

**COUNTY OF ORANGE, VIRGINIA  
PERSONNEL POLICIES MANUAL**

**DRUG AND ALCOHOL USE**

**POLICY NO.: 3.3**

**EFFECTIVE: 11/01/96**

**REVISED: 06/08/10**

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**OVERVIEW:** It is Orange County's desire to provide a drug free, alcohol-free and safe workplace. This policy is designed to promote this goal. It requires employees to maintain at work an appropriate mental and physical condition, free from the influence of alcohol, controlled substances, or illegal drugs.

**SCOPE:** This policy applies to all Orange County employees, regardless of employment status.

**DEFINITIONS:**

1. Accident: Means any incident in which:
  - a. There is the loss of human life: or
  - b. The driver receives a citation under State or local law for a moving violation arising from the accident.
  - c. There is physical damage to a vehicle or other property

Refer to policy 3.4: Use of County vehicles, for more information.

2. Alcohol: Means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
3. Alcohol Concentration (or content): 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.
4. Alcohol Use: Means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
5. Breath Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).
6. Certified Laboratory: A laboratory which has been certified by the Commonwealth of Virginia and by the U.S. Department of Health and Human Services to perform job-related forensic testing for drugs and alcohol.

7. Commercial Motor Vehicle: See Policy 3.4
8. Confirmatory Test: (a) for alcohol testing, means a second test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration; (b) for controlled substances testing, means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.
9. Controlled Substances: any substance whose manufacturing, sale, use, and dispensation are controlled by law. For purposes of this policy, the term “controlled substances” excludes those substances which have been prescribed by a physician to an employee and are being administered as directed by the prescription instructions.
10. Drug/Alcohol Test: A procedure to determine if a blood, breath, or urine specimen contains drugs, alcohol, or the metabolites of drugs or alcohol.
11. Evidential Breath Testing Device (EBT): A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath. The device must be placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.”
12. Medical Review Officer: 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.
13. Performing (a safety-sensitive function): Any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive function.
14. Reasonable suspicion: The evidentiary standard which must be met before a “for cause” controlled substance/alcohol test is required of an employee in a safety-sensitive driving position. In order to meet this standard the supervisor must determine, based on specific objective facts and reasonable inferences drawn from those facts, that there is a reasonable basis to suspect that a test would show the employee has a controlled substance/alcohol in his/her body.

15. Refusal to Submit (to an alcohol or controlled substance test): An employee (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process will be considered to have refused to submit the test.
  
16. Safety-Sensitive Function: any of those on-duty functions as listed below:
  - a. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
  - b. All time spent at the driving controls of a commercial motor vehicle.
  - c. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent in the sleeper berth).
  - d. All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being unloaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
  - e. All time spent performing the driver requirements associated with an accident.
  - f. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
  - g. All time spent as an on-duty rescue squad worker, E-911 dispatcher, Sheriff's deputy, day care provider or other on-duty position identified by the County Administrator as a "safety-sensitive" function.
  
17. Screening Test (a.k.a. initial test): In alcohol testing it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.
  
18. Split Sample Testing: Division of the urine specimen in controlled substance testing into two separate containers, the primary specimen used for the screening test and the split specimen used if the employee requests a second test after being informed of a verified positive screening test.

**PROVISIONS:**

A. Prohibited Activities:

County Employees are prohibited from reporting to or being at work under the influence of alcohol or a controlled or illegal substance. Employees are prohibited from possessing, selling, buying, transporting, distributing, manufacturing, or using alcohol or a controlled substance during work hours, while at a County facility, or on County property. County employees are also prohibited from falsifying County records or data to include but not limited to alcohol and/or controlled substance test results to include attempting to falsify or assisting others in attempting to falsify test results, etc.

B. Violations:

Any employee, who is found using, marketing, possessing, manufacturing, or distributing alcohol, a controlled substance or illegal drugs while on the job or while using County property, shall be subjected to disciplinary action. The employee's supervisor will investigate the circumstances surrounding the violation and will recommend the most appropriate action to be taken by the County. The individual circumstances will dictate what action should be taken – ranging from referral to an appropriate treatment program to dismissal from County service.

A positive drug or alcohol test, administered on-the-job in accordance with this provision, which identifies the presence of alcohol or a controlled substance will result in the employee being suspended without pay. The employee may be required to enter a treatment program as a condition of continued employment. A second offense will result in termination.

Employees are required to inform County management if charged with or convicted of a criminal drug or alcohol related violation. Failing to do so within three (3) days of being charged or convicted will result in termination.

The following occurrences will also result in the termination of an employee upon the first offense:

1. Falsifying County records or data to include, but not limited to, alcohol and/or controlled substance test results to include attempting to falsify or assisting others in attempting to falsify test results, etc.
2. Possession or use (unless prescribed by a physician), as well as the manufacture, distribution, dispensation, of a controlled substance while on the job, except where carried as evidence by court personnel or law enforcement officers;

3. The use of or being under the influence of controlled substances while on the job (except where alcoholic beverages are consumed by law enforcement officers in the performance of their job or the consumption of alcoholic beverages at a social function, which the employee is expected to attend, so long as the employee does not drive a County vehicle and does not become intoxicated) or use of alcoholic beverages on County property;
4. Operating a vehicle or other equipment on County business while under the influence of intoxicants or other self-administered drugs prohibited under this policy;
5. A Commercial Driver's License (CDL) holder receives a test result of .02 or greater for alcohol and/or a positive result for controlled substances, or refuses to submit to testing.

C. Treatment:

The County encourages employees who suffer from alcohol and drug abuse to participate in an appropriate treatment and rehabilitation program. Sick or annual leave may be used for treatment. FMLA leave may be used, if applicable.

D. Testing:

**Any employee** may be subject to a urine test, or a breathalyzer screening in any of the following circumstances:

1. Pre-employment Screening:

When a job offer is contingent upon the satisfactory completion of a medical exam, testing for controlled substances is included in the medical examination.

The job advertisement shall inform applicants about controlled substances testing in advance.

Results of controlled substances testing will be made available to applicants, if requested in writing to the Human Resources Office. Requests must be made within 60 days of applicants being informed of the disposition of their employment applications.

2. Post Accident:

Following any on-duty accident, as defined by this policy.

All new and current employees must provide advance written consent for post-accident testing and release of test results to the County.

3. Random Testing for Designated Positions:

Some positions may require random testing of employees based upon the safety issues inherent in the nature of the work. Positions which may require random testing include those which involve frequent operation of heavy equipment or a County-owned vehicle; positions which are high risk or public safety factors, etc. In such situations, testing schedules and selection are random.

An employee selected for random testing will be notified of selection for testing, given a "Testing Notice Card," and will be required to report to the collection site immediately upon notification to provide a urine and/or breath sample as required. If the employee is driving himself/herself to the testing site, the employee is expected to report to the nearest collection site within one (1) hour of notification of testing requirement. The employee is expected to return to the work site immediately after leaving the collection site. Employee time spent in the testing process shall be compensated as regular hours or overtime as appropriate. Employees shall be subject to disciplinary action if they fail to report to the test site within one (1) hour or fail to immediately return to work after testing.

Any employee, who after being notified to report for random testing voluntarily acknowledges a chemical dependency or alcohol abuse problem, shall be transported to the collection site by a supervisor to be tested. If the employee tests positive, the employee must be removed from safety sensitive functions until the employee is evaluated by a licensed medical professional. The confidentiality of this information will be respected. An employee, who voluntarily acknowledges a chemical dependency, shall be permitted to continue employment subject to the following conditions:

- (a) The employee volunteers for such treatment prior to being confronted by a supervisor with a violation of this policy. The employee successfully adheres to the requirements of and completes the treatment program.

(b) The employee does not thereafter engage in conduct violating this regulation regarding use of alcohol, illegal drugs, and unauthorized prescription drugs.

(c) In the case of employees returning to work after successful completion of a treatment program, the County reserves the right to test for alcohol and/or controlled substances, on a random or periodic basis in accordance with the procedures of this policy.

4. Reasonable Suspicion:

When a supervisor has a reasonable suspicion that an employee is using or under the influence of alcohol or a controlled substance while on the job.

Whenever possible, the County recommends that a witness (another supervisor) should be found before confronting the impaired employee. The witness should make independent notes on the employee's condition and the effect of the impairment on job performance.

Once a supervisor determines that reasonable suspicion exists, the employee shall be directed to submit to testing and be transported to the test site by the supervisor.

An employee directed to submit to alcohol or drug testing shall be informed of the reason(s) for the test and the fact that refusal to provide the specimen constitutes a violation of County Personnel Policies and is grounds for termination of employment.

The supervisor shall document the information communicated to the employee and the evidence which constituted reasonable suspicion within 24 hours of the observed behavior.

The employee should be placed on administrative leave while undergoing the tests and should not be allowed to resume safety sensitive functions until the employee's test for alcohol is less than 0.02 and/or he or she has a verified negative controlled substance test.

In the event that an employee is using, distributing, selling or possessing illegal drugs on the job, the County Sheriff's Office will be notified immediately.

Reasonable suspicion must be based upon objective facts and direct observational and recognition of behaviors or characteristics which are typically associated with drug or alcohol abuse (i.e., slurred speech, dilated pupils, staggering gait, the odor of alcohol or a drug, etc.).

An employee, who is required to possess a CDL, **shall** be subject to a urine test, or a breathalyzer screening in the following circumstances:

1. Pre-employment Screening:

The top applicant for jobs where possession of a CDL is required must undergo testing for controlled substances and the results evaluated prior to hire or prior to first day in a duty status in a safety sensitive function.

If the applicant is a current employee seeking promotion, demotion or transfer to a position or assignment requiring a CDL, testing must occur before the employee assumes the new position or assignment.

Applicants offered positions requiring a CDL must give written consent to permit Orange County to contact all previous employers over the past two years. The inquiry from the County asks questions in order to:

- a) Determine if the applicant has participated in alcohol and/or controlled substance testing programs that meet DOT guidelines;
- b) Obtain the date last tested;
- c) Verify that the employee has not refused to submit to an alcohol or controlled substance test; an applicant shall not be employed by Orange County if he/she refused to be tested with a previous employer;
- d) Obtain the results of any controlled substances or alcohol tests administered in the previous six months; and
- e) Obtain the record of any violations of the alcohol or controlled substance rules.

Agencies will obtain the applicant's signature on the release form and send the form to any employer the applicant has worked for in the last two (2) years. The forms will be returned to the Human Resource Office in the self-addressed envelope provided. The Human Resource Office will notify agencies of the results and maintain the records from previous employers.

Offers of employment for positions requiring possession of CDLs are contingent upon the applicant demonstrating a verified negative controlled substances test; and, the County receiving reports from previous employers that indicate the applicant's compliance with testing programs and DOT regulations.

Applicants who have met testing requirement may perform safety sensitive functions prior to receipt of reports from previous employers for a period of 14 days. After 14 days, the employee must be removed from safety sensitive duties until the information is received. If, after exercising due diligence, the County is unable to acquire the reports required, the Human Resource Office may waive that requirement.

2. Post-Accident Testing:

As soon as possible following an accident, involving a commercial vehicle, the driver(s) involved in the accident must be tested for alcohol and controlled substances.

If a CDL employee is injured in an accident and unable to provide a breath sample or urine specimen, the County will obtain hospital reports, if available, that would indicate alcohol or controlled substances use.

An alcohol test under this section must be administered within eight (8) hours after the accident.

A controlled substances test under this section must be administered within 32 hours following the accident.

A driver, who is subject to post-accident testing, shall remain readily available for such testing. If the driver is not available for any reason, except temporarily leaving the accident scene to obtain assistance in responding to the accident or obtaining necessary emergency medical care, he or she will be deemed to have refused to submit to testing. An employee may not ingest food or drink during the period prior to testing.

Supervisors are responsible for providing written documentation to include the amount of time taken between accident and testing and the reason for the delay any time alcohol testing is not performed within two (2) hours and drug testing is not performed within 32 hours and forward the information to the Human Resources Office.

3. Random Testing:

A designated percentage of CDL holders will be subject to random alcohol and controlled substances testing each year; (25 percent for alcohol testing and 50 percent for controlled substances testing). Selection of CDL holders to be tested shall be done by a scientifically validated random method which ensures that each CDL holder has an equal chance of being selected each time that selections are made.

Random tests will be conducted periodically on an unannounced basis throughout the calendar year.

Random tests shall be conducted immediately before, during, or immediately after the employee's schedule shift in a safety sensitive position.

All departments who employ commercial drivers must provide an updated current roster of positions requiring a CDL to the Human Resources Office. The Human Resource Office must be advised by the first working day of each month whether or not any charges are to be made to the roster.

CDL holders, who refuse to provide a urine or breath sample, fail to proceed immediately to the collection site or attempt to tamper with or provide an adulterated sample, will be removed immediately from all safety sensitive duties and shall be subject to disciplinary action including but not limited to transfer, demotion or termination of employment.

4. Reasonable Suspicion Testing:

CDL holders shall be required to immediately submit to an alcohol and/or a controlled substances test when a supervisor trained to recognize signs of alcohol use or controlled substance use observes behavior or appearance that is characteristic of alcohol and/or controlled substances use or upon receipt of information of such behavior or appearance when the nature of such information suggests the source was reliable and credible. The observation must be made while the employee is on duty.

E. Refusal to Take Alcohol and/or Controlled Substances Test.

1. An applicant who refuses to be tested will be disqualified for the position for which he/she applied.
2. A refusal from an employee to be tested will be considered the equivalent of a positive test result and constitute grounds for termination of employment.

F. Confirmation of a Positive Test or Refusal to Take the Test:

Such employees will be removed immediately from all safety sensitive duties and will be placed on personal leave or leave without pay until a decision has been made regarding disciplinary action including but not limited to transfer or demotion into a non-safety sensitive position or termination of employment.

G. Testing Procedures.

All testing will be conducted from urine specimens or breath tests administered by qualified contractor personnel.

1. Alcohol Testing.

Alcohol Breath Testing requires an appropriately certified Evidential Breath Testing (EBT) device operated by a certified Breath Alcohol Technician. Contractor personnel and laboratories used for the analysis of the specimens must meet the federal requirements set forth by the National Institute of Drug Abuse (NIDA) and follow the guidelines established by the U.S. Department of Health and Human Services (DHHS).

Upon entering the test location, the employee will be asked to provide positive identification with photograph to the breath alcohol technician (BAT) and to submit the "Testing Notice Card".

Providing incomplete information (except a social security number), engaging in conduct that obstructs the testing process or failing to sign the required certifications may be regarded as a refusal to take the test and may constitute grounds for termination of employment. At the completion of the screening test, the results will be shown to the employee.

If test results are negative, the employee's "Testing Notice Card" will be validated and he or she will return to work. If the result of the screening test shows a detectable alcohol concentration, a confirmation test will be performed within specified time limits. If detectable amounts of alcohol of 0.02 BAC or higher are verified in the confirmation test, the employee will be in violation of this policy.

An individual with a verified positive confirmation test may not leave the test site without approval from the attending physician or designee. Leaving the test site without approval shall be grounds for termination of employment.

2. Controlled Substances Testing.

For controlled substances testing, employees report to a specified test location and submit a "Testing Notice Card." If the employee is unable to provide the specified quantity of urine, the employee will be instructed to drink not more than 24 ounces of fluid and wait up to two hours to provide another sample. If a complete sample cannot be provided, the employee will return to the work site but will not be allowed to perform safety sensitive functions. The information about the incomplete test will be sent to the MRO, who will refer the employee for a medical evaluation to determine if the inability to provide a specimen is genuine.

G. Test Results.

1. Alcohol Test Results.

If the results of the first test are negative, the testing laboratory will inform the employee and Human Resource Office of the negative report and no further testing will be conducted.

If the result of the screening test is an alcohol concentration of 0.02 or greater, the BAT shall perform a confirmatory test within 20 minutes after the completion of the screening test, but not less than 15 minutes after the screening test.

If the result of the Breath Alcohol Concentration (BAC) test is equal to or exceeds 0.02 percent the employee and the Human Resource Office, will be notified and the employee shall be removed immediately from all driving related duties and shall be subject to disciplinary action which shall include termination of employment.

The Human Resource Office will notify the agency who will make arrangements for transporting the employee home.

If the confirmatory test is negative, the testing lab will so inform the employee and the Human Resource Office.

2. Controlled Substance Test Results.

The first test to be conducted will be an immunoassay test.

If the result of the first test is negative, the testing laboratory will forward the results to the MRO and no further testing of the specimen will be conducted. The Human Resource Office will notify the department director who will notify the employee of the negative test result.

If the result of the first test is positive, a second, confirmatory test will be performed. The second test will use gas chromatography/mass spectrometry techniques.

A positive conclusion will not result unless both the immunoassay and the gas chromatography/mass spectrometry tests result in a positive.

The laboratory shall forward the results of the test to the MRO for review.

The MRO shall afford the employee the opportunity to discuss a positive test result before reporting the result to the Human Resource Office.

The MRO shall inform the employee of his or her right to request that the specimen be tested in a different NIDA approved laboratory for presence of the drugs(s) for which a positive result was obtained. The MRO shall honor the employee's request if it is made within 72 hours of the employee having been informed of a verified positive test result.

After contacting the employee, but in no case more than three business days after completing the review, the MRO shall provide the Human Resource Office with the following information:

- a) The controlled substance test being reported was conducted in accordance with 49, CFR Part 40;
- b) The name of the employee for whom the test results are being reported;
- c) The reason for the test (e.g., pre-employment, random, post-accident, etc.);
- d) The date and location of the test collection;
- e) The identities of the person or entities performing the collection, analysis of specimens and serving as the MRO for the specific test; and

- f) The verified results of a controlled substances test, either positive or negative, and, if positive, the identity of the controlled substance(s) for which the test was verified positive.

If the MRO is not able to contact the employee, the MRO shall report to the Human Resource Office that he or she has made and documented all reasonable efforts to contact the driver. The Human Resource Office shall, as soon as practicable, ask the appropriate department director or his/her designee to direct the employee to contact the MRO before next driving a County CMV, or within 24 hours, whichever is earlier.

Without communicating with the employee; the MRO may verify a test as positive to the Human Resource Office if:

- a) The employee declines the opportunity to discuss the results of the test with the MRO; or
- b) More than five (5) days have passed since the employee was instructed to contact the MRO; or
- c) Other circumstances specified in the DOT regulations permit.

The Human Resources Office will so notify the appropriate department director.

If the MRO determines that there is a legitimate medical explanation for a positive test result, the MRO shall report the results as negative.

In the event of a positive alcohol or controlled substances test result, the employee must be assigned to a non-safety sensitive position or be placed on personal leave or leave without pay until a determination is made regarding discipline and/or treatment. The supervisor and/or department director must discuss individual cases with the Human Resources Office.

An employee who is relieved of his or her duties shall not be permitted to operate a motor vehicle. Every attempt should be made to locate a family member or friend to transport the employee home. If this is unsuccessful, a co-worker may drive the employee or a taxi may be called. Any expenses incurred on the part of the co-workers are reimbursable by the County.

H. Test Records.

The records pertaining to the alcohol and controlled substances testing program shall be maintained by the Human Resources Office. Access to these records shall be limited to designated staff in the Human Resources Office.

Both positive and negative drug test information shall be maintained by the Human Resources Office. Positive drug test results shall be maintained for five (5) years in the employee's personnel record. Negative test results shall be maintained separate from employee personnel records by the Human Resources Office for a minimum of 12 months.

Test information maintained under the alcohol and controlled substances testing program will be released only to the employee, on written request, or to an identified person as directed by the specific written consent of the employee authorizing the release of the information.

