

Disclaimer – This model policy does not constitute legal advice. Fire Departments using this policy as a model should consult with your department’s attorney for applicability in your state and to conform to and not conflict with existing companion policies or existing State or Federal laws.

Contributor – Eastside Fire & Rescue, Issaquah, Washington

SUBJECT - FOR CAUSE SUBSTANCE ABUSE POLICY

1. PURPOSE

- 1.1. To provide a safe workplace by eliminating the hazards to health and job safety created by alcohol and other drug abuse.
- 1.2. To reinforce our commitment to maintaining a safe and secure workplace requiring a clear policy and support programs relating to the detection, treatment, and prevention of substance abuse by employees.
- 1.3. To reinforce our commitment to a drug and alcohol free workplace
- 1.4. "To enforce a Zero Tolerance for the use of drugs and alcohol in the workplace and employees reporting to work under the influence of drugs or alcohol."
- 1.5. To create awareness in employees and their families of the impact of substance abuse.
- 1.6. To administer programs that consider employee rights, are positive in their intent, and are within legal boundaries.
- 1.7. To support the establishment of programs to assist employees with alcohol and other drug abuse or dependence problems.
- 1.8. To utilize resources available to educate and increase the awareness of employees and the general public.
- 1.9. To participate in and support _____ Fire Department sponsored drug and alcohol education programs.
- 1.10. To encourage employees to seek and accept assistance for alcohol- and other drug abuse-related problems before job performance is affected.
- 1.11. To support _____ efforts to eliminate alcohol and other drug abuse among employees where it exists.

2. Reference

- 2.1. Discipline Policy.
- 2.2. Employee Assistance Program (EAP).
- 2.3. Target Safety (OSHA-Compliant Safety Training) Drug Free Workplace Course (online for _____ personnel).
- 2.4. 49 CFR Part 40 (DOT rules for CDL's)

3. Responsibility

- 3.1. It is the responsibility of all employees of _____ Fire Department while on the job and/or in situations where an employee's off-the-job or off-premises conduct impairs work performance, or undermines the public confidence in, or harms the reputation of _____ Fire Department by use of alcohol or drugs.

4. Policy

- 4.1. It is the policy of _____ Fire Department to maintain a zero tolerance drug and alcohol free workplace for its employees that shall not tolerate or condone substance use or abuse while on duty or tolerate employees arriving to work under the influence of drugs or alcohol.

5. Procedure

- 5.1. In order to maintain a drug and alcohol free work place the following procedures shall apply:
 - 5.1.1. Employees shall not be under the influence of an illegal drug or alcohol while in the workplace, on department premises, in department vehicles, or during working hours.
 - 5.1.2. All new employees shall be subject to drug and alcohol testing as part of their pre-placement medical exam.
 - 5.1.3. Employees falling under a reasonable suspicion of being under the influence by their supervisors or peers shall be subject to alcohol and other drug-screening tests.
 - 5.1.4. When there is reasonable suspicion, _____ Fire Department may inspect persons and their property (e.g., backpacks, lockers, cars, etc) on Fire Department premises.

Fire Department's Right to Test

- 5.1.5. The Fire Department shall test all new employees for substance abuse during the pre-placement medical exam.

- 5.1.6. An employee may be required to submit to screening whenever a supervisor observes circumstances which provide reasonable suspicion to believe the employee is using or has used a controlled substance or has otherwise violated the substance abuse rules. See Appendix "A."
- 5.1.7. In order for an employee to undergo blood testing and/or urinalysis at times other than the physical, the Fire Chief or designee must:
 - 5.1.7.1. Provide the Employee and (Union) written notice in sufficient detail of the facts which led to the Employee being subjected to blood testing and/or urinalysis;
 - 5.1.7.2. Have reasonable suspicion based on specific objective facts that the Employee has abused alcohol and/or a controlled substance as prescribed in this policy (see Appendix A.);
 - 5.1.7.3. Reasonable suspicion must be approved in writing by the Fire Chief and Human Resources Manager or Battalion Chief. When the testing is undertaken as a result of observable behavior, such as the direct observation of drug use or of the physical symptoms or manifestations of being under the influence of alcohol or drugs.
 - 5.1.7.4. If an employee is ordered back to duty for testing, the Employee shall be paid in accordance with the applicable Departments reimbursement/salary Policy or Collective Bargaining Agreement. All cases of urinalysis performed on employees within the bargaining unit or department policy, (whichever document controls the workplace) shall be under the "monitored" process except in cases where the laboratory advises the Fire Department that a witnessed test should be given. A "witness" process is prohibited, except in the case of "reasonable suspicion" testing. Random testing of employees is strictly prohibited, except where required pursuant to an authorized rehabilitation program.
- 5.1.8. Employees who are required to submit to a test for the presence of alcohol or illegal drugs shall sign authorizations releasing all test results and records to the fire department.
- 5.1.9. Testing involving Union firefighters, the Union shall be notified when the fire department implements the reasonable suspicion testing procedures,

and shall be provided with all paperwork and certifications causing the Fire department to test the Employee(s).

- 5.1.10. Testing involving non-union or volunteer firefighters, the affected firefighter may have their supervisor as a representative to be notified when the fire department implements the reasonable suspicion testing procedures, and shall be provided with all paperwork and certifications causing the Fire department to test the Employee(s).
- 5.1.11. Tests for detectable levels of alcohol or drugs shall be either through blood or urinalysis, performed at a certified laboratory.
- 5.1.12. All test samples will be collected at a designated facility as arranged through the Human Resources Manager. An appropriate chain of custody will be established and maintained to ensure the accuracy of test results.

Release of Test Results to Department

- 5.1.13. Applicants and employees subject to testing must, prior to testing, sign an approved form agreeing to the testing and authorizing the release of test results to the Fire Departments Health & Safety Officer (HSO), and authorizing the disclosure of the results by the HSO to the Medical Review Officer (MRO), a licensed physician, a personnel representative, the employee's supervisor, and upper management. The HSO will obtain the results of the analysis and communicate or disclose such results to said individuals as noted above or any other person in accordance with the applicable fire departments' policies and procedures. The fire department officers, employees, agents, and representatives may use such information in connection with fire department business, and for purposes of employment and disciplinary actions, and disclose it when required to Government agencies and/or to others upon valid legal requests, legal proceedings, and other situations to protect the interests of the fire department and otherwise in accordance with policies on employee data.

Expedited Arbitration of Reasonable Suspicion

- 5.1.14. If an employee disputes the evaluation of reasonable suspicion, the employee must nonetheless, submit to a blood/urinalysis test, as ordered and may simultaneously file a grievance over the order.

- 5.1.15. A Union Employee may file this grievance through the designated Union grievance representative, legal counsel, or any other means as stated in Washington Statutes. The grievance shall immediately be subjected to the expedited arbitration process of the Federal Mediation and Conciliation Service unless the Fire department and Union mutually agree to a local arbitrator.
- 5.1.16. A non Union employee may file this grievance through the designated fire department process for non union firefighters, legal counsel, or any other means as stated in _____ (your applicable state) Statutes or Departments grievance policy.
- 5.1.17. For Union employees and in accordance to the labor agreement currently in effect, the grievance shall immediately be subjected to the expedited arbitration process of the Federal Mediation and Conciliation Service unless the Fire department and Union mutually agree to a local arbitrator.
- 5.1.18. A finding of no reasonable suspicion means the specimen shall be destroyed, and the Employee shall suffer no adverse consequences. Pending the arbitrator's decision, which shall be final and binding, the blood/urine specimen shall be preserved by acceptable and controlled methods as determined by the laboratory facility.
- 5.1.19. The related costs of the expedited arbitration shall be borne by the losing party. Where the Union does not represent the Employee and the arbitrator rules in favor of the Fire department, the Employee shall be deemed the losing party and bear full costs. Refusal to submit to testing under the terms stated above may be grounds for disciplinary action.

Post Accident Testing

- 5.1.20. Employees are required to notify their supervisor immediately regarding any accident resulting in injury to persons or damage to Department property.
- 5.1.21. Employees involved in any accident resulting in injury to self or others or resulting in damage to property belonging to the fire department or others, are required to undergo drug and alcohol screening within 2 hours of the occurrence of the accident. It is preferable that the testing be completed within one to two (1-2) hours of the incident causing damage or injury. Failure to report an accident or submit to substance

screening where required by law or this policy will result in disciplinary action up to and including termination. The supervisor shall complete an Accident Report in compliance within the fire departments accident policy and applicable laws and regulations.

- 5.1.22. A supervising officer will drive the involved firefighter to an approved laboratory for testing and after testing, will drive the firefighter to their home station.
- 5.1.23. If the firefighter is injured in the accident and taken to a local emergency department, drug and alcohol testing shall be performed in the emergency department following the procedures outlined in this policy.
- 5.1.24. For those employees covered under worker compensation program and to the extent allowed by State Workers' Compensation laws, workers' compensation benefits may be denied in whole or in part to an employee who refuses to submit to or cooperate with a drug or alcohol test or has a positive drug or alcohol test following an accident or incident causing injury to damage to department property, its personnel or members of the community or their property.

Test Substances

- 5.1.25. Employees may be tested for: amphetamines, cannabinoids, cocaine, opiates, phencyclidine, alcohol and any substance that alters the abilities of the firefighter while on duty. Such tests will be coordinated with the Human Resources Manager or the fire chief or designee based on the Reasonable Suspicion Standard, Appendix "A."

Testing Procedure

- 5.1.26. The Department reserves the right to utilize any form of testing, including, but not limited to, blood, hair, breath, saliva or urinalysis testing procedures. All initial positive urine and hair specimens will be confirmed by a second test, gas chromatography/mass spectrometry (GC/MS), liquid chromatography/mass spectrometry (LC/MS), or mass spectrometry/mass spectrometry (MS/MS) as appropriate.
- 5.1.27. If both the initial test and the verification test are positive for alcohol and/or drugs , the Employee shall be notified of the results from the Fire department in the following manner:

5.1.27.1. Within thirty-six (36) hours of providing the specimen, the testing facility or employee shall contact the Human Resources Manager for the results of the test. If the test is positive, the employee shall be permitted to have a portion of the original specimen retested at one of the laboratories agreed to by the parties.

5.1.27.2. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory which performed the test for the employer shall be responsible for the transfer of the portion of specimen for the integrity of the chain of custody during such transfer. The Department shall pay the costs of the second test if it is negative, the employee if it is positive.

Rehabilitation

5.1.28. Employees have the right to voluntarily enter EAP without penalty. Upon testing and in the event that the results of the blood/urinalysis testing are positive, the Employee will enter and remain in an alcohol/substance abuse program approved by the Fire department and Union (if applicable) until the approved program administrator is able to state that the Employee has successfully completed the approved treatment program/plan. While in the program the Employee will be allowed to return to work, if the authorized program or EAP approves; if not, the Employee may be placed on leave until the authorized program approves the Employee's return to work.

5.1.29. If the Employee does not complete the treatment program/plan, or refuses to enter the rehabilitation program, he/she may be disciplined up to and including discharge. If the Employee successfully completes the approved treatment program/plan as determined by the authorized program or EAP, the Employee will be permitted to return to work.

5.1.29.1.1. Employee may use any accrued leave while in the rehabilitation program, or take a leave of absence without pay.

5.1.30. Employees being rehabilitated shall be permitted to return to work if authorized by the program administrator.

Re-Occurring Alcohol/Substance Abuse

5.1.31. Only one rehabilitation session will be permitted. Three random tests a year for two years while rehabilitation shall be conducted. Those who test positive after rehabilitation shall be terminated.

Discipline Pending Rehabilitation

5.1.32. No employee shall be disciplined for alcohol/substance abuse if the Employee voluntarily enrolls in and completes a rehabilitation program.

5.1.33. Nothing in this policy shall prevent the Employer from disciplining an employee for acts that, without regard to whether an employee was using drugs or alcohol, would merit discipline. For example, an employee who is arrested and convicted of a misdemeanor or subject to a written reprimand.

Causes for Termination

5.1.34. Testing positive for illegal drugs or alcohol without legal basis for use

5.1.35. Storing any alcohol or illegal drugs in a locker, desk, or other repository on department premises.

5.1.36. Switching or adulterating any urine sample submitted for testing, or submitting a false sample for testing.

5.1.37. Possession, use or distribution of illicit drugs or alcohol on department premises, or in department vehicles, whether during working hours or non-working hours.

5.1.38. Refusing consent to testing or refusing to submit a urine or blood sample for testing when required pursuant to this policy.

5.1.39. Failing, when requested pursuant to this policy, to enroll in any rehabilitation program and/or failing to adhere to the requirements of the program/plan.

5.1.40. Being indicted or convicted under any criminal drug statute.

5.1.41. Failing to cooperate with law enforcement agencies during an investigation related to the unlawful use, sale or distribution of drugs or alcohol.

Authorized Use of Prescribed Medicine

5.1.42. An employee undergoing prescribed medical treatment with any drug or controlled substance that may impair his/her physical or mental ability is required to report this treatment to his/her BC or supervisor, who will

determine whether the fire department should temporarily change the employee's job assignment during the period of treatment.

Employee Assistance Program (EAP)

- 5.1.43. Employees who desire help with an alcohol-related problem may request assistance through the EAP. Assistance will be provided on a confidential basis, and each employee will be referred to the appropriate treatment and counseling services. Employees who voluntarily request assistance, through the EAP, in dealing with alcohol-related problems, may do so without jeopardizing their continued employment with the fire department. Employees who voluntarily request help have NO responsibility to inform the fire department.
- 5.1.44. The EAP applies to all employees and their eligible dependents who are covered under our medical/health and welfare insurance programs to which the fire department pays. While the fire department has no intention of intruding into the private lives of its employees, we recognize that personal problems may eventually take a toll on job performance. Our concern is to assure that employees report to work in condition to perform their duties safely and efficiently in the interest of their fellow workers, themselves, and our customers.
- 5.1.45. This policy will not exempt employees from job performance requirements.
- 5.1.46. Where applicable and available, sick leave may be used for treatment and rehabilitation on the same basis as for other health problems.
- 5.1.47. Supervisors and managers are responsible for confronting employees about unsatisfactory as well as acceptable but deteriorating performance, and referring such employees to the EAP when appropriate.
- 5.1.48. If an employee is required to attend EAP, the fire department has the right to be notified by the counselor of any positive drug or alcohol testing as performed by the counseling agency. If informed by the counselor of a positive test, the employees referred to such a program by the fire department must immediately cease any illegal drug use or controlled substance abuse, must consent to periodic unannounced testing for a period of at least 12 months, and must comply with all other conditions of the treatment or counseling program and disciplinary action.

Definitions

- 5.1.49. The term "illegal drug" means drugs and controlled substances, the possession or use of which is unlawful, pursuant to the laws of any country and any Federal, State, or local laws, and regulations of the United States.
- 5.1.50. Drugs and controlled substances that are not legally obtainable, or that are legally obtainable but have not been legally obtained, are considered to be illegal drugs. Examples include street drugs such as cocaine, heroin, marijuana, and phencyclidine and controlled substances such as amphetamine, methamphetamine, and barbiturates.
- 5.1.51. The term controlled substance includes any prescribed drug not being used for prescribed purposes or in a prescribed manner.
- 5.1.52. Alcohol abuse, or alcoholism, is defined by the National Council on Alcoholism as "a chronic, progressive, and potentially fatal disease characterized by: tolerance, physical dependency, and/or pathological organ changes, all of which are the direct or indirect consequences of the alcohol ingested."
- 5.1.53. Department or Fire department shall mean _____
(your fire department)
- 5.1.54. Reasonable Suspicion is defined to mean suspicion based on factors which would lead a reasonable person in the fire fighting industry to believe that the employee is under the influence of alcohol or drugs based on performance, appearance or other suspicious factors
- 5.1.55. Medical Review Officer - A Medical Review Officer (MRO) is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results. The MRO, acts as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process. The MRO provides quality assurance review of the drug testing process for the specimens under their purview, determine if there is a legitimate medical explanation for laboratory confirmed positive, adulterated, substituted and invalid drug test results, ensure the timely flow of test result and other information to employers and protect the confidentiality of the drug testing information. The MRO shall be

the department's Occupational Medicine contractor at Valley Medical Center.

5.1.56. Zero Tolerance is defined as a policy or practice of not tolerating undesirable behavior, such as violence or illegal drug use, especially in the automatic imposition of severe penalties for first offenses.

Miscellaneous

5.1.57 Nothing in this policy shall constitute a waiver of any employee's constitutional or statutory rights.

APPENDIX "A"
REASONABLE CAUSE OBSERVATION CHECKLIST
(STRICTLY CONFIDENTIAL)

Employee: _____ Time and Date of Evaluation: _____

Supervisor: _____

This checklist will **assist** a supervisor in referring a person for drug testing or to EAP.
Has the employee exhibited any of the following?

QUALITY AND QUANTITY OF WORK

Yes No

- | | | |
|-----|-----|--|
| ___ | ___ | Clear refusal to do assigned tasks |
| ___ | ___ | Significant increase in errors |
| ___ | ___ | Repeated errors in spite of increased guidance |
| ___ | ___ | Reduced quantity of work |
| ___ | ___ | Inconsistent "up and down" quantity of work |
| ___ | ___ | Behavior that disrupts work flow |
| ___ | ___ | Procrastination on significant decisions or tasks |
| ___ | ___ | More than usual supervision necessary |
| ___ | ___ | Frequent, unsupported explanations for poor work performance |
| ___ | ___ | Noticeable change in written or verbal communication |
| ___ | ___ | Other (specify) _____ |

INTERPERSONAL WORK RELATIONSHIPS

Yes No

- | | | |
|-----|-----|---|
| ___ | ___ | Significant change in relations with coworkers, supervisors, etc. |
| ___ | ___ | Frequent or intense arguments |
| ___ | ___ | Verbal abusiveness |
| ___ | ___ | Physical abusiveness |
| ___ | ___ | Persistently withdrawn or less involved with people |
| ___ | ___ | Intentional avoidance of supervisor |
| ___ | ___ | Expressions of frustration or discontent |
| ___ | ___ | Change in frequency or nature of complaints |

- Complaints by coworkers or subordinates
- Cynical, "distrustful" comments
- Unusual sensitivity to advise, critique, or work
- Unpredictable response to supervision
- Passive-aggressive attitude or behavior, doing things "behind your back"

GENERAL JOB PERFORMANCE

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Excessive unauthorized absences (number in last 12 months _____) |
| <input type="checkbox"/> | <input type="checkbox"/> | Excessive authorized absences in last 12 months _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Excessive use of sick leave in last 12 months _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Frequent Monday or Friday absence or other pattern |
| <input type="checkbox"/> | <input type="checkbox"/> | Frequent unexplained disappearances |
| <input type="checkbox"/> | <input type="checkbox"/> | Excessive "extension" of breaks or lunch |
| <input type="checkbox"/> | <input type="checkbox"/> | Frequently leaves work early (number of days per week _____) |
| <input type="checkbox"/> | <input type="checkbox"/> | Concern about incidents of safety offenses involving others |
| <input type="checkbox"/> | <input type="checkbox"/> | Experiences or causes job accidents |
| <input type="checkbox"/> | <input type="checkbox"/> | Major change in performance of duties or responsibilities |
| <input type="checkbox"/> | <input type="checkbox"/> | Interferes with or ignores established procedures |
| <input type="checkbox"/> | <input type="checkbox"/> | Inability to follow through on performance recommendations |

PERSONAL MATTERS

- | Yes | No | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Changes in or unusual personal appearance (dress, hygiene) |
| <input type="checkbox"/> | <input type="checkbox"/> | Changes in or unusual speech (incoherent, stuttering, loud) |
| <input type="checkbox"/> | <input type="checkbox"/> | Changes in or unusual physical mannerisms (gestures, posture) |
| <input type="checkbox"/> | <input type="checkbox"/> | Changes in level of activity (reduced or increased) |
| <input type="checkbox"/> | <input type="checkbox"/> | Changes in or unusual topics of conversation |
| <input type="checkbox"/> | <input type="checkbox"/> | Engages in detailed discussions about death, suicide, harming someone |
| <input type="checkbox"/> | <input type="checkbox"/> | Increasingly irritable or tearful |
| <input type="checkbox"/> | <input type="checkbox"/> | Persistently boisterous or rambunctious |
| <input type="checkbox"/> | <input type="checkbox"/> | Unpredictable or out-of-context displays of emotion |
| <input type="checkbox"/> | <input type="checkbox"/> | Unusual fears |
| <input type="checkbox"/> | <input type="checkbox"/> | Lacks appropriate caution |

- ___ ___ Engages in detailed discussions about obtaining or using drugs or alcohol
- ___ ___ Has personal relationship problems with others
- ___ ___ Makes unfounded accusations toward others; has feelings of persecution
- ___ ___ Secretive or furtive
- ___ ___ Memory problems (recalling instructions, data)
- ___ ___ Frequent colds, flu, or other illnesses
- ___ ___ Comes to work with alcohol on breath
- ___ ___ Excessive fatigue
- ___ ___ Makes unreliable or false statements
- ___ ___ Unrealistic self-appraisal or grandiose statements
- ___ ___ Temper tantrums or angry outbursts
- ___ ___ Demanding, rigid, inflexible
- ___ ___ Major change in physical health
- ___ ___ Concerns about sexual behavior or sexual harassment

Other information or observations (please be specific and attach additional pages if necessary)

Signature of Supervisor: _____ Date: _____

Signature of BC or DC: _____ Date: _____

Substance Abuse Policy Acknowledgement/Release

I hereby certify that I have received and read the Substance Abuse Policy Statement and have had the drug-free workplace program explained to me. I understand that if my performance indicates it is necessary, I will submit to a drug and/or alcohol test. I also understand that failure to comply with a drug and/or alcohol testing request or a confirmed positive result for the illegal use of drugs and/or alcohol will lead to discipline up to and including termination of employment and/or forfeiture of workers' compensation benefits *.

I hereby consent to submit to urinalysis and/or other tests as shall be determined/required by _____ the "fire department", pursuant to the Substance Abuse Policy, for the purpose of determining any drug and/or alcohol content thereof.

I agree that _____ {enter Laboratory Name} a certified lab or other designated collection site may collect these specimens for these tests and may test them or forward them for analysis to a certified testing laboratory designated by the company.

I further agree to and hereby authorize the release of the results of said tests to an authorized Medical Review Officer (MRO), the Company, or authorized agent of the fire department.

I further agree to hold harmless the fire department and its agents (including the above named laboratory and the collection site) from any liability arising in whole or part out of the collection of specimens, testing, and use of the information from said testing in connection with the Company's consideration of my employment, or my employment application if a candidate for employment.

I further agree a reproduced copy of this consent and release form shall have the same force and effect as the original.

I have carefully read the foregoing and fully understand its contents.

Applicant/Employee:

Print Name: _____ Soc.Sec.No. XXX- XX - _____

Signature: _____ Date: _____

Witness Printed Name: _____

Witness Signature: _____

This form will become part of an employee's personal medical file.