



City of Manitowoc Police Department

DRUG AND ALCOHOL TESTING POLICY AND PROCEDURE

November 18, 2013
Revised September 2023

City of Manitowoc Police Department Drug and Alcohol Policy and Procedure

I. **PURPOSE**

The purpose of this policy is to provide all Bargaining Unit sworn personnel with notice of the provisions of the department drug and alcohol testing program.

II. **PREAMBLE**

The law enforcement profession has several uniquely compelling interests that justify the use of employee drug and/or alcohol testing. The public has a right to expect that those who are sworn to protect them are, at all times, both physically and mentally prepared to assume these duties. There is sufficient evidence to conclude that the use of controlled substances and other forms of drug and alcohol abuse will seriously impair an employee's physical and mental health and, thus, job performances.

It is the policy of the City of Manitowoc Police Department that the critical mission of law enforcement justifies maintenance of an alcohol and drug-free work environment through the use of a reasonable employee drug and alcohol testing program.

The Wisconsin Professional Police Association/Law Enforcement Employees Relations Division (WPPA/LEER) and the City of Manitowoc Police Department (referred to as *the Employer*) recognize drug dependency as an illness and a serious health problem. The WPPA/LEER and *the Employer* also recognize that Employee Awareness Programs and Employee Assistance Programs (EAP's) are necessary ingredients to ensuring an alcohol and drug-free work environment.

It is further the policy of the WPPA/LEER and *the Employer* to offer referral to employees to appropriate services and rehabilitation programs for counseling and treatment when concerns arise concerning drug and alcohol abuse which may affect an employee's work performance. It is the responsibility of *the Employer* to provide an active Employee Assistance Program (EAP) to which *the Employer* can refer employees for assessment and for appropriate education, prevention, counseling, treatment, and rehabilitation services. All such referrals and any reports provided to *the Employer* by the referred employee or by the EAP staff shall be maintained in the strictest confidence by *the Employer*.

Upon the adoption of this policy, all employees represented by the WPPA/LEER will be advised by *the Employer* in writing of the *Employer's* Drug Abuse Policy and Program. The information to be provided shall include, at minimum, information of the availability of EAP's, the effects of drugs and alcohol on individuals and their families, and, finally, *the Employer's* drug and alcohol testing program.

It is the responsibility of each employee to seek assistance from the EAP when necessary before the employee's drug problems lead to disciplinary action. An employee's decision

to seek voluntary help from the EAP is not to be used as a basis for any disciplinary action against the employee and will not be noted in any personnel record or personnel actions. The confidentiality of individuals utilizing the EAP is to be protected within the limits of the law.

Therefore, in order to ensure the integrity of the department and the safety of its officers, to preserve public trust and confidence in a fit and alcohol and drug-free law enforcement profession, the City of Manitowoc Police Department shall implement a drug and alcohol testing program to detect prohibited drug and alcohol use by employees. In appropriate circumstances, rehabilitation and counseling will be applied.

The WPPA/LEER and *the Employer* also recognize that educational programs are an integral component of an effective drug prevention program. The education of employees with respect to the dangers of drug and alcohol abuse should serve to decrease the incidence of drug abuse. Drug and alcohol awareness education to be provided by *the Employer* shall include regular Drug and Alcohol Awareness In-services for all the employees of *this Employer* subject to this policy.

III. DEFINITIONS

- A. Employee(s). Those Bargaining Unit employees who have been formally vested with law enforcement powers and authority, other than probationary employees.
- B. Supervisor. Any employee identified as a supervisor by Wis. Stats. ' 111.70 (1)(o).
- C. Drug Test. The compulsory production and submission of blood and/or urine by an employee, in accordance with this policy, for chemical analysis to detect prohibited drug usage.
- D. Alcohol Test. An approved Preliminary Breath Testing (PBT) device. If an employee tests positive for the presence of alcohol, then a confirmation test will be conducted. Blood alcohol testing is authorized only under circumstances described below.
- E. Reasonable Suspicion. A belief that an employee is using or has used drugs and/or alcohol in violation of this policy, drawn from specific, objective and articulable facts and reasonable inferences drawn from those facts in light of the observer's experience, and based upon, among other things, the following:
 - 1. Observance phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of an employee appearing to be under the influence of a drug or alcohol;
 - 2. Abnormal conduct or erratic behavior while at work, excessive absenteeism, excessive tardiness, or significant deterioration in work

performance;

3. A report of drug use provided by reliable and credible sources, which has been independently corroborated;
 4. Evidence that an individual has tampered with a drug test during his/her employ with the current employer;
 5. Evidence that an employee is involved in the illegal use, possession, sale, solicitation, or transfer of drugs while working or while on *the Employer's* premises or while operating *the Employer's* vehicle(s), machinery, or equipment.
- E. Probationary Employee. For the purposes of this policy only, a probationary employee shall be considered to be any employee who is conditionally employed with the department as a law enforcement officer.
- F. Aliquot. A portion of a blood/urine specimen used for testing.
- G. Being Subject to the Effects of Illegal Drugs or Alcohol. Having the presence of alcohol, an illegal drug, or drug metabolite in an individual's system, as determined by appropriate testing of a bodily specimen, that is equal to or greater than the levels specified for the confirmation test. This result shall be referred to as a "positive test."
- H. Collection Site. A place designated by *the Employer* where individuals present themselves for the purpose of providing a specimen of their blood/urine to be analyzed for the presence of drugs, and breath, or blood for the presence of alcohol.
- I. Confirmatory Test. A second analytical procedure to identify the presence of alcohol or a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to insure reliability and accuracy. (At the time of the adoption of this policy, gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)
- J. Initial Test (also known as Screening Test). Immunoassay screen to eliminate "negative" specimens from further consideration.
- K. Neutral Selection Basis. A mechanism for selecting employees for a drug test that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected and (2) does not give an employer discretion to waive the selection of any employee selected under the mechanism, except as otherwise provided herein.

- L. Chain of Custody. Procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an employer chain of custody form be used from time of collection to receipt by the laboratory and that appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, require an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.
- M. Medical Review Officer (MRO). A licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

IV. PROCEDURES

A. Prohibited Activity

The following rules shall apply to all employees, while on and off duty:

1. No employee shall illegally possess any controlled substance.
2. No employee shall intentionally ingest any controlled substance unless as prescribed by a licensed medical practitioner or except as in IV.A.3. below.
 - a. If an employee is required to use prescription medicine that he or she has been informed expressly has the potential to impair job performance, he or she shall notify his or her immediate supervisor. The employee shall advise his or her supervisor of the known side effects of such medication as well as the prescribed period of use.
 - b. Supervisors shall document this information through the use of an internal memorandum and maintain this memorandum in a secured file, separate from all personnel records pursuant to Wis. Stats. ' 103.13.
 - c. At the employee's option, the employee and/or his/her physician may provide the above information to the designated MRO who will inform *the Employer* of only those potential effects which the MRO deems are relevant to the employee's job duties. Any information which is not relevant to employment or related litigation shall be kept in confidence by the MRO from *the Employer*.

3. Any employee who unintentionally ingests, or is made to ingest, a controlled substance shall report the incident to his/her supervisor immediately so that appropriate medical steps may be taken to ensure the employee's health and safety. Unintentional or forced ingestion of a controlled substance shall not, in and of itself, form the basis for discipline of the employee.
4. Any employee having a reasonable basis to believe that another employee is illegally using, or is in possession of any controlled substance, shall immediately report the facts and circumstances to his or her supervisor or to a law enforcement officer in the jurisdiction where the illegal conduct has occurred. Failure to do so shall not, by itself, form the basis for discipline of the employee not reporting.
5. No employee shall intentionally ingest any prescribed medication in amounts beyond the recommended dosage. *The Employer* recognizes that some prescription medications may cause impairment in judgment, coordination, and physical ability. Reasonable accommodations will be made for employees who must temporarily use prescribed medications having such adverse effects.
6. Employees, in carrying out their duties, must not consume nor be under the influence of alcohol (defined as .02% or greater) and/or controlled substances throughout scheduled work hours except as otherwise provided herein.
7. Discipline of employees for violation of this policy shall be in accordance with the collective bargaining agreement, department policy, rules, regulations, and state law.

B. Probationary Employee Drug Testing

All probationary employees shall be required, as a condition of employment, to participate in unannounced drug and/or alcohol tests prior to the completion of the probationary period. The frequency and timing of such testing shall be determined by *the Employer*, but such determination shall not be arbitrary, capricious or unreasonable. Refusal to submit to such testing or confirmed positive drug and/or alcohol test may invoke dismissal from the department. Probationary employees shall also be subject to further drug and/or alcohol testing as set forth below.

C. Employee Drug Testing

Employees may be required to take drug tests as a condition for continued employment in order to ascertain prohibited drug use as provided below:

1. **RANDOM DRUG TESTING:** Employees shall be subject to drug tests based upon a neutral selection basis. The *Association* and *the Employer* shall develop and agree upon a reasonable mechanism for selecting employees for drug tests that results in an equal probability that any employee from a group of individuals subject to the selection mechanism will be selected and that does not give *the Employer or the Association* discretion to waive the selection of any employee selected under the mechanism. The *Association* shall have the right to be present when employees are selected for random testing. Random testing will occur quarterly, and the sampling rate, on an annual basis, will test approximately 20% percent of the total number of employees covered. Once an employee is notified they have been selected, it is required they report to the testing facility within 30 minutes.

2. **REASONABLE SUSPICION:** When a supervisor has reasonable suspicion to believe that an employee is using, consuming, or under the influence of a non-prescribed, controlled substance, and/or non-prescribed narcotic drug while on duty, the supervisor will document in writing the specific objective facts constituting reasonable suspicion of drug use. The employee will be offered an opportunity to explain his or her condition. An *Association* representative shall be present during such explanation unless the employee waives such representation after having been informed by *the Employer* of his/her right to representation. After the employee has had a chance to explain his or her condition, which led supervisors to conclude that drug/alcohol testing might be appropriate, and if the supervisor still believes the employee to be under the influence of a controlled substance, then, by a written order, the supervisor employee may order drug testing in accordance with the procedures set forth below.

All supervisory employees shall be provided with training in detecting possible symptoms of drug and alcohol abuse prior to the implementation of this policy.

3. **POST OFFICER INVOLVED CRITICAL INCIDENT [OICI] TESTING:** Any employee directly involved in an OICI, including but not limited to the following cases, may voluntarily participate¹ in a drug and alcohol (.02% or greater) test immediately following the event, or soon thereafter, as the situation allows:
 - a. The intentional discharge of a firearm at a human being or a vehicle or building in which human beings are located;

¹ Unless the conditions of subparagraph 2 above "Reasonable Suspicion" apply.

- b. Motor vehicle accident involving an employee acting in an official capacity in which a death or personal injury occurs and which requires a report as defined by Wis. Stat. ' 346.70;
- c. Physical altercation resulting in death or great bodily harm as defined by Wisconsin Statutes.

Under the circumstances set forth above, an employee directly involved shall be defined as the individual or individuals, who discharged a firearm, drove the motor vehicle or participated in the physical altercation.

- 4. Any employee who, in the carrying out of his or her official duties, unintentionally or intentionally ingests, either directly or indirectly, any controlled substance or alcohol is required to document, as soon as possible thereafter, such contact. Documentation shall occur in writing explaining all circumstances, and the employee's supervisor shall be notified as soon as possible. Appropriate medical steps should be taken to safeguard the employee's health and safety. Drug tests will be administered and no disciplinary action will be taken if the tests are positive and the employee was in physical danger if he or she did not ingest alcohol or the drug or narcotic substance or such ingestion was accidental.
- 5. Nothing in this policy shall be construed as granting permission for employees serving in any drug enforcement activities to ingest any illegal drug, marijuana, narcotic substance, or controlled substance under any circumstance except that the employee was in physical danger if he or she did not ingest the drug or narcotic, or the employee unintentionally ingested the drug or narcotic.
- 6. Employees who seek voluntary assistance for substance abuse shall not be disciplined for seeking such assistance or for any underlying substance abuse problems, except to the extent any such problems may have affected the employee's work performance. Requests from employees for such assistance shall remain confidential and shall not be revealed to other employees without the employee's consent. Any discipline arising from admitted substance abuse problems shall be imposed consistent with the provisions of this policy.
- 7. For special duty assignments that allow the consumption of alcohol, the above alcohol amounts of .02% shall not apply

D. Drug Testing Procedures

1. Specimen Collection Procedures

- a. Designation of Collection site. *The Employer* shall work with collection vendors to provide the necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of blood/urine specimens to a certified drug testing laboratory.
- b. Chain of custody. Chain of custody standardized forms shall be executed by authorized collection site personnel upon receipt of specimens.
 - (1) The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified.
 - (2) Upon receiving the specimen from the test subject, blood/urine if there are less than 60 milliliters of blood/urine in the container, additional blood/urine shall be collected in a separate container to reach a total of 60 milliliters. The test subject may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the test subject fails for any reason to provide 60 milliliters of blood/urine, the provisions of paragraph (D), (1), k. shall apply.
 - (3) Wherever there is reason to believe that a particular test subject may have altered or substituted the blood/urine specimen to be provided, a second blood/urine specimen shall be obtained as soon as possible under the conditions for privacy described above.
 - (4) The collection site person shall complete the chain of custody form.
- c. Identification. Personnel authorized to administer drug tests shall require positive identification from each participant to be tested before they enter the testing area. This shall consist of a Driver's License picture or other government issued photograph identification.
- d. Inability or Unwillingness to provide Blood/urine Specimen. Where the test subject appears unable or unwilling to give a blood/urine specimen at the time of the test, testing personnel shall document the circumstances on the drug test report form. The test subject shall be permitted a reasonable amount of time to give a sample, during which time he/she shall remain in the testing area.

Reasonable amounts of water may be given to the test subject to encourage urination. Failure to submit a sample shall be considered a refusal to submit to a drug test.

2. Laboratory Analysis Procedure

- a. Initial Test. The initial test of blood/urine specimen(s) shall use an immunoassay which meets requirements of the Food and Drug Administration for commercial distribution which are in effect on the day the aliquot is obtained. The following initial cutoff levels shall be used when screening blood/urine specimens to determine whether they are negative for these six drugs or classes of drugs.

| Initial Test Level (ng/ml) | |
|-------------------------------|-------|
| Marijuana metabolites..... | 100 |
| Cocaine metabolites | 300 |
| Opiate metabolites | 2000 |
| Amphetamines | 1,000 |
| Barbiturates | .300 |
| Benzodiazepines | .200 |

The types of drugs tested and the levels considered to be a positive result may be modified pursuant to SAMHSA guidelines, and any such modifications shall be incorporated herein.

Initial Test Level (% by weight)

| | |
|---------|-----|
| Alcohol | .02 |
|---------|-----|

- b. Confirmatory Test. All blood/urine specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. Concentrations of a drug at or above the following levels shall be considered a positive test result when performing a confirmatory GC/MS test on a blood/urine specimen that tested positive in the initial test.

Confirmatory Test
Level (ng/ml)

| | |
|----------------------------|-------|
| Marijuana metabolites..... | 15* |
| Cocaine metabolites | 150** |
| Opiates: | |

| | |
|-----------------------|--------|
| Morphine..... | 300*** |
| Codeine | 300*** |
| Amphetamines: | |
| Amphetamine | 500 |
| Methamphetamine..... | 500 |
| Barbiturates | .200 |
| Benzodiazepines | 200 |

- * Delta-9-tetrahydrocannabinol-9-carboxylic acid
- ** Benzoyllecgonine
- *** 25 ng/ml if immunoassay specific for free morphine

The types of drugs tested and the levels considered to be a positive result may be modified pursuant to SAMHSA guidelines.

c. Reporting Results.

- (1) The laboratory shall report all positive test results to the Employer's MRO. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control) it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative and the cutoff for each, the blood/urine specimen number assigned by the agency, and the drug testing laboratory blood/urine specimen identification number.
- (2) The laboratory shall report as negative all blood/urine specimens which are negative on the initial test or negative on the confirmatory test. Negative test reports will be sent directly to the Employer. Only blood/urine specimens confirmed positive shall be reported positive for a specific drug. Positive test results will be sent directly to the MRO.
- (3) The MRO shall report the test results to the Employer.

E. Drug Test Results

1. Confidentiality.

- a. Any information obtained by *the Employer* pursuant to this policy shall be the property of *the Employer*.
- b. *The Employer* shall not release to any person other than the

employee information related to drug test results unless:

- (1) The employee has expressly, in writing, granted permission for *the Employer* to release such information; or
- (2) It is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, where the information must be disclosed to a federal or state agency or other unit of the state or United States Government as required under law, regulation, or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee.
- (3) There is risk to public health or safety that can be minimized or prevented by the release of such information. Unless such a risk is immediate, a court order permitting the release shall be obtained prior to the release of the information.

2. Drug test results and records shall be retained in a secured file controlled by *the Employer*.

V. SECOND SAMPLE TESTING

If the employee desires to have his/her blood/urine specimen retested because of a positive test result, he/she may do so at *the Employee's* expense at an approved testing laboratory of the employee's choice. Results of any retesting should be submitted to *the Employer* in writing as soon as possible.

VI. ACTIONS TAKEN

- A. If an employee tests positive for illegal drug usage after the confirmatory tests, such individual shall be subject to discipline pursuant to the Collective Bargaining Agreement, department policy, rules and regulations and state law.
- B. On any action, employee assistance program counseling and follow-up may be applied.
- C. At any time prior to a required drug and/or alcohol test that produces a positive

result; an employee may inform his or her supervisor of prohibited drug and/or alcohol use and seek assistance under an employee assistance program or private rehabilitation and counseling. Any and all assistance rendered shall be closely monitored. This may include but is not limited to:

1. Further assessment of the individual by qualified persons.
2. Treatment of the individual by a recognized facility or person.
3. Release of information to *the Employer* on the progress and treatment of the employee, upon consent of the individual.
4. Process or after care treatment with possible random screening for a period of up to one year after initial treatment. Random screening under these conditions can occur up to twice within a calendar month. This is to ascertain compliance with said treatment and objectives of the department relevant to this issue.
5. In those instances where the individual fails to utilize the assistance to overcome his/her problem(s) and/or fails to make reasonable progress in counseling or treatment within a reasonable period of time as determined by the EAP staff and/or treatment personnel and/or performs in a substandard manner, and/or is under the influence of chemicals in the work place, the individual shall be considered a safety hazard to the department, public and co-workers. This shall result in corrective disciplinary action up to and including termination pursuant to the Collective Bargaining Agreement and state law unless otherwise specified herein.

VII. TRAINING

The Employer shall take steps to ensure that supervisors receive appropriate training to administer this drug and alcohol testing policy.

VIII. DISCIPLINE FOR VIOLATION OF POLICY

Discipline of employees for violation of this policy shall be in accordance with the Collective Bargaining Agreement, department policy, rules and regulations and state law. The refusal to take a required drug or alcohol test may constitute grounds for discipline up to and including termination.

IX. ASSOCIATION TO BE HELD HARMLESS

- A. This drug and alcohol testing program is initiated solely at the behest of *the Employer*. *The Employer* shall be solely liable for any obligations and costs arising out of any employees' claims based upon constitutional rights regarding

the application of this program. The *Association* shall be held harmless by *the Employer* for the violation of any employee's constitutional or other legal rights.

- B. At any time, upon reasonable advance request, the *Association* will have the right to designate a representative to inspect and observe any aspect of the drug and alcohol testing program with the exception of individual test results. The *Association* may inspect individual test results if the release of this information is authorized by the employee(s) involved and the employee(s) provides *the Employer* with a release and hold harmless and indemnification agreement to allow the release.

City of Manitowoc Police Department Drug and Alcohol Testing Policy and Procedures

~Acknowledgement of Receipt

By signing this form, I am acknowledging I have received the City of Manitowoc Police Department Drug and Alcohol Policy. I also acknowledge it is my responsibility to read, and understand the Policy. If I have questions, I am to immediately inquire with my supervisor.

(Employee Printed Name)

(Employee Signature)

(Date)

(Supervisor Signature)