



EMPLOYEE SUBSTANCE ABUSE PROGRAM

FC No.: 371
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I. Policy

- A. It is the policy of the department to prohibit employees from having illegal drugs in their bodies **or abusing prescription drugs** while at work, from consuming alcohol while at work or on county property, or from being impaired by or under the influence of alcohol while at work or on county property. The policy also prohibits employees from operating a county vehicle, on duty or off duty, with illegal drugs in their bodies, while impaired by or under the influence of alcohol, or within four hours of consuming alcohol. (CALEA 26.1.1)
- B. ***Employees must report to their supervisors when they have taken, or intend to take any drug which they may reasonably expect to affect their performance. Employees should ask their physicians about how prescription drugs may affect their performance, and read any warnings printed on prescription drugs. Employees are encouraged to read warnings printed on non-prescription drugs. The supervisor should consult Occupational Medical Services (OMS) or other resources regarding potential effects and recommendations concerning driving restrictions.***
- C. **Bargaining Unit Members**

This directive merely attempts to clarify the FOP and MCGEO contracts and Administrative Procedure 4-11. For any questions that arise, the contracts will always supersede the directive.

II. Basis for Drug/Alcohol Testing

- A. **"For Cause" Testing**
The Chief of Police, or designee, may direct an employee to submit to drug/alcohol testing if, after reviewing the information presented by the employee's supervisor, the Chief, or designee, has reason to believe or suspect that a test would confirm that an employee has drugs/alcohol in the employee's body. The Chief has delegated this authority to all executive officers. Whenever possible, two supervisors at the work site should observe the employee or review the information about the employee prior to presenting the information to the Chief of Police, or designee. This process will be conducted in compliance with the LEOBR, if applicable.
- B. **Random Testing**
 - 1. Specialized Units - Random testing to detect drug use will be performed on police officers assigned to specialized units, the primary purpose of which is the investigation of drug-related offenses. This testing is done at OMS **or other collection site authorized by OMS.**
 - 2. Commercial Drivers License Holders - Employees in safety-sensitive positions will be subject to random testing. Each employee will have an equal chance of selection for testing. Refer to FC 337, "CDL Alcohol and Drug Testing," for additional information.
- C. **Follow-up Testing**
Employees may be subject to periodic drug/ alcohol tests under the following circumstances:
 - 1. The employee refused to take a test;
 - 2. The employee has a confirmed positive drug/alcohol test result; or
 - 3. The employee's drug/alcohol abuse has been confirmed either by the employee's admission of such abuse or other objective evidence of such abuse; and

The department has determined that the employee will be subject to disciplinary action or will not be allowed to return to full duty unless the recommended treatment has been completed and demonstrated

through periodic testing over a specified period that the treatment was successful.

III. Test Forms

- A. An employee who is tested for drugs/alcohol will be furnished with the following forms that describe the test and the use of test results:
1. MCP 4, "Authorization to Obtain Specimen for Drug/Alcohol Testing" (see Appendix A).
 2. MCP 5, "Authorization for the Release of Information Relating to Drug/Alcohol Testing" (see Appendix B).
- B. Employees will be given a copy of each completed form. Because laboratories will not perform drug/alcohol tests unless the employee completes and signs the forms, a refusal by an employee to complete and sign the forms will be considered a refusal to submit to testing.

IV. Procedures for "For Cause" Drug/Alcohol Testing

- A. Supervisors will familiarize themselves with the indicators of possible substance abuse problems in employees.
- B. Requests for "for cause" screening tests must meet evidentiary standards established for the employee's position. The standard for police officers and employees who are required to hold a CDL to perform their jobs is "reasonable suspicion." For all other department employees the evidentiary standard is "probable cause."
- C. When an employee is suspected of being in violation of this policy, the supervisor will begin recording, in writing, any observations concerning the employee's behavior, appearance, and/or other factors. Whenever possible, two supervisors at the work site should observe the employee or review the information about the employee. If it is determined that:
1. "Reasonable suspicion" exists that an officer, or
 2. "Probable cause" exists that a civilian employee is in violation of the substance abuse policy the employee's supervisor will immediately relieve the employee of all duties. The employee will not be permitted to operate a vehicle or come into contact with the public. One supervisor will stay with the employee at all times.
- NOTE: Supervisors will not interrogate an officer in determining "reasonable suspicion." (CALEA 26.1.5)
- D. *If the employee is an officer, the supervisor will take custody of the officer's gun. The Chief of Police or Director of IAD will authorize the return of the weapon based on the results of any tests given and how quickly the results are obtained.*

- E. The supervisor will then contact an executive officer who will immediately respond to the location of the officer. The executive officer will confer with the supervisor(s) and review the written observations of the supervisor(s) to determine if "reasonable suspicion" ("probable cause" for civilian employees) exists that the employee is in violation of the substance abuse policy. If the executive officer determines the appropriate evidentiary standard for testing has been met, the executive officer will immediately notify the **Internal Affairs Division (IAD)**. Any further investigation will be handled by **IAD**.

- F. If **IAD** determines a drug/alcohol test will be administered, the employee must be placed in an appropriate leave status or assigned appropriate light duties until the results of the test are known. If the results of the test are negative, any sick leave, annual leave, or compensatory time that the employee used will be restored. An employee placed on leave without pay will be reimbursed for lost wages and benefits if the test is negative. OMS will report whether test results were negative or confirmed positive to the Chief of Police, or designee, and to the employee, usually within five working days. (CALEA 52.1.8)

V. Follow-up Testing (CALEA 52.1.7.a)

During follow-up testing, an employee may be subject to periodic drug/alcohol urine tests for a period of not less than 12 months and no greater than 60 months. Usually the time for periodic urine tests for alcohol abuse alone shall not exceed 18 months. Follow-up tests will be reported as confirmed positive for alcohol if the urine alcohol concentration is above 0.02, the established cutoff level for the test.

VI. Location of Collection Site

The collection site is:
Diagnostic Assays Services
9290 Gaither Road
Gaithersburg, MD 20877
Phone: (301) 840-9220

During weekends, holidays, and after 1630 hours, call to arrange to meet a technician at the site.

VII. Medical Emergency

- A. In the event the employee requires immediate medical attention, contact Montgomery County Fire and Rescue Services for transportation to the nearest hospital emergency room. If possible, obtain information from the employee about substance(s) ingested, existing medical conditions, and allergies to medications to inform hospital staff or paramedics.

- B. Notify the on-duty district executive officer or duty commander to respond to the hospital emergency room. ***If the executive officer determines that the appropriate evidentiary standard for testing has been met, the executive officer will immediately notify the IAD. Any further investigation will be handled by IAD.***
- C. Request that the blood and urine samples taken by hospital staff be frozen. During the next business day, notify OMS to arrange pick up of the frozen samples for testing.

VIII. Tests by Other Authority

In the event that a test was conducted by department personnel or another law enforcement agency's personnel to measure the blood alcohol content (BAC) of the affected employee (i.e., breathalyzer for criminal traffic charges or for an administrative investigation), an alcohol test at the collection site will still be administered. Also, a test for drugs will still need to be conducted at the collection site following the procedures above. The test conducted by department personnel or another law enforcement agency's personnel can be considered in disciplinary action.

IX. Refusal to Take Drug or Alcohol Test

- A. An employee is considered to have refused to take a drug or alcohol test if the employee:
 - 1. Fails to provide adequate breath for alcohol testing without a valid medical **explanation.**
 - 2. Fails to provide adequate urine for drug testing without a valid medical explanation.
 - 3. Refuses to sign the testing form or engages in other conduct that clearly obstructs the testing process.
- B. A refusal to take a drug or alcohol test is considered the same as a verified positive drug test result or ***a BAC of 0.04 or greater.*** An employee who refuses to be tested ***may be placed in an appropriate leave status or assigned appropriate light duties until the department has determined that the employee's performance will not be affected by drug/alcohol abuse. The Chief of Police may refer an employee who refuses to be tested to OMS for a fitness-for-duty examination.***
- C. The district/unit commander will be consulted concerning the need for placing the employee on administrative leave and for conducting an administrative investigation. (CALEA 52.1.8)

X. Adverse Actions for a Positive Drug/Alcohol Test (CALEA 26.1.4)

- A. Probationary employees without merit system status or temporary employees who violate this policy may be subject to termination.
- B. An employee who violates this policy may be subject to termination for failure to meet the medical requirements of the employee's position.
- C. An employee with merit system status who violates this policy will be subject to appropriate disciplinary action, up to and including dismissal.
- D. The Chief of Police may, as an alternative to discipline or in addition to discipline, require the employee to be assessed for a substance abuse problem, to complete any recommended treatment or rehabilitation, to submit documentation of successful completion of the treatment/program, and submit to follow-up drug/alcohol testing.

XI. Pending Criminal or Traffic Charges

- A. The county's policy on substance abuse is not intended to supersede criminal or traffic statutes. Employees will be held accountable for violations of criminal statutes related to drug possession or traffic statutes related to DWI.
- B. ***The results from an "ordered" test can not and will not be used as the basis of a criminal charge.***

XII. Convictions of Alcohol/Drug Related Offenses

Employees who are convicted of a drug/alcohol related offense which occurred in the workplace, on county property, while on duty, or while operating a county vehicle or equipment must report such conviction to their supervisors within five calendar days. Conviction includes probation before judgment, a plea of nolo contendere, or any imposition of a sentence for being under the influence of, or for having manufactured, distributed, dispensed, used, or possessed any controlled substance, including alcohol.

XIII. Treatment

- A. Employees who refer themselves for treatment for drug or alcohol abuse will not be subject to disciplinary action, absent other evidence of violation of federal, state, or local law, or county or departmental regulations.
- B. Accrued leave or leave without pay may be used for treatment. Requests for leave for treatment will be regarded as confidential.

- C. *An employee may be granted two hours of administrative leave to confer with EAP staff, with the approval of the supervisor.*

XIV. Employee Rights

An employee subject to any type of drug/alcohol testing must be advised of the following, prior to the collection of the specimen:

1. The reason(s) for requiring the test,
2. If the employee refuses to be tested, that the employee may be subject to disciplinary action,
3. The name and address of the laboratory that will perform the test, and
4. That, if the result of the test is confirmed as positive, the employee is entitled to have a test conducted on the same specimen by a different certified laboratory at the employee's own expense.

XV. Proponent Unit: Personnel Division

XVI. Cancellation

This directive cancels Function Code 371, effective date 02-19-99.



Charles A. Moose, Ph.D.
Chief of Police