

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3****PURPOSE**

The U.S. Department of Transportation (DOT) issues regulations implementing the Omnibus Transportation Employee Testing Act of 1991. This Act is designed to improve the overall safety of the transportation industry by requiring employers to test safety-sensitive employees for the use of controlled substances and alcohol. The City of San Jose is legally required to enforce Federal DOT regulations and implement controlled substance and alcohol testing for employees who require a commercial driver's license.

In 1989 the City of San Jose adopted a Drug-Free Workplace and Substance Abuse Policy applicable to all employees. The Federal DOT legal requirement reinforces the City's commitment to promote a drug-free workplace and to ensure that employees involved in safety sensitive transportation activities avoid problems created by the use of controlled substances and alcohol.

The purpose of the following policy is to outline details of the Federal DOT program, including testing requirements and consequences to employees who have been found to use controlled substances and alcohol as outlined in this policy. In addition, this policy is intended to comply with all applicable regulations of the Federal DOT. Employees covered by this policy are also covered by the City of San Jose's Substance Abuse Policy.

APPLICATION

- The Federal DOT regulation covers City employees whose duties are such that federal regulations require them to hold a Commercial Driver's License (CDL) in order to drive a commercial motor vehicle (CMV).

Employee Notification

Employees initially covered by the Federal DOT's controlled substance and alcohol testing regulations have been notified of the testing regulations by the City. Any employees newly covered by these regulations will be notified of their coverage by their Department Director or Designee. The Human Resources Department will provide affected Department Directors with a copy of this Federal DOT Drug and Alcohol Testing Policy whenever revisions are made.

Supervisor Training

Supervisors of the covered employees must attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substance use, which may be through the use of a videotape or other media.

This training must cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and controlled substance use.

POLICY**1. Prohibited Conduct Related to Controlled Substances**

No driver shall report for duty or remain on duty performing a safety-sensitive function when the driver uses a controlled substance in concentrations greater than those described below, except

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when the substance is prescribed by a physician, and the physician informs the driver that the substance does not adversely affect the driver's ability to perform the safety-sensitive function. The City reserves the right to have the City Physician make the final determination as to whether the driver can drive a City vehicle when the employee is using a prescription medication.

No driver shall perform a safety sensitive function after testing positive for a controlled substance, until such time that he or she is authorized to return to full duty by the Substance Abuse Professional (SAP) and has a verified negative controlled substances test.

2. Prohibited Conduct Related to Alcohol

No driver shall report to duty or remain on duty requiring the performance of a safety sensitive function with a breath alcohol concentration level of 0.04 or greater.

No driver shall use alcohol while performing a safety sensitive function. No driver shall possess alcohol while on duty or operating a Commercial Motor Vehicle.

No driver shall perform a safety-sensitive function within four (4) hours after using alcohol. No driver shall use alcohol within eight (8) hours after an accident, or until an alcohol test has been completed, whichever comes first.

No driver shall perform a safety sensitive function after testing positive for a controlled substance, until such time that he or she is authorized to return to full duty by the SAP and a breath alcohol test value less than 0.02.

3. Refusal to Submit to an Alcohol or Controlled Substance Test

No driver shall refuse to submit to any of the required controlled substance and/or alcohol tests, including post-accident, random, reasonable suspicion, or follow-up tests. In addition to direct refusal to give a urine sample, refusal also includes inability to give a urine specimen or failure to provide a sufficient amount of urine without a reasonable medical explanation, not reporting to the collection site in the time allotted by the department, refusing to sign the necessary forms, failing to remain at the testing site until the testing process is complete, failing to permit the observation or monitoring of controlled substance test, if applicable, and failure to cooperate with any part of the testing process. Any of the above occurrences will constitute a refusal to take a controlled substance test.

Refusal to test will be considered a positive test and the employee will be disqualified from driving until a verified negative test result is obtained. In addition, disciplinary action may be taken for refusing to submit to any controlled substance or alcohol testing required by this policy.

4. Types of Testing

Pre-employment Testing: The regulations require urine controlled substance testing of candidates for positions that require Class A or B drivers' licenses. Candidates who have a verified positive controlled substance test may have their offer of employment rescinded. An employee who transfers, demotes, or promotes into a position that requires a Class A or B driver's license will be subject to urine testing prior to starting the new assignment.

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Reasonable Suspicion Testing: Drivers must be tested based on reasonable suspicion, provided that the conduct underlying the decision to test is witnessed by a supervisor. If the incident causing reasonable suspicion occurs during or shortly before normal business hours (7:30 a.m. – 4:00 p.m.), contact Employee Health Services (EHS) to conduct the testing. If the incident occurs at other times when EHS is closed, complete the attached form and contact:

Alliance Occupational Medicine
Phone: (408) 642-4866

Alliance will arrange for the testing to occur at their office located at 2737 Walsh Ave., Santa Clara, CA 95051. After using this service, please notify EHS at the first available opportunity. Alliance is staffed by certified technicians. All test results will be treated as confidential and returned to EHS.

Random Testing: The employer must annually test at least 25% of the total number of covered drivers on a random basis each year for controlled substances and 10% for alcohol. The test must be unannounced, with all drivers selected from a random pool. Individuals in the pool may be randomly selected for drug testing only or may be randomly selected for both drug and alcohol testing. When an individual is randomly selected for both drug and alcohol testing, these tests will be administered during a single visit to the collection facility to minimize the number of work disruptions.

Post Accident Testing: The driver is responsible for providing a urine and breath sample for testing as soon as possible after a reportable accident. Drivers who are subject to post-accident testing are required to remain readily available for testing for the next eight (8) hours for an alcohol test and for the next thirty-two (32) hours for a drug test, unless tested or excused from testing. Except in medical emergencies, failure of the driver to remain readily available for drug and/or alcohol testing will be considered a refusal to submit to testing. If the accident occurred during, or shortly before, normal business hours (7:30am – 4:00pm), contact Employee Health Services to conduct the testing. A “Reportable accident” is one that (1) involves a fatality, or (2) results in the driver receiving a citation under state or local law for a moving traffic violation. If the incident occurs at other times when EHS is closed, complete the attached form and contact:

Alliance Occupational Medicine
Phone: (408) 642-4866

Alliance will arrange for the testing to occur at their office located at 2737 Walsh Ave. Santa Clara, CA 95051. After using this service, please notify EHS at the first available opportunity. Alliance is staffed by certified technicians. All test results will be treated as confidential and returned to EHS.

Return to Duty and Follow-up Testing: A return to duty test must be conducted when an individual who has violated the prohibited drug or alcohol conduct standards returns to performing safety-sensitive functions. The driver needs to have a verified negative controlled substances test or if applicable, a breath alcohol test value less than 0.02. Follow-up testing is conducted periodically after the individual has returned to work, based on a plan established by Employee Health Services and communicated to departments.

5. Prohibited Substances

A urinalysis will be performed to detect the presence of the illegal substance shown below or its defined metabolite equivalent. A positive test is one in which the concentration meets or exceeds the following DOT levels. Measurements are in nanograms per milliliter.

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Type of Drug or Metabolite	Initial Test * (Immunoassay)	Confirmation Test ** (GC/MS)
(1) Marijuana metabolites	50	
(i) Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA)		15
(2) Cocaine metabolites (Benzoylecgonine)	150	100
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines	500	
(i) Amphetamine		250
(ii) Methamphetamine		250
(iii) Methylenedioxyamphetamine (MDMA)	500	250
Methylenedioxyamphetamine (MDA)		250
(5) Opiate Metabolites		
(i) Codeine/Morphine	2000	
(ii) Codeine		2000
(iii) Morphine		2000
(iv) 6-Acetylmorphine	10	10
(6) Semi-synthetic Opiate		
(i) Hydrocodone/Hydromorphone	300	100
(ii) Oxycodone/Oxymorphone	100	100

* Immunoassay

** Gas chromatography/Mass spectrometry

On an initial drug test, a result below the cutoff concentration is reported as negative. If the result is at or above the cutoff concentration, a confirmation test will be conducted automatically by the testing laboratory. On a confirmation controlled substance test, a result below the cutoff concentration for the specific assay method is reported as negative and a result at or above the cutoff concentration for the specific assay method is a confirmed positive.

The use of legally prescribed medications that may contain a controlled substance in concentrations greater than those specified above is prohibited when operating a commercial motor vehicle.

The use of beverages or food containing alcohol or any other substances including medications that produce an alcohol level of 0.04 or greater is prohibited. A safety sensitive driver cannot drink 4 (four) hours prior to work regardless of alcohol level.

Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine. If a verified adulterated or substituted controlled substance test result is received, this will be handled in the same manner as a confirmed positive for a drug or drug metabolite and the employee must be immediately removed from performing safety sensitive functions.

If a controlled substance test result is received indicating that the employee's specimen is negative dilute and the creatinine concentration is greater than or equal to 2 mg/dL but less than 5 mg/dL, the medical review officer will request an immediate recollection under direct observation.

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Following receipt of the initial report of the verified positive test result, a driver who engages in prohibited conduct (Sections 1 and/or 2 of this policy) shall be removed immediately from performing any and all safety-sensitive functions, including those defined by DOT and such other functions as: any work with vehicles, machinery or tools; any work in the street or a potentially hazardous location, or any other work where drug or alcohol-induced impairment may constitute a danger to the employee or others. If a non-safety sensitive function is not available, the employee may be required to take available paid leave or unpaid leave until he or she is approved to return to full duty.

A positive alcohol breath test between .02 and .04 will result in the removal of the driver from the safety-sensitive function for 24 hours.

A driver will not be hired or promoted if he/she refuses to submit to a pre-employment drug or alcohol test, or if he/she tests positive for a controlled substance or alcohol test. In addition, disciplinary action may be taken for refusing to submit to any controlled substance or alcohol testing required by this policy.

7. Referral, Evaluation and Treatment

When an employee has violated DOT drug and alcohol regulations, he/she cannot again perform any DOT safety-sensitive duties for any employer until and unless that employee completes the SAP evaluation, referral, and the education/treatment process set forth in this subpart and in applicable DOT agency regulations and has a verified negative test for controlled substances. The first step in this process is a SAP evaluation.

Any one of the following constitutes cause for a SAP referral: a verified positive DOT controlled substance test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or controlled substances under a DOT agency regulation constitutes a DOT controlled substance and alcohol regulation violation.

Drivers who have engaged in conduct prohibited by this policy will be:

- Provided resources for evaluation and resolving problems associated with alcohol misuse and controlled substance use.
- Evaluated by an EAP-approved SAP who will recommend the appropriate level of assistance for the employee to resolve problems associated with alcohol misuse and controlled substance use.
- Investigated for possible disciplinary action.

First Offense: In an effort to encourage the employee to take responsibility for his/her problem, the first violation of this policy will result in a formal, mandatory referral to the Employee Assistance Program (EAP), using the established referral procedures, in addition to any disciplinary action the City may impose for violations of this policy. A written record of this referral will be maintained in a restricted confidential employee medical file. Positive controlled substance or alcohol test results and related information will be used only for medical or disciplinary purposes. This does not prohibit the City of San Jose from taking disciplinary action against any employee for a first offense.

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A Substance Abuse Professional (SAP) associated with the EAP will assess the employee's need for treatment. If treatment is recommended by the SAP, the employee must complete the treatment before he/she can return to the safety-sensitive duties. An employee declining to be evaluated by the SAP may be subject to disciplinary action independent of any other misconduct.

Successful completion of the treatment will be considered a condition for continued employment. At the department's discretion and subject to the availability of a suitable position, the employee may be permitted to work in a non-safety-sensitive function while undergoing the prescribed treatment.

Second Offense: During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second positive test itself subject to due process. If a second treatment program is allowed, the employee will be responsible for the full cost.

- Any rehabilitation program must be approved for the employee by the EAP prior to enrollment in the program.
- The employee who enters into an EAP-approved program shall pay 30% of the treatment costs, and the City will pay the remainder of the cost not covered by the employee's health insurance (for a first offense).
- The employee may use accrued, authorized paid leave (i.e. sick leave, vacation) during his/her absence for treatment.
- Further details of the Substance Abuse Treatment Program may be obtained by consulting your Memorandum of Agreement or by contacting the Office of Employee Relations.

Referral to Substance Abuse Program Procedures

- All drug tests are reviewed by the MRO. The MRO will sign the chain of custody form.
- The MRO calls the employee to inform him/her of a positive result and follows MRO protocol for verification.

The Employee Health Services representative then informs the employee's Department Director or authorized representative and the Office of Employee Relations.

- The employee's manager or supervisor removes the employee from performing safety-sensitive duties, the designated Department representative contacts the EAP by calling 800-826-4690.
- A SAP clinician is fully briefed on the case by the EAP representative. The SAP then conducts an assessment of the employee and determines the employee's treatment plan.
- An EAP representative notifies the MRO or the EHS representative of the employee's treatment plan recommendations.
- The employee is then referred into treatment.

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- The EAP representative confirms the treatment with the SAP and the employer.
- At the conclusion of the treatment, the SAP conducts a post-treatment assessment. The assessment includes a review of the treatment plan, discharge plan, and suggested aftercare.
- A Completion of Treatment letter is generated based upon the recommendations of the treatment program and the SAP. The EAP representative also directly contacts the referring party (EHS) to expedite communication of the discharge/aftercare plan. An EHS or Employee Relations representative will then inform the appropriate department representative that the treatment has been completed.

8. Return to Duty

Before a driver returns to work requiring performance of a safety-sensitive function, following a positive test result, he/she must:

- Follow the rehabilitation program prescribed by the SAP, and
- Obtain a verified negative return-to-duty controlled substance and/or obtain a breath alcohol test level less than 0.02, and
- Submit to unannounced follow-up alcohol and/or controlled substances tests. The number and frequency of such follow-up testing shall consist of at least six tests in the first 12 months.

DRUG AND ALCOHOL TESTING PROCEDURES**1. Drug Testing Procedures**

Selection Process for Random Drug Testing: A random number generating software program will provide a list of the employees covered by this policy and select the sample for each testing period. All drivers will have an equal chance of being selected on each testing day. Employee Health Services will notify departments of randomly selected employees. Drivers notified of selection for testing must proceed immediately to the designated testing site. A reasonable amount of transportation time will be allowed. The time allowed between notification and testing is no more than the requisite travel time to the testing site. In the event the employee is on vacation or an extended medical absence, another employee may be selected for testing through the software program randomization process.

Collection of Urine: The employee will submit for urine drug testing at EHS.

Split Specimen: The urine specimen is divided into two containers, each of which is sealed, labeled, and maintained separately. At the request of the employee the "split" specimen can be used for confirmation.

Documentation and Chain of Custody Procedures: EHS completes the Federal Chain of Custody form certifying that the specimen is properly collected, identified and labeled.

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Laboratory Procedures: The testing laboratory must be certified by the Department of Health and Human Services (DHHS). The split specimen bottle remains sealed and is stored at the laboratory.

Urine specimens are first tested by a screening procedure. Tests that screen positive must have the substance confirmed by gas chromatography/mass spectrometry (GC/MS), which both identifies the substance correctly and measures its concentration in the urine. Blind samples will be sent to the laboratory at a rate of 1% of all specimens, up to a maximum of 50 blind samples per quarter.

Reporting of Results: All controlled substance tests are reviewed and interpreted by the Medical Review Officer (MRO) before they are reported to the employee. The employee will be notified of a positive test result by the MRO. After the employee is notified, Employee Health Services representative will inform the employee's Department Director or authorized representative and the Office of Employee Relations of the verified test result.

2. Alcohol Testing Procedures

Random Testing Procedure: Random alcohol testing must be conducted just before or after an employee's performance of safety-sensitive duties. The number of random tests must equal 10% of all employees covered by this program per year. A random generation software program will randomize the drivers and select the 10% sample. Drivers notified of selection for testing must proceed immediately to the designated testing site. A reasonable amount of transportation time will be allowed. The time allowed between notification and testing is no more than the requisite travel time to the testing site. A certified Breath Alcohol Tester will conduct all breath alcohol testing.

Method: Tests for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration approved evidential breath testing (EBT) device operated by a trained Breath Alcohol Tester (BAT).

Criteria for Positive Test Results: An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the initial test. An employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his/her safety-sensitive position for 24 hours.

Reporting of Results: The Department Director or designee will be notified by EHS or Human Resources immediately if the alcohol test result is positive.

3. Dilute or Adulterated Specimens

If a verified adulterated or substituted drug test result is received, this will be handled in the same manner as a confirmed positive test for a controlled substance and the employee will immediately be removed from performing safety-sensitive functions. This action will be taken upon receiving the initial report of the verified adulterated or substituted test result. If a controlled substance test result is receiving indicating that the employee's specimen was negative dilute with a creatinine level greater than or equal to 2 mg/dL and less than 5 mg/dL, a second collection must take place immediately under direct observation.

4. Record Retention

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Drug testing records will be maintained in EHS. Negative test results will be held for one year and the positive test results will be held for five years. Documentation of employees who refuse to take the controlled substance test will also be included in the records. All records pertaining to controlled substance and alcohol testing will be confidential on a need-to-know basis. Positive controlled substance or alcohol tests results and related information will be used only for medical or disciplinary purposes.

Approved:

/s/ Jennifer Schembri
Director of Employee Relations
Director of Human Resources

April 25, 2019
Date

Approved for posting:

/s/ Jennifer Maguire
Assistant City Manager

April 25, 2019
Date