

**SECTION 405: DRUG AND ALCOHOL-FREE WORKPLACE POLICY
AND TESTING PROGRAM FOR INDIVIDUALS NOT REQUIRED
TO POSSESS A COMMERCIAL DRIVER'S LICENSE**

405.1 POLICY: It is the policy of Black Hawk County to maintain a workplace that is free from the effects of drug and alcohol abuse, in accordance with the federal Drug-Free Workplace Act of 1988. Accordingly, it is the policy of Black Hawk County that the following conduct is prohibited:

1. The use, sale, offering for sale, storing, distribution, or possession of illegal drugs, including controlled substances, imitation controlled substances, or counterfeit controlled substances, on the job, on County property, or in County vehicles;
2. Any improper use of "legal" physician-prescribed drugs or over-the-counter medications on the job, on County property, or in County vehicles;
3. The use, sale, offering for sale, storing, distribution, or possession of beer, wine, liquor, other alcoholic beverages, or medicines containing alcohol on the job, on County property, or in County vehicles; and
4. Being under the influence of alcohol, illegal drugs including controlled substances, or improperly used prescription drugs or over-the-counter medications or substances on the job, on County property, or in County vehicles.

The Black Hawk County Board of Supervisors recognizes that the use, misuse or abuse of controlled substances or alcohol can create a serious threat to the workplace safety of the County's employees and the public, and therefore has established this policy to help maintain a safe, healthy, and injury-free work environment. Abuse of alcohol or legal drugs or illegal drug use will not be tolerated. Regardless of the cause, an employee whose faculties appear to be impaired during work hours will not be allowed to work.

The County will conduct drug testing when it makes an offer of employment to individuals in certain designated positions; and may conduct drug and alcohol testing of employees under the following circumstances: (1) where there is reasonable suspicion of the use of illegal drugs, controlled substances or alcohol; (2) when investigating certain accidents; and (3) during or after rehabilitation.

405.2 SCOPE: This policy applies to all Black Hawk County employees and applicants (including rehires) for designated County positions unless otherwise specified. This policy also applies to off-site lunch periods or breaks when an employee is scheduled to return to work. Visitors, vendors, and contractors are governed by this policy while on County premises and will not be permitted to conduct business if found to be in violation of this policy.

Employees and applicants who are required to have a Commercial Driver's License (CDL) are subject to additional requirements or exempted from other requirements as regulated by the Department of Transportation or Federal Highway Administration as set forth in Title 49, Code of Federal Regulations, Parts 40 and 382 governing drug and alcohol use and testing.

No part of this policy or any of the procedures hereunder is intended to limit the County's right to manage its workplace or discipline its employees; nor is it a guarantee of employment, continued employment, or of terms or conditions of employment.

Whenever the provisions of this policy are in conflict with federal, state, or local laws or regulations, the provisions of the laws or regulations shall prevail.

405.3 DEFINITIONS:

"ABUSE" OF ALCOHOL, A LEGAL OR AN ILLEGAL DRUG: Any use of alcohol, a legal, or an illegal drug, which impairs an individual's faculties (other than use of a legal drug for appropriate purposes in accordance with applicable medical directions).

ALCOHOL: The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol. The term "alcohol" includes, but is not limited to, beer, wine, liquor, other alcoholic beverages, and medicines and other substances containing alcohol.

CONTROLLED SUBSTANCES: Any substance specified in Schedule I, II, III, IV or V of the federal Controlled Substances Act, 21 U.S.C. 801 et. seq. and published at 21 CFR 1308.11 and 21 CFR 1308.12, and any substance defined as a "controlled substance" by state law.

DRUG TEST: Any urine or other test conducted for the purpose of detecting the presence of a legal or illegal chemical substance in an individual. Drug test may also include a blood test in situations where a blood test is made on an employee involved in a workplace accident and the test is administered by or at the discretion of a person providing treatment to the employee.

LEGAL DRUGS: Those drugs for which there is a valid prescription from a medical doctor or other authorized prescriber (such as a dentist), or that are generally available over-the-counter without a prescription.

MEDICAL REVIEW OFFICER: A licensed physician, osteopathic physician, chiropractor, nurse practitioner, or physician assistant authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer's drug or alcohol testing program, and 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 the individual's medical history and other relevant biomedical information.

REFUSE TO SUBMIT: After an individual has been notified to provide a specimen for drug and/or alcohol testing, the individual:

1. Fails to provide a sufficient test specimen of breath, saliva or urine without a valid medical explanation;
2. Tamper with or attempts to adulterate the specimen;
3. Interferes with the collection procedure;
4. Does not immediately report to the collection site;
5. Does not remain readily available for testing in post-accident testing situations; and/or
6. Refuses to complete and sign a chain of custody form during the specimen collection process.

405.4 PRESCRIPTION OR OVER-THE-COUNTER MEDICATION: An employee may bring to work and take a prescription drug during work hours only if the drug has been prescribed for the employee by a physician or other authorized prescriber (such as a dentist) and only if the drug is taken in accordance with the prescriber's directions. All prescription drugs must be kept in the container in which they were received from the pharmacy or other dispenser. Use of a legal drug in which the prescription is not in the user's name (prescribed for another individual) is considered "abuse" of a legal drug. An employee may bring to work and take an over-the-counter drug during work hours only if the drug is used for its intended purpose and in accordance with package directions and any supplemental directions of the employee's physician.

An employee must notify their supervisor, Department Head, or the Human Resources Department whenever he/she is using a prescription or over-the-counter drug which potentially may affect safety or work performance. In making this determination, the employee should rely upon the warnings or cautions that are received with the particular legal drug. The County does not seek information on all drugs that an individual may be taking, but only those where there is an indication that the drug may affect performance, or there is a caution that one should not engage in certain activities which are part of the employee's job duties while taking the drug. Black Hawk County reserves the right to take appropriate action, including relieving an employee from work if the use of the drug appears to be impairing or is deemed likely to impair the employee's faculties or work performance.

405.5 ALCOHOL AND DRUG TESTING: Testing shall be conducted in a manner to assure the highest degree of accuracy and reliability by using techniques and laboratory facilities which meet the requirements of the Iowa Department of Health.

Alcohol Testing. Alcohol testing, including initial and confirmatory testing will model the

requirements set forth by the United States Department of Transportation regulations under 49 CFR 40 Subparts J-N in regards to evidential breath alcohol testing (EBT) devices, alcohol screening devices, and the qualifications for personnel administering initial and confirmatory testing. A “Non-DOT” or “Forensic” chain of custody will be used in place of the “Federal” or “DOT” chain of custody for alcohol testing.

Drug Testing. The collection of urine drug screens shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen.

Urine drug specimens shall be split into two components at the time of the collection in the presence of the individual who provided the sample or specimen. One portion shall be used for initial laboratory analysis and confirmation of initial positive test results and the second portion shall allow for a second, independent confirmatory test or “split specimen test” showing presence only of a drug metabolite in the urine at the time the collection was performed. Sample collection, storage, transportation and reporting shall follow strict chain of custody documentation and procedures to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided.

An individual submitting to a drug test will be provided the opportunity to record any information which may be considered relevant to the test, including identification of prescription or non-prescription drugs currently or recently used, or other relevant medical information.

405.6 CONFIRMATORY TESTING: Drug or alcohol testing shall include confirmation of any initial positive test results.

Alcohol Testing. If an initial breath test result for alcohol shows an alcohol concentration of .04 or greater, a second confirmatory breath test shall be conducted. A confirmed alcohol concentration level of .04 or higher, expressed in terms of grams of alcohol per two hundred ten liters of breath or its equivalent, is considered a positive alcohol test result and violates this policy.

Drug Testing. All confirmatory drug testing shall be conducted at a laboratory certified by the United States department of health and human services substance abuse and mental health services administration (SAMHSA).

If an initial urine test is positive for the presence of a controlled substance, a confirmatory test will be performed using a different chemical process than was used in the initial screen for drugs. The confirmatory drug test shall be a chromatographic technique such as gas chromatography/mass spectrometry or another comparable reliable analytical method.

The laboratory will report the analysis of the initial and confirmatory urine drug screen test results directly to the MRO who shall review and interpret all test results, including

quantitative and qualitative results to ensure the chain of custody is complete and sufficient. Prior to reporting positive test results, the MRO will provide prospective employees and current employees an opportunity to confidentially discuss information which may be relevant to the drug test, including identification of prescription or non-prescription drugs currently used or any other relevant medical information.

405.7 PRE-EMPLOYMENT DRUG TESTING: Applicants for employment in certain designated County positions shall undergo pre-employment drug testing within 48 hours of receiving a conditional offer of employment. Each applicant shall be required to sign an authorization/release form prior to undergoing the pre-employment drug test. Failure to sign the authorization/release form shall prevent further consideration of the applicant for County employment.

If the Medical Review Officer (MRO) verifies a drug test result as “positive” for a controlled substance, Human Resources shall notify the applicant in writing of: (1) his/her positive test results, (2) the Medical Review Officer’s name and address, (3) the opportunity to request records, and (4) his/her ineligibility to be considered for County employment again for a period of one year from the date of the positive test result.

In the event an applicant’s drug test result has integrity flaws, such as in the case of a “dilute specimen,” and there is no sign of adulteration, the applicant will be scheduled for a second drug test. If the second drug test result also has integrity flaws without a valid medical explanation, Human Resources shall notify the applicant in writing that the conditional offer of employment is rescinded due to his/her failure to obtain a negative drug test result without integrity flaws. The applicant shall also be advised that he/she is ineligible to be considered for County employment again for a period of six months from the date of the second drug test result.

405.8 REASONABLE SUSPICION TESTING: Any employee who is reasonably suspected of being impaired by, or under the influence of, a controlled substance or alcohol shall be suspended from their job duties pending an investigation and verification of their condition. Employees will not be permitted to drive a motor vehicle after they have been suspended. If the employee has driven a motor vehicle to work, the employee must either make arrangements with another individual to drive their vehicle or must make arrangements for alternative transportation.

Employees may be subject to drug and alcohol testing when there is reason to believe that an employee is using or has used alcohol or other drugs in violation of the County’s written policy, drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this provision, facts and inferences may be based upon, but not limited to, any of the following:

1. Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.

2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
3. A report of alcohol or other drug use provided by a reliable and credible source.
4. Evidence that the individual has tampered with any drug or alcohol test during his/her employment with the County.
5. Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under Iowa Code Chapter 88 (Occupational Health and Safety), or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed \$1,000.
6. Evidence that the employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working, or while on County property, or while operating a County vehicle, machinery, or equipment.

Reasonable suspicion testing will only be required during, just before, or just after the period of the day when the employee is engaged in work functions.

Employees who are required to submit to reasonable suspicion testing will be suspended from their job duties pending an investigation and the test results. If the employee's tests result in an alcohol concentration of less than .04 and a MRO-verified negative test for the use of controlled substances, the period of suspension will be with pay. If the test of the employee results in an alcohol concentration of more than .04, or a MRO-verified positive test for the use of controlled substances, the period of suspension will be without pay and the employee may be subject to disciplinary action as hereafter provided.

405.9 POST-ACCIDENT TESTING: Post-Accident drug and alcohol testing will be conducted after accidents where an employee's performance could have contributed to the accident. An accident is defined as:

- (1) An incident involving the loss of human life;
- (2) A driver receives a citation under State or Local Law for a moving violation arising from an incident;
- (3) An injury is treated away from the scene of an incident or as pursuant to Iowa Code Chapter 88.6(b) Occupational Health and Safety.
- (4) A vehicle must be towed away from the scene of an incident; or
- (5) An incident results in property damage to an apparent extent of \$1,500 or more pursuant to Iowa Code Chapter 321.266.

The employee is permitted to obtain necessary medical attention following an accident but the employee will be subject to post-injury testing and must remain readily available for testing or the employee will be deemed to have refused to submit to testing. Alcohol

tests will be administered as soon as practicable but no later than 8 hours after the injury. Tests for controlled substances will be administered as soon as practicable but no later than 32 hours after the injury.

405.10 EMPLOYEE-REQUESTED TESTING: If an employee's confirmed positive drug test is reported to Human Resources by the MRO, the employee shall be notified in writing by certified mail, return receipt requested, of: (1) the test results, (2) his/her right to request and obtain a second confirmatory test of the previously collected sample at an approved laboratory of his/her choice, and (3) the fee payable by the employee to the County for reimbursement of the testing expenses. The employee shall be responsible for the full cost of testing the split specimen to obtain the second confirmatory test.

If, within seven days from the date Human Resources mails the written notice to the employee of his/her right to request a test, the employee, either in person or by certified mail return receipt requested, requests a second confirmatory test, identifies an approved laboratory to conduct the test, and submits payment to the County for the test fee, a second confirmatory test shall be conducted at the laboratory chosen by the employee.

The results of the second confirmatory drug test shall be reported to the MRO who reviewed the initial confirmatory test results. After reviewing the results, the MRO shall issue a report to the County's Human Resources Department advising whether the results of the second confirmatory test confirmed the initial confirmatory test as to the presence of a specific drug. If the results of the second test do not confirm the results of the initial confirmatory test, the County shall reimburse the employee for the fee paid for the second test and the initial confirmatory test shall not be considered a confirmed positive drug test for purposes of taking disciplinary action.

405.11 TESTING DURING OR AFTER REHABILITATION: An employee who has tested positive on a drug or alcohol test and whose employment has not been terminated, will be required to undergo a substance abuse evaluation and complete any recommended treatment or follow-up care. The employee will also be subject to testing during and after completion of drug or alcohol rehabilitation. The number, type, and frequency of follow-up tests will be as directed by the substance abuse professional and, unless otherwise recommended, will consist of at least 6 tests in the first 12 months following the employee's return to duty. The employee may also be required to meet various performance standards imposed as a condition of continuing employment.

The County's responsibility for the cost of any substance abuse evaluation, treatment or counseling will be limited to the benefits provided by the County's health insurance plan, if the employee is covered by such plan, for such evaluation, treatment or counseling.

405.12 CONSEQUENCES FOR VIOLATIONS: All employees who experience work-related or personal problems resulting from substance abuse are encouraged to make use of available resources, such as the County's Employee Assistance Program, for assistance before their substance abuse adversely affects work performance or results in

a violation of this policy. Employees may request a confidential leave of absence for this purpose by contacting the Human Resources Department. Under certain circumstances, employees may be referred for treatment for substance abuse.

Disciplinary action, including termination of employment, may be taken against employees for any of the following reasons:

1. A violation of any provision of this Drug-Free Workplace Policy.
2. If the test of the employee results in an MRO-verified positive test for the use of controlled substances or an alcohol concentration of .04 or greater.
3. A failure to provide adequate breath/urine for testing without a valid medical explanation after he/she has received notice of the requirement for testing.
4. A failure or refusal to submit to testing, providing false information in connection with a test, or attempting to falsify test results through tampering, contamination, adulteration, substitution, or any other conduct that clearly obstructs the testing process.
5. A failure or refusal to submit to an evaluation by a substance abuse professional.
6. A failure or refusal to undergo treatment recommended as a result of an evaluation by a substance abuse professional.
7. Withdrawal from or a failure to satisfactorily complete the treatment program recommended by the substance abuse professional.
8. Withdrawal from or failure to satisfactorily participate in an aftercare program, if aftercare is prescribed as a part of treatment.
9. A failure or refusal to comply with follow-up testing following treatment, or a positive test result on a follow-up test.

405.13 CONVICTIONS: Under the federal Drug-Free Workplace Act, an employee who is convicted of a violation of any criminal drug statute where such violation occurred on the job or on County premises, must notify the Human Resources Department within five (5) days of such conviction. The County must then notify the federal contracting agency within ten (10) days, if applicable, and also take appropriate disciplinary action (for example, termination or requiring completion of a rehabilitation program) against the employee within thirty (30) days.

405.14 OFF-THE-JOB USE: Off-the-job use of alcohol or drugs that adversely affects an employee's job performance or jeopardizes the employee's safety; the safety of other

employees, the general public, or county equipment; or where such usage adversely affects the public trust in the ability of the county to carry out its responsibilities, may also be cause for disciplinary action, up to and including discharge.