



## LEWIS AND CLARK COUNTY POLICY

<b>Subject:</b> Drug and Alcohol Free Workplace	<b>Policy No:</b> 1.2.11
<b>Approved:</b>	<b>Effective Date:</b> August 1, 2017 <b>Revised Date:</b> 05/31/17

### I. Policy Statement

Lewis and Clark County is committed to maintaining a safe, healthy, and productive work environment that is drug and alcohol free and is committed to placing safe, professional drivers in our vehicles. The County prohibits employees from reporting to work who demonstrate a physical or mental impairment as a result of the use of alcohol or other drugs.

### II. Applicability

All Lewis and Clark County employees.

### III. Definitions

Department Director – A County employee who has the powers, duties, and responsibilities for managing a defined group of functions and services.

Discharge – The involuntary termination of employment for reasons other than lack of funds, lack of work, retirement or resignation.

Elected Official – Any one of the following: Board of County Commissioners; Coroner; Clerk of District Court; County Attorney/Public Administrator; Justice of the Peace; Superintendent of Schools; Sheriff; Treasurer/Clerk and Recorder/Auditor/Surveyor/Assessor.

Human Resource Director – Under general administrative direction of the Chief Administrative Officer, responsible for administration of County personnel policies and pay rules.

Supervisor – Any individual authorized to assign and direct other employees, adjust employee grievances, discipline other employees, perform performance appraisals, and

exercise authority delegated by the elected official/department director that is not of a merely routine or clerical nature but requires the use of independent judgment.

#### IV. Directives

##### A. Drug and Alcohol Free Workplace Policy

1. Substance abuse increases the potential for accidents, absenteeism, substandard performance, and poor employee morale. Impaired judgment of employees may have serious financial consequences for the County through increased risk of accidents, potential accident liabilities, increased Workers' Compensation liabilities, and potential faulty decision-making. Substance abuse undermines the County's mission to provide the community with an excellent quality of life through leadership, communication and delivery of services that are responsive to citizen's needs, cost effective, and oriented to the future.
2. The Drug-Free Workplace Act (D.F.W.A.) of 1988 requires that agencies receiving grants from any federal agency certify that they will maintain a drug-free workplace. The intent of this policy is to:
  - a. Provide clear guidelines and consistent procedures for handling incidents of employee use of alcohol, drugs, or other controlled substances.
  - b. Provide substance abuse prevention education to employees.
  - c. Establish an employee assistance program to help workers and their family members resolve problems that affect job performance.
  - d. Ensure compliance with state and federal laws.
3. Written notice is hereby given that compliance with this policy statement is a condition of continued employment for all employees. Employees will abide by the terms of this statement. Employees who violate the provisions of this policy may be required to successfully complete a drug/alcohol abuse rehabilitation program as a condition of continued employment.
4. Violations of this policy will result in disciplinary action, up to and including dismissal.
5. In order to comply with the Drug-Free Workplace Act, the County has adopted the following guidance:
  - a. Any time supervisors believe they have evidence or an indication that an employee may have a drug/alcohol problem, the supervisor should contact the elected official/department director and the Human Resource Director for guidance and assistance in dealing with aspects of the problem in the workplace setting.
  - b. Employees are prohibited from engaging in either the unlawful or unauthorized use, possession, manufacture, distribution, dispensing or sale of any controlled substance or alcohol while at work or in and on work sites.
  - c. Employees are prohibited from arriving to work under the influence of alcohol or illegal drugs.
  - d. Employees are prohibited from using, possessing, distributing, or manufacturing illegal drugs on company property or while performing company business.

- e. Employees cannot bring or consume alcoholic beverages on company property except in connection with company-authorized events.
  - f. Employees being treated with a drug or controlled substance that might adversely affect their ability to perform their work must provide a written statement from their doctor to the Human Resource Department. Only the person for whom a prescription drug is issued can bring that medication onto County property.
  - g. Employees are required to notify their supervisor in writing within five (5) calendar days of their conviction of a violation of a criminal drug statute occurring in the workplace. Supervisors are responsible for notifying the Human Resource Director in writing immediately upon receiving notice of violation from an employee.
  - h. **Federally Funded Programs Notice Requirement** – The County is required to notify the appropriate federal contracting agency within ten (10) calendar days of notice of a conviction.
6. Employees who violate these provisions are subject to the following:
- a. Employees who use alcohol while on company property or on company business or who report to work under the influence of alcohol will be removed from the workplace and may be required to undergo testing, referred to the Employee Assistance Program, and/or disciplined, up to and including dismissal.
  - b. Employees who use, possess, purchase, or dispense any illegal drug while on County property or while on County business will be removed from the workplace, and may be required to undergo testing, referred to the Employee Assistance Program (EAP), and/or disciplined, up to and including dismissal.
  - c. Employees who are arrested for or convicted of violating a criminal drug statute while at work must be removed from the work site, required to seek counseling from the EAP, and/or disciplined, up to and including dismissal.

## **B. Qualified Testing Program**

1. A critical part of the County's drug and alcohol free program is compliance with the Federal Motor Carrier Safety Regulations, Code of Federal Regulations (CFR) 49, Part 382. The below information is provided in accordance with Part 382.601.
2. **Categories Subject to Testing** – all vehicle drivers who are required to hold a Commercial Driver License to perform their duties, who work part time or full time for the County are subject to the controlled substance testing provisions in Part 382.
3. **Safety Sensitive Functions** – all drivers are considered to be performing safety sensitive functions during any period in which they are actually performing, ready to perform, or immediately available to perform as a driver of a commercial motor vehicle. These functions are further defined as:
  - a. Time at a terminal, facility or other property waiting to be dispatched.
  - b. Time inspecting equipment as required, or servicing/conditioning a motor vehicle.
  - c. Driving.
  - d. Time spent in or on any commercial vehicle.
  - e. Time spent loading or unloading a vehicle or remaining in readiness to operate a vehicle.
  - f. Time spent supervising or assisting loading or unloading a vehicle.
  - g. Time spent attending a vehicle being unloaded.

- h. Time spent performing driver requirements relating to accidents.
  - i. Time spent repairing, obtaining assistance or remaining in attendance upon a disabled vehicle.
  - j. Time spent providing a breath or urine sample in compliance with the requirements of Part 382.
4. **Prohibited Conduct** – specifically, all drivers who are performing safety sensitive functions must comply with the following:
- a. No driver shall report for duty or remain on duty while having an alcohol concentration of 0.02 or greater. (A driver found to have a concentration greater than 0.02 but less than 0.04 will be removed from performing any safety sensitive functions for 24 hours.)
  - b. No driver shall possess alcohol.
  - c. No driver shall use alcohol while performing safety sensitive functions.
  - d. No driver shall perform safety sensitive functions within four hours of using alcohol.
  - e. No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
  - f. No driver shall refuse to submit to a post-accident; random; reasonable suspicion; or follow-up, alcohol or controlled substances test.
  - g. No driver shall report for duty or remain on duty when the driver uses any controlled substance. An exception is when the use of the controlled substance is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. The use of another individual's prescription medicine may be considered prohibited controlled substance use.
  - h. No driver shall report for duty, remain on duty, or perform a safety sensitive function, if the driver tests positive for controlled substances.
5. **Types of testing** – the following alcohol and controlled substance tests will be performed. In order for the driver to be allowed to perform safety sensitive functions, a negative result for controlled substances and an alcohol concentration of less than 0.02 will be necessary. (A concentration between 0.02 and 0.039 will result in a 24 hour disqualification. A concentration of 0.04 or higher will result in a positive test).
- a. Pre-employment - administered prior to a driver performing safety sensitive functions for the first time for an employer. (Controlled substances testing only).
  - b. Post-accident - administered as soon as practicable, following an accident involving a commercial motor vehicle, if there is a fatality, or if the driver is cited for a moving traffic violation. (Must occur within 8 hours of the accident for alcohol, and within 32 hours after accident for controlled substances).
  - c. Random - administered if a driver's name is selected in a random drawing, conducted periodically throughout the year. Drivers notified of a random selection must submit immediately for testing.
  - d. Reasonable suspicion - administered if the employer has reasonable suspicion to believe the driver is in violation of any of the prohibitions listed above.
  - e. Return to duty - administered prior to a driver returning to duty, following a "positive" controlled substances or alcohol test. Will also be administered if a driver is disqualified from the random pool for any reason, and then re-enters the random pool.

- f. Follow-up - if a driver has refused to test or tested positive, and wishes to be re-qualified to perform safety sensitive functions, he/she must be counseled by an authorized Substance Abuse Professional (SAP), follow the recommended program, and then produce a negative "Return to Duty" test result. The SAP will then direct the County to administer a minimum of six "Follow-up" tests in the next 12 months. This number may be increased by the SAP. The County will select the times for the follow-up tests.
6. **Testing procedures** – all testing will be performed with procedures that are outlined in Part 382. These procedures are designed to protect the driver, maintain integrity in the testing process and safeguard the validity of the test results
7. **Refusal to Test** – all drivers are required to submit to testing, when directed by an official of the County, in order to comply with the requirements of Part 382. If any driver refuses to test under the conditions outlined in Part 382, the refusal will be treated as a positive result, and will be subject to consequences of a positive test. Refusal to test includes any action which interferes with the testing process. A driver has refused to take a test if they:
  - a. Fail to appear for any test (except a pre-employment test) within a reasonable time after being directed to do so by the employer.
  - b. Fail to remain at the testing site until the testing process is complete.
  - c. Fail to provide a specimen for a required test.
  - d. Fail to permit an observed or monitored collection when required.
  - e. Fail to provide a sufficient specimen for a required test without a valid medical explanation.
  - f. Fail or decline to take an additional test when required.
  - g. Fail to undergo a medical examination or evaluation as directed by the medical review.
  - h. Fail to cooperate with any part of the testing process (ie obstructive behavior, refusal to empty pockets when requested, failure to wash hands after directed to do so by collector, etc).
  - i. For an observed collection, fail to follow the observer's instructions to raise and lower clothing and turn around.
  - j. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
  - k. Admit to the collector or medical review officer to having adulterated or substituted the specimen.
  - l. Adulterate or substitute a specimen.
  - m. Fail to sign the certification statement at Step 2 of the Alcohol Testing Form.
  - n. Fail to remain readily available for post-accident drug and alcohol testing until a decision is made that no testing is required or until testing is complete.
8. **Consequences of Prohibited Conduct** – any driver who engages in conduct prohibited by Part 382 will be immediately removed from performing any safety sensitive function. In addition, the driver will be subject to discharge from his/her employment with County. A driver who tests positive may be offered a "once per lifetime" last chance to be reinstated. The reinstatement will be subject to the driver submitting to a treatment needs assessment by a SAP, and following and completing the recommended treatment. In addition, the driver will be required to submit to a Return-To-Duty controlled substance and/or alcohol test.

9. **Employee Assessment** – any employee who tests positive for the presence of illegal drugs or alcohol, will be required to be evaluated by a SAP. The SAP will evaluate the employee to determine what assistance the employee needs in resolving problems associated with prohibited substance abuse or misuse. The employee cannot return to their safety-sensitive position until successfully completing the SAP return-to-duty requirements.

After successfully completing the SAP requirements, the employee may be eligible to return to work. The employee must then have a return-to-duty test and the test result must be negative. The SAP will also develop the employee’s follow-up testing plan – outlining for the employer the number and frequency of follow-up testing that will take place.

Any employee who refuses or fails to comply with County requirements for return-to-duty shall be subject to disciplinary action, up to and including discharge. Employees will not be allowed to use any type of accumulated leave from the time they are removed from their safety sensitive position until they complete the return-to-duty process and are able to perform their safety sensitive position.

The costs associated with an employee’s positive test are as follows:

Action:	Who pays:
SAP counseling, evaluation, and treatment plan	Employee 100%
Return-to-Duty Test	Employee 100%
Additional testing as required by SAP and outlined in the treatment plan	Employee 50% Employer 50%

## V. Closing

Provisions of this policy will be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

Questions concerning this policy should be directed to the Designated Employer Representatives:

Human Resources Analyst  
316 N Park Ave, Rm 303  
Helena, MT 59623  
(406) 447-8316

Human Resource Director  
316 N Park Ave, Rm 346  
Helena, MT 59623  
(406) 447-8317

## VI. References

None

**VII. Attachments**

Statement of Understanding