understand that, except as expressly stated in this agreement, my terms and conditions of employment will be determined by the County's policies and rules, and that this agreement does not guarantee me employment for any set period of time. I have had sufficient time to study it away from the workplace and to consult anyone I desire about it. I sign it free of any duress or coercion. This letter will become part of my personnel file.

\_\_\_\_\_  
 (Employee) (Date)  
 Disciplinary Authority)

\_\_\_\_\_  
 (Exempt Employee With (Date)

\_\_\_\_\_  
 (Employee's Immediate (Date)  
 Exempt Supervisor)

\_\_\_\_\_  
 (Multnomah County (Date)  
 Labor Relations, if applicable)