

ADMINISTRATIVE ORDER NO. 61

Repealed By

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Pursuant to Administrative Order and the authority granted to me by Article 2-311, BMCC, I hereby establish the following policy regarding:

“Drug and Alcohol Testing: For Cause/Reasonable Suspicion Testing”

PURPOSE

The City of Billings has a strong commitment to its employees to provide a safe work place and to establish high standards of employee health and safety. Consistent with the spirit and intent of this commitment, the City has established this policy regarding drug and alcohol abuse. Quite simply, our goal will continue to be one of establishing and maintaining a work environment that is free from the effects of alcohol and drug abuse.

POLICY

- A. The City strictly prohibits the use, sale, transfer, manufacture, or possession of alcohol, drugs or controlled substances during City time or on City property, premise or work site (including City vehicles). Violators will be subject to disciplinary action up to and including termination of employment for a first offense.
- B. The City prohibits employees from reporting for or being at work while under the influence of alcohol, drugs or controlled substances. Violators will be subject to disciplinary action up to and including termination of employment. (See “Consequences” below)
- C. Employees who must use a prescription drug that causes adverse side effects (e.g. drowsiness, impaired reflexes or reaction time) or may affect ability to perform work in a safe and productive manner must notify his or her supervisor prior to starting work, or operating City equipment.

All tests will be conducted by a laboratory certified by the U.S. Department of Health and Human Services. Collection of samples, chain of custody, testing and confirmation tests will be by approved standard methods.

DEFINITIONS

1. “Aberrant”: A deviation from what is right, true, normal, etc.
2. “Adulterate”: To change or tamper with a specimen.
3. “Alcohol”: Beer, wine, and all forms of distilled liquor containing ethyl alcohol. References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing ethyl alcohol.
4. “Chain of Custody Requirement”: The collection, transportation and confirmation testing of any urine samples will be performed in accordance with 49 CFR, part 40.
5. “Drug”: Any substance (other than alcohol) that has known mind or function-altering affects on a human subject, specifically including psychoactive substances and including, but non limited to, substances prohibited or controlled by State and Federal controlled substance laws.
6. “Breath Alcohol Testing”: The determination of Blood Alcohol Concentration by measuring the amount of alcohol in exhaled breath.

7. "Confirmed Positive": A laboratory report that a substance has been identified in a urine specimen by both Immunoassay and gas chromatography/mass spectrometer testing methods. For alcohol, a confirmed positive breath alcohol test consists of a positive result on a screening test and a positive result on a confirmation test.
8. "Controlled Substances": Chemicals that may be legally sold only on the order of a professional who holds a special license.
9. "Dilute": A specimen that contains so much water that the concentration of solutes or analytes in the specimen falls below a certain limit.
10. "Follow-up Unannounced Testing": The subsequent testing for alcohol and other drugs without prior notice when a previous test has been verified a confirmed positive, confirmed positive for alcohol and/or on return-to-work following alcohol or drug related treatment.
11. "Forensic Urine Drug Testing Proficiency Program": The procedures used by the National Institute of Drug Abuse (NIDA) to ensure that approved laboratories meet the standards established by the Department of Health and Human Services for the testing of urine specimens for drugs of abuse.
12. "Illegal Substances": Drugs which by law may not be sold or traded for human use other than closely supervised and specially approved medical procedures.
13. "Medical Review Officer (MRO)": A licensed physician trained in the field of substance abuse.
14. "Possess": To have on one's person or in one's personal effects or under one's control.
15. "Reasonable Suspicion"/"For Cause": Documented specific, contemporaneous, articulable observations concerning the appearance, conduct, behavior, and speech or body odors, which are consistent with the effects of substance abuse.
16. "Treatment": A program, either in-patient or out-patient for alcohol and/or drugs that is recommended by qualified Substance Abuse/Chemical Dependency Treatment Professionals.
17. "Under the Influence"/"Impaired": When an employee is affected by a drug or alcohol or the combination of a drug and alcohol. The symptoms of influence and/or impairment are not confirmed to those consistent with misbehavior, nor to obvious impairment of physical or mental ability such as slurred speech or difficulty in maintaining balance. A determination of use, influence, and/or impairment can be established by a professional opinion, urine, blood or any other commonly used scientific valid tests, and in some cases by a lay person's opinion. An employee will be presumed to be impaired and in violation of this policy whenever the presence of drugs is detected at levels determined by the testing laboratory as constituting a positive indication for drugs. And employee will be presumed to be impaired by alcohol whenever the presence of alcohol is detected at a level of **.04% or greater.**

COVERAGE, CONSENT AND CONSEQUENCES

This policy shall cover all part-time, full-time, regular, seasonal and on-call employees of the City of Billings. This policy is a qualified testing program as defined under 39-2-207 MCA.

The City strictly prohibits the use, distribution, sale, transfer, manufacture, or possession of drugs, alcohol, or controlled substances during City time or on City property, premise or work site (including City vehicles). Violators will be subject to disciplinary action up to and including termination of employment for a first offense.

The City prohibits employees from reporting for or being at work while under the influence of alcohol, drugs or controlled substances. Any employee who has a verified confirmed positive drug and/or alcohol test will be subject to the following disciplinary action:

A first offense will require the employee to do the following:

- Meet with a Substance Abuse Counselor through the City's Employee Assistance Program, prior to returning to work.
- Follow all recommendations made by the Substance Abuse Counselor to remain employed by the City of Billings. Sick leave and the Family Medical Leave Act will govern pay and time off.
- Submit to a drug/alcohol test and have a negative result prior to returning to work. Any positive results must demonstrate a reduction in the chemical of choice. If the MRO determines the employee has continued to use alcohol or drugs, this would constitute as a second verified confirmed positive.
- Submit to unannounced follow up testing for a 12-month period.

A second offense of a verified confirmed positive drug and/or alcohol test would result in the following:

- Termination of employment from the City of Billings.

The above consequences will not have time limits of when it will be removed from an employee's file.

PRACTICAL IMPLEMENTATION OF POLICY AND REVIEW OF CONSEQUENCES

- Employees refusing or unreasonably delaying submission of a specimen or who adulterate or substitute a specimen, will be considered as if they have a verified confirmed positive specimen and will be declared unfit for duty.
- An initial dilute specimen will require a second, immediate, new specimen. If the second specimen is negative, the overall result will be negative. If the second specimen is positive, the overall result is a verified confirmed positive. If the employee refuses the second test, as stated above, the overall result will be considered a verified confirmed positive and the employee will be declared unfit for duty.
- An employee who provides a verified confirmed positive drug or alcohol test on two separate occasions shall be subject to discharge on the second occurrence.

- Employees who provide a verified confirmed positive drug or alcohol test for the first time will be required to follow the Substance Abuse Professional's recommendation for treatment. If treatment recommendation is not followed, the employee will be subject to discharge.
- Any employee who provides a verified confirmed positive drug or alcohol test during the 12-month follow-up unannounced testing period will be considered to have provided their second verified confirmed positive drug or alcohol test and will be subject to discharge.

REHABILITATION

Any employee who feels that he or she has an addiction or dependence to drugs or alcohol is encouraged to seek assistance through the City's Employee Assistance Program (phone: 237-3585) free of charge or through their own personal physician. Requests for information concerning such assistance will be confidential. An employee seeking assistance for drug or alcohol dependency may be covered under the City's health care plan. Please review your benefit booklet or call EBMS (phone: 245-3575) to determine coverage issues.

DISPUTE RESOLUTION PROCEDURES

If an employee is tested and the employee disputes the result or believes that he or she has a reasonable explanation for the failed test, the employee will be given the opportunity to provide the medical review officer or any medical information that is relevant to interpreting the test results, including information concerning currently or recently used prescription or non-prescription drugs. Employees may also request a second test, also known as a split sample, of the same initial test to be performed by a qualified lab. If the second test is negative, the results of the test shall be deemed to have been negative.

CONFIDENTIALITY

All information, interviews, reports, statements, memoranda, and test results shall be confidential and shall not be disclosed to anyone except: (39-2-207 MCA)

- a. The tested employee.
- b. The City's designated policy coordinator
- c. In connection with any legal or administrative claim arising out of the implementation of sanctions, or in response to inquiries relating to a workplace accident involving death, personal injury, or property damage in excess of \$1,500 when there is reason to believe that the employee may have caused or contributed to the accident.

In addition, information obtained in the testing process that is unrelated to the use of dangerous drugs or alcohol may not be released by the medical review officer (MRO) to the City.

PRACTICAL REVIEW OF PROCEDURE

All employees will be subject to a urine test for drugs and/or a breath test for alcohol when there are reasons to believe that prohibited substance abuse is a potential factor in affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented specific, contemporaneous, articulable observations concerning the

appearance, behavior, and speech or body odors, which are consistent with the effects of substance abuse.

Reasonable suspicion determinations will be made when there is concurrence from a supervisor (two supervisors is preferred but not required) who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably conclude that an employee may be adversely affected or impaired in his/her work performance due to prohibited use or abuse of prohibited substances.

All costs associated with testing will be paid for by the employer.

Employer will conduct regular education and provide information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol.

Drugs to be tested in a urinalysis are: amphetamines, cocaine, marijuana, opiates and phencyclidine (PCP).

PROCEDURE

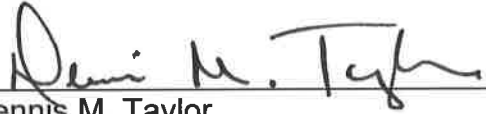
1. Document any observations and signs that substance abuse may be present. Complete the Reasonable Suspicion Incident Record (attached). If possible, obtain concurrence from another trained supervisor, a Human Resources professional or the Safety Officer.
2. Contact the Human Resources Office or Safety Officer to arrange for testing. If neither is available, call St. Vincents Healthcare Center directly at 237-4114.
3. Complete the Alcohol and/or Controlled Substance Test Notification (attached).
4. Isolate and inform the employee. Provide the employee with a copy of the Test Notification. If the employee refuses to take a drug or alcohol test, inform him or her that refusal is considered a confirmed positive test and that it will result in termination of employment.
5. Transport the employee to and from the test site. If test results are pending/unknown or if any test is positive, drive the employee home or allow the employee to make arrangements to be picked up. Do not let the employee drive him/herself. If the employee is belligerent and insists on driving him or herself home, contact the Police Department through 911.
6. Immediately submit copies of the Incident Record and Test Notification to the Human Resources Manager/Safety Officer.
7. Release the employee from work until test results are available (alcohol tests are available immediately; drug tests are available within 24 hours).
8. The Medical Review Officer will make contact with the employee directly if necessary, prior to any determination of a verified confirmed positive drug test result.
9. Any employee who tests positive for the presence of prohibited substances will be evaluated by a City of Billings selected Substance Abuse Professional (SAP). The SAP will evaluate the employee to determine what assistance, if any, the employee needs in resolving problems associated with use or abuse of prohibited substances.

Drug & Alcohol Testing

10. If all results are negative, the City will pay the employee for all work time missed while waiting for the results (no sick or vacation time will be deducted).
11. If the results are positive (first offense), for the day of testing, the employee will be paid for any hours worked and the rest of the day will be without pay (once the employee is taken home after the test), and any subsequent days, including rehabilitation, will be sick time.

Any questions regarding this policy should be directed to the Human Resources Manager at 657-8204.

Dated this 12 day of December, 2001.



Dennis M. Taylor
City Administrator