

DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT POLICY:

DRUG AND ALCOHOL FREE WORKPLACE (DOT)

PURPOSE

To establish policy and procedures as it relates to a drug and alcohol free workplace, and its applicability to employees who possess a DOT Commercial Driver's License. This policy has been developed in order for the City of Pittsfield to come into compliance with the Omnibus Transportation Act of 1991 which establishes an employer based alcohol and control substance testing program to help prevent accidents and injuries resulting from misuse of alcohol and controlled substances by drivers of commercial motor vehicles.

SCOPE

DOT Commercial Driver's License: Employees of the City of Pittsfield who are required to maintain a commercial driver's license are subject to regulations promulgated by U.S. Department of Transportation and therefore are subject to the provisions of 49 CFR 40.00, et. al. and 49 CFR 382.00, et.al. The City of Pittsfield, in accordance with this regulation, will comply with the federal drug testing and reporting program. Employees whom possess a CDL will be subject to random drug testing. Consortium to be administrated by the Transportation Advisors (TA), and TA will randomly select individuals on a quarterly basis and provide said names in writing to the Human Resources Department.

- Violation of this policy is grounds for termination.
- Any applicant whose confirmed test result indicates illegal drug use will not be offered employment.
- If a test should yield "*dilute negative*" as the result of a screening, the employee must be re-tested.
- Any current employee who in the first instance has a similar test result or whose continued alcohol abuse is affecting job performance has the choice of enrolling in an approved rehabilitation program or possible job termination.
- Any employee in possession of an illegal drug at the workplace will be terminated from employment.

PROHIBITED CONDUCT

The following is considered prohibited conduct under this policy:

1. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater.
2. No driver shall use alcohol while performing safety-sensitive functions.
3. No driver shall perform safety-sensitive functions within four hours after using alcohol.



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4. No driver required to take a post-accident alcohol test under 49 CFR 382.303 shall use alcohol for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
5. No driver shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up controlled substance and/or alcohol test required by 49 CFR Part 382.
6. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.
7. No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances.
8. The City shall not permit a driver to continue to perform safety sensitive functions if the City has actual knowledge of a driver violating any of the aforementioned prohibitions.
9. The City can obtain actual knowledge based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances, or an employee's admission of alcohol or controlled substances use, except as discussed in the City's voluntary self-identification program.

Prescription Medications

No driver may possess any prescription medication or report to work while using any prescription, except when he/she is under a doctor's care and the doctor has advised the driver that the substance does not affect his/her ability to operate a commercial motor vehicle. The use of medication that could affect a driver's safe job performance is prohibited while working. The driver shall report to the supervisor, the use of any prescribed medication and, without identifying the medication, shall provide a certificate from the driver's doctor that the use of the medication will not impair the his/her ability to safely perform his/her duties. If, as a result of testing under this policy, the driver is found to have the presence of controlled substances in the body which is a result of the use of his/her legally prescribed medication that has not been reported, the driver shall be removed from service without pay until it is determined that the use of medication will not impair his/her ability to safely perform assigned duties. The use of medical marijuana is currently not recognized by The Department of Transportation.



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Medical Marijuana

Marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act, 21 U.S.C. § 812(b) (1) whose use, sale, and possession are federal crimes.

State laws allowing marijuana use do not protect City employees against employment-related sanctions.

Similarly, employees using marijuana for “medical” reasons are not protected from sanctions under the Americans with Disabilities Act (ADA) or the Commonwealth’s disability discrimination laws requiring reasonable accommodation of disabling medical conditions. Section 7 of the citizens’ petition adopted in November 2012 states in paragraph (D):

Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place.

Furthermore, the new Chapter 94G, section 2(e) provides that:

This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.

In summary, all City personnel are still prohibited from using or possessing marijuana, regardless of the laws with respect to marijuana possession and usage in Massachusetts.

Other Related Alcohol Conduct

A driver tested under the requirements of this policy who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall be removed immediately from performing safety-sensitive functions until the start of the driver’s next regularly scheduled duty period, but not less than 24 hours following the test administration.

EMPLOYEE RESPONSIBILITIES

It is expected that all employees will be encouraged to take responsibility for actions such as:

1. Avoiding the use of any involvement with illegal drugs.
2. Avoid unauthorized use of alcohol while on City premises or in the City vehicles. According to the DOT standard an employee cannot work within four hours of having consumed any alcohol.
3. The use of medications or prescription medications could impair one’s performance to drive a motor vehicle and this must be reported to the supervisor.



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4. It is expected that all employees shall abide with this policy and if there is a violation of this policy that there is grounds for termination.
5. If an employee is convicted of violating a criminal drug statute they need to notify their supervisor or department head of such an event within 5 days.

TYPES OF TESTING AND REFUSAL TO TAKE TEST

1. Pre-employment: A pre-employment drug screen is conducted before applicants are hired or after an offer to hire but before actually performing safety sensitive functions for the first time. It is also required when employees transfer to a safety sensitive position. In addition, an applicant who has tested positive on any other employer's DOT mandated pre-employment drug test in the last 3 years must provide documentation of the applicant's successful completion of DOT return-to-duty requirements (i.e. an evaluation by a substance abuse professional, education and/or treatment, and a negative DOT pre-employment test all of which meet the requirements of 49 CFR Part 40). The driver/applicant will be responsible to pay for the pre-treatment evaluation, education and/or treatment.
2. Post-Accident: Both a drug and alcohol test will be conducted after accidents if the accident meets the DOT requirements for a post-accident test as outlined below:
 - A. If the accident involved the loss of human life (fatality); or
 - B. The driver received a citation for a moving violation and the accident involved bodily injury to any person who, as a result of the accident, immediately receives medical treatment away from the scene of the accident; or
 - C. The driver received a citation for a moving violation and the accident involved one or more motor vehicles incurring disabling damage as a result of the accident, requiring either motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

All employees who have access to and drive City vehicles, and/or possess a C.D.L, and are involved with a motor vehicle accident (MVA) are required to report the accident to the police immediately. Additionally, a driver may not consume alcohol for eight (8) hours following an accident that requires the DOT alcohol test. The alcohol test must be completed within two (2) hours of the accident, if not the driver must advise the City the reasons for the delay, and shall continue to have the test conducted up to eight (8) hours following the accident. After eight (8) hours the attempt to test will be ceased; the driver must again provide the reasons for the test not being administered.



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A controlled substances test shall be administered as soon as practicable up to 32 hours following the accident. After 32 hours the attempt to test will be ceased, the driver must provide the reasons for the test not being administered promptly. A driver must remain readily available for testing, or may be deemed by the City to have refused to submit to testing. Please refer to Section VIII for the procedure for post-accident testing after business hours.

3. Reasonable Suspicion: Conducted when a supervisor trained in reasonable suspicion awareness observes behavior or appearance that is characteristic of alcohol misuse or drug use. Reasonable suspicion must be documented in writing at or near the time of observation on the Observed Behavior Reasonable Suspicion Record. Drivers required to be tested under reasonable suspicion testing will be removed from performing safety sensitive functions pending the outcome of the test result(s) and be transported to the testing facility by the City.
4. Random: Random selection of drivers will be made by a scientifically valid method using a computer-based random number generator that is matched with drivers' Social Security numbers or license number. Each driver shall have an equal chance of being drawn each time selections are made. Selections for testing are unannounced and reasonably spread throughout the calendar year. Random selections are made to ensure testing for controlled substances is conducted at not less than the minimum annual 50% rate and alcohol is conducted at not less than the minimum annual 10% rate, or the rates as established by the FMCSA.

A driver shall only be randomly tested for alcohol just before, during, or after performing safety-sensitive functions; however, they may be tested for controlled substances anytime while performing work for the employer. Once a driver is notified of selection for random alcohol and/or controlled substances testing they shall proceed to the test site immediately. If a test should yield "*dilute negative*" as the result of a screening, the employee must be re-tested. If a test shows a "*positive*" result for substance, the City will follow protocols outlined in this policy for employee discipline.

5. Return to Duty and Follow-up: No employee found to be in violation of the FMCSA and City's drug and alcohol policy will be permitted to return-to-duty involving safety-sensitive functions until the employee has a certified negative controlled substances test and/or an alcohol test with a result less than 0.02 alcohol concentration. Prior to the employee's return-to-duty, said employee, in accordance with 49 CFR §40.285 and §40.289(b), shall be evaluated by a Substance Abuse Professional (SAP), certified in accordance with 49 CFR §40.281. The SAP must provide a written report indicating when the employee may complete a return to duty drug and/or alcohol test. All return to duty tests must be collected under direct observation. Follow-up tests are required for any driver who violates the FMCSA drug and alcohol testing regulations. The SAP determines the number and frequency of tests. All follow-up tests must be collected under direct observation.

The consequences of the employee's refusal to take a drug test are set forth in 49 CFR §40.191(c). Employees who are subject to this policy are expected to comply fully with all required drug and alcohol testing.



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Failure to do so (including, for example, refusing to sign consent or refusing to test, obstructing the testing process, failing to make yourself available for a required test, failing to provide an adequate sample for testing, attempting to adulterate or substitute a specimen, or in any way tampering with a required test, failure to empty pockets as requested by collection site personnel) will cause the driver to be immediately relieved from performing safety-sensitive functions, and will also be considered a violation of the City's policy that will subject the employee to discipline, up to and including termination of employment.

RELEASE OF RECORDS

In accordance with 49 CFR §40.321, unless otherwise provided in this Subpart P of 49 CFR 40.00, an employer shall not release individual test results or medical information about an employee to third parties without said employee's specific written consent. Notwithstanding, in accordance with 49 CFR §40.323, the employer may release information pertaining to an employee's drug and alcohol test without said employee's consent in certain legal proceedings. In accordance with 49 CFR §40.331(a), if the employer receives a written request from a former employee to provide information pertaining to his/her drug and alcohol testing to a subsequent employer, the employer must release said information, and the employer must comply with the terms of the employee's consent.

EMPLOYER RESPONSIBILITY

The City of Pittsfield shall ensure that persons designated to determine whether reasonable suspicion exist to require a driver to undergo testing receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substance use. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. The Transportation Advisor Inc. may provide this training.

The City of Pittsfield will provide bulletin board notices that continually remind employees that they need to present to Berkshire Occupational Medicine (BOH) after an accident to have drug and alcohol testing. It is important to note that the employee must be able to give consent for this testing and must specifically state to BOH that they need to have a drug and alcohol test post-accident. Supervisors may also present to the BOH with employee and request that this be done. An unconscious employee cannot have a drug and alcohol sample taken from them.

EMPLOYEE ASSISTANCE

Because of the commitment to maintaining a safe work environment, the City of Pittsfield offers an Employee Assistance Program (EAP) through its insurance company MIIA. Employees who self-identify that they have a drug or alcohol problem prior to any testing process or notification of testing will receive confidential assistance to help deal with this problem.

An employee who tests positive or refuses testing must meet with a certified SAP, and will be involved with the Human Resources Department in getting the employee rehabilitated and eventually back into the work force.



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RANDOM SELECTION

The City of Pittsfield has maintained the services of The Transportation Advisor., who will maintain names and social security numbers of all employees who meet the requirement for a random selection. Throughout the year a computer program will pick a percentage of employees who must present for a random test. This selection process is completely random and an employee may be picked more than once year.

1. TA will randomly select a number of employees and set up a time with the Human Resources Department as to when the employee is to report for urine or alcohol testing.
2. Just prior to the employee's actual appointment at the testing site, the supervisor will verbally inform the employee in a confidential manner to report to the specific site at a given time.
3. Employees who are selected for testing but happen to be absent from work that day will be tested on the first day that they return to work.

PROCEDURES FOR ALCOHOL AND DRUG TESTING

An Evidential Breath Testing Device (EBT) approved by the National Highway Traffic Safety Administration is used for alcohol testing. For controlled substances, urine specimens are obtained in a confidential and specific manner consistent with DOT regulations. All alcohol and drug testing will be performed in accordance with these procedures at Berkshire Occupational Health (BOH). The five drugs that are tested for include: cocaine, marijuana, opiates, phencyclidine (PCP) and amphetamines.

All drug screen collections and breath alcohol tests will be done at BOH. When an employee has been selected for random testing he or she will be notified by his supervisor of the time he or she will need to present to BOH on that same day. When he or she presents to Berkshire Occupational Health the employee must:

1. Show photo identification.
2. Provide a urine specimen in the privacy of a designated bathroom and/or provide the specific amount of air blown into the EBT as instructed.
3. Observe the entire collection process.
4. Read, sign and date the chain of custody forms.
5. Note the temperature reading on the bottle of urine and verify that the temperature was correctly recorded on the form.

Post-Accident Testing: During the regular working hours the employee should be instructed, or brought to Berkshire Occupational Health



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After-hours Protocol:

1. Manager/Supervisor calls BOH at 447-2684, prompt # 7, with test request and BOH "on-call" staff travel to Fairview to perform testing.
2. Manager/Supervisor accompanies employee to Fairview Hospital Emergency Department.
3. If medical treatment is needed, testing will be done after employee is medically stable.
4. BOH completes urine drug screen (UDS) and/or breath alcohol test (BAT).
5. Employee must test, regardless of whether he/she is at fault, if there is loss of life; or if he/she was at fault and receives a citation, or if he/she was at fault and receives a citation and the vehicles involved need to be removed.

RESULTS REPORTING

Results of testing are released to the Human Resources Department, and all results are kept confidential, including negative results.

ALCOHOL

1. An employee with an alcohol concentration of .02 or greater but less than .04 is not permitted to perform safety sensitive functions for a minimum of 24 hours and the Human Resources Department Representative will be notified of this result.
2. An employee with an alcohol concentration of .02 or greater in the screening test must remain in the presence of the breath alcohol tester (BAT) and have a confirmatory test done. At that time the employee must not chew gum, drink anything and may not smoke any cigarettes.
3. If the confirmatory test is greater than .04 the employee cannot work in a safety sensitive position and the Human Resources Department Representative will be contacted and rehabilitation steps will be made.
4. If the result of either of these tests is positive, the employee cannot drive and a responsible City of Pittsfield designee must present to Occupational Health to assist the employee in returning home. The employee cannot drive himself home with the results being positive.

DRUGS

1. If negative, the employer receives a result from the Medical Review Officer (MRO) and will inform the employee.
2. If the test is positive, the employee will have an opportunity to discuss the results with the Medical Review Officer prior to any notification to the employer. If the MRO can discover no reasonable explanation for the positive result the individual is subject to the City's disciplinary procedures for such violation of this policy.



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3. Within 72 hours of the MRO notifying the employee of a positive testing, the driver may request a reanalysis of the original specimen. This is referred to as a split sample. Only the MRO may authorize such reanalysis, and may only take place at a certified lab by the Department of Health and Human Services. If the reanalysis fails to reconfirm the presence of the drug(s), the MRO shall cancel the test. It shall be understood that the reanalysis will be at the employee's own expense.

CONSEQUENCES OF POLICY VIOLATION

Any employee who fails a drug or alcohol test shall be suspended, without pay, for a minimum period of five (5) working days, and before such employee shall be permitted to return to work, the employee must be evaluated by a SAP and cleared to take a directly observed return to duty drug and alcohol test.

The cost of any return to duty or follow up testing or confirmatory testing shall be the employee's responsibility. Non-permanent or seasonal employees who fail a drug or alcohol test shall be subject to penalties up to and including termination.

Any employee who fails a drug or alcohol test shall be subject to unannounced follow-up testing as determined by the SAP and outlined in the SAP report. Any employee who fails more than one drug or alcohol test in any one year period or during their scheduled follow-up appointments as determined by the SAP shall be subject to termination of employment.

Any employee who refuses to submit to a drug or alcohol test shall be subject to the same penalties as an employee who tests positive. set forth in 49 CFT 40.191(c)(drugs) and 49 CFR §40.261(b)(alcohol); which means you will be subject to the same penalties imposed upon employees who violate the DOT regulations, i.e. 49 CFR §382.507 which provides that a driver who violates the provisions of 49 CFR part 382 or the provisions of 49 CFR part 40 shall be subject to the civil and/or criminal penalties as set forth in 49 U.S.C. §521(b); which states that such a violation shall be a civil penalty in an amount not to exceed \$10,000 per offense; or a criminal penalty (if the violation is willful) in an amount not to exceed \$25,000.



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DEFINITIONS

"Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

"Alcohol concentration (or content), BAC" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under 49 CFR Part 382.

"Alcohol use" means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

"Commercial driver" means any person who operates a commercial motor vehicle.

"Commercial motor-vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- Has a gross vehicle weight rating of 26,001 or more pounds; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).

"Controlled substances" mean those substances identified in 49 CFR Part 40.85: marijuana, cocaine, opiates including heroin, amphetamines, MDMA (Ecstasy), and phencyclidine.

"DOT Agency" means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653, 654 and 655), in accordance with 49 CFR Part 40.

"Driver" means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are



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either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

"Drug" has the meaning of any controlled substances, prescription, or over-the-counter medication.

"EBT (or evidential breath testing device)" means an EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming to the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.

"Employer" means an entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with 49 CFR Part 382. The term refers to the entity responsible for overall implementation of DOT drug and alcohol program requirements, as well as those individuals employed by the entity who take personnel actions resulting from violations of 49 CFR Part 382 and any applicable DOT agency regulations. Service agents are not employers.

"Licensed medical practitioner" means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

"Medical Review Officer (MRO)" means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

"Performing (a safety-sensitive function)" means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

"Refuse to submit (to an alcohol or controlled substances test)" means that a driver:

- Fails to show up for any test within a reasonable time after being directed to do so by the City or to remain at the testing site until the testing process is complete. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a Consortium/Third Party Administrator);
- Fails to provide a urine specimen for any drug test required by 49 CFR Part 382;



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- In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen;
- Fails to provide a sufficient amount of urine when directed, unless it has been determined, through a required medical evaluation, that there was an adequate medical explanation for the failure to provide.
- Fails or declines to take a second test the employer has directed following a negative dilute result;
- Fails to undergo an additional medical examination, as directed by the MRO as part of the verification process, or as directed by the Designated Employer Representative (DER) concerning the evaluation as part of the "shy bladder" procedures in 49 CFR Part 40, subpart I;
- Fails to cooperate (e.g. leaves the test site before the collection process is completed, refuses to empty pockets) or otherwise interferes with any part of the testing process.

"Safety-sensitive function" means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by 49 CFR 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

