



QUESTIONS?
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DRUG FREE WORKPLACE PROGRAM & TESTING POLICY Updated January 2020

This policy is effective the ____ day of _____, 20____.

I.) PURPOSE/INTRODUCTION:

XXXXXXXXXXXXXXXXXXXXXXX (the “Company”) is firmly committed to providing a productive, safe and healthy work environment. The use, misuse or abuse of illegal drugs, abuse and misuse of alcohol, prescription drugs and lawful products (including cannabis on any local or state level), adversely affects those objectives by increasing absenteeism, lowering productivity and quality and most of all, jeopardizing the health and safety of our employees, customers, guests, visitors, and all others who conduct or transact business with us.

The following policy and testing program requires compliance by all employees, who are not subject to the U.S. Department of Transportation Regulation on drug testing, as a condition of employment and continued employment with the Company.

The Company reserves the right to interpret, revise or discontinue any provision of this policy. However, in implementing and administering this policy, the Company will not discriminate against any employee or applicant for employment because of real or perceived age, ancestry, citizenship status, national origin, religion, creed, sex, gender, gender identity, gender transitioning status, sexual orientation, pregnancy (including childbirth and medical conditions related to pregnancy or childbirth), marital status, disability (physical or mental), genetic information or pre-disposition, race, color, sealed or expunged criminal conviction, arrest record, military discharge or veteran status, or any other characteristic protected by local, state or federal law.

Comment [SA1]: Any DOT regulated worker would fall under a separate and distinct drug testing policy in conformity with the DOT drug testing regulation. DOT does not recognize marijuana for any purpose, including medicinal.

Appendixes A, B, C, and D are attached and have been incorporated into this policy and program. Appendix A is simply an acknowledgment of receipt required to be executed by all new and current employees. Appendix B and Appendix C consist of “Consent to Test” forms to be executed by current employees as well as applicants respectively. Appendix D consists of a Follow-Up Testing/Last Chance Agreement.

II.) STATEMENT OF POLICY:

The Company recognizes that our employees’ health and safety are of the utmost importance. Drug use and alcohol misuse may pose a serious threat to employee health and safety. It also jeopardizes the health and safety of non-employees, such as our customers, guests, visitors,

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vendors and suppliers. It is the policy of the Company to prevent any substance use or abuse from having an adverse effect on our employees. The work environment is safer and more productive without the presence of certain drugs or alcohol in the body while on Company time or on Company property. Furthermore, all employees have a right to work in a drug-free environment and to work with individuals free from the negative effects of drugs or alcohol. Employees who use or abuse illegal substances or who misuse or abuse legal substances and/or over-the-counter drugs are a danger to themselves, their co-workers, the public and the Company.

For purposes of this policy, the Company’s “workplace” includes, but is not limited to, any Company building, property, and parking area under the Company’s control (regardless of whether it is leased or owned), or any location or area where an employee is performing his or her job duties or where an employee is physically located during his or her work schedule. Company property shall also include any place the employee is located when “on call” or at any time during his or her work shift including, but not limited to, guest, visitor or customer locations, vendor or supplier locations, home offices, as well as vehicles, whether leased, rented, or owned. For purposes of this policy, “on call” means an employee who is scheduled to be on standby or could be called into work within 24 hours' notice or otherwise responsible for performing work-related tasks either at the Company’s premises or any other designated location by management.

The federal government, many States and numerous organizations have recognized the adverse impact of drug and alcohol misuse or abuse in the workplace. All employees are advised that remaining free from illegal drugs, or being impaired by or under the influence of legal drugs or alcohol when performing any assigned work duties, or while at the workplace, is a condition of continued employment with the Company.

The Company prohibits the manufacture, distribution, dispensation, possession, concealment, use, sale or transfer of alcohol, cannabis, controlled substances or illegal drugs, and any drug related paraphernalia at the Company’s workplace, while working on Company time, while on call or while operating Company equipment (including, but not limited to, any motor vehicles).

The Company will conduct post-offer testing of all applicants. All employees may be subject to testing where circumstances establish that reasonable cause/suspicion of prohibited substance use exists, following “on-the-job” accidents or injuries as described in more detail below and, if required by law or due to a safety sensitive job function, on a random basis.

To the extent any employee is permitted to return to duty following any positive test in violation of this policy, he or she must first test negative before returning and must submit to follow-up tests for as long as two years.

Comment [SA2]: This would be part of some sort of LAST CHANCE OPPORTUNITY should the employer wish to implement a LC opportunity. Such option should be carefully vetted and reviewed.

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Any employee who tests positive for any substance prohibited by this policy will be subject to disciplinary action up to and including immediate termination. A positive test result shall be deemed a failure of a drug test for purposes of this policy. Any employee who refuses to comply with a request to submit to testing or who fails to cooperate in the test process, as determined by the Company or any third party collection site in its sole discretion, will be terminated from employment. These procedures are designed not only to detect violations of this policy but also to ensure fairness to each employee. Every effort will be made to maintain the dignity of employees or applicants involved. Disciplinary action, up to and including immediate termination from employment will, however, be taken as necessary.

All employees have an obligation to comply and support this policy. Any employee who is aware of a violation of the policy should report it to Human Resources, his/her immediate supervisor or the Company's Safety Manager. Every effort will be made to preserve the confidentiality of the source of a report. All reports will be taken seriously. Persons submitting knowingly false reports or information are subject to discipline up to and including immediate termination from employment.

PRESCRIBED MEDICATION

An employee taking over-the-counter or prescribed medication must be aware of any effect the medication may have on the performance of their duties. The employee must inform his/her physician or preferred medical provider of his/her job duties in order to make certain that the over-the-counter or prescribed medication does not negatively affect or interfere with the employee's safe and effective performance of his/her job duties. An employee must promptly report, in a confidential and private manner, to Human Resources or the Company's Safety Manager any restriction or limitation on his or her ability to effectively and safely perform the essential functions of the job due to the use of any medication which has or may have any adverse effect on his or her ability to effectively and safely perform any of his or her essential job duties. An employee is not required or expected to divulge his or her medical condition or the type of medication. Upon such disclosure, the Company will engage in the interactive process with the employee to determine whether the employee may effectively and safely perform his or her essential job duties, with or without any reasonable accommodation, to the extent required by law. If the Company obtains information that an employee used or is using a medication which has or may have an adverse effect on his or her ability to effectively and safely perform his or her essential job duties, and the Company determines the employee failed to inform the Company of any restriction or limitation from such use, then the employee will be subject to disciplinary action, up to and including immediate termination of employment.

All prescription and over the counter drugs must be kept in their original packaging or container and must be stored in compliance with applicable laws. An employee who fails to adhere to this provision may be subject to disciplinary action, up to and including immediate termination of employment. Additionally, consuming or possessing a prescribed drug where the prescription

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has expired, consuming or possessing a prescribed drug that is not one’s own prescription and/or abusing one’s own prescription is not lawful and will subject the employee to disciplinary action, up to and including immediate termination of employment.

Notwithstanding the foregoing, the Company does endeavor in good faith to engage in the interactive reasonable accommodation process with any employee lawfully taking medication for an underlying medical condition, to the extent required or permitted by applicable disability laws.

CANNABIS (MARIJUANA)

Recreational Use - The Company recognizes that certain states and municipalities allow the use of recreational cannabis. The recreational cannabis law in Illinois permits an adult (21 years of age or older) to use cannabis and avoid civil and criminal penalties under state law.

Medical Use - The Company recognizes that certain states and municipalities allow the use of medicinal cannabis. Illinois’ medical cannabis law permits an individual with a qualifying debilitating medical condition to register as a medical cannabis patient and avoid civil and criminal penalties under state law for certain medical uses of cannabis. The Company will not discriminate against an employee based on the employee being a registered medical cannabis cardholder.

However, in accordance with Illinois and federal law and in order to maintain a safe, efficient and productive workforce, employees may not use or possess cannabis at the workplace (as previously defined in this policy). The Company also prohibits employees from reporting to work under the influence of, or in any way impaired by, cannabis; as determined in the Company’s sole discretion to the fullest extent permitted by applicable law.

Recreational marijuana: Any drug test that results in a confirmed positive for Cannabis/Tetrahydrocannabinol (THC) shall result in disciplinary action, up to and including, immediate termination of employment.

Medicinal marijuana: Any drug test that results in a confirmed positive for THC that exceeds 10 nanograms in any saliva or urine specimen taken under this policy, shall cause the Company to have a good faith basis to believe the employee is impaired by or under the influence of cannabis, subjecting the employee to immediate termination of employment even if the THC is through the use of a valid prescription for medicinal purposes only.

COMPANY SEARCHES

The Company may conduct searches on and of any Company property, including, but not limited to, inspection of vehicles, lockers, desks, employee tools and lunch boxes, briefcases, packages, etc. Private vehicles parked on the Company’s physical premises are included in this search

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Comment [SA3]: So... there is a distinction here. Recreational usage = termination as a result of any THC being detected in a drug test. Medicinal usage = termination if the nanogram level is at or above the legal limit to operate a motor vehicle under the IL Vehicle Code. Under the IL Vehicle Code, a PRESUMPTION of impairment can be found where 5 or more nanograms of THC is detected in blood, and 10 or more in any other bodily substance (i.e. urine or saliva). Taking disciplinary action for one who is lawfully using THC for medicinal purposes and who tests positive for such use that exceeds the legal limits under the IL Vehicle Code appears to be a reasonable position to take as an employer --- under the law.

policy. Refusing to submit to a search or inspection when requested by Company management will be cause for immediate discharge from employment. Any controlled and/or illegal substance found on Company property, including cannabis, may be turned over to appropriate law enforcement authorities for investigation and possible criminal enforcement action.

III.) DRUG AND ALCOHOL TESTING PROGRAMS:

To support this policy, the Company has adopted the following Uniform Drug and Alcohol Testing Program that applies to all its employees (unless otherwise noted).

- A. Post-offer ~~Testing~~;
- B. Introductory Period Testing for Safety Sensitive and Key Management ~~Positions~~;
- C. Reasonable Suspicion Testing (which includes post-incident or incident testing);
- D. Random ~~Testing~~;
- E. Return to Duty ~~Testing~~; and
- F. Follow-up ~~Testing~~;

Comment [SA4]: Employer must decide if it wishes to test for THC in the pre-employment/post-offer stage. An alternative is some sort of INTRODUCTORY period testing. Pre-hire testing for THC is best reserved to those in safety sensitive positions.

Comment [SA5]: This is merely an alternative to pre-employment testing for THC.

Comment [SA6]: Random should be reserved for those in truly safety sensitive positions or key financial positions or with certain professionals.

Comment [SA7]: This is more rare for employers to adopt and is usually not necessary except for safety sensitive positions.

Comment [SA8]: This is in line with additional testing in conformity with a last chance agreement.

Neither this policy nor any of its terms are intended to create a contract of employment, or to alter the existing employment or contractual relationship in any way. The Company retains the sole right to change, amend or modify any term or provision of this policy to comply with developing law and/or due to business needs without notice.

A) POST-OFFER TESTING

After an offer of employment has been extended, the applicant must undergo a drug screen designed to identify whether or not the applicant is using illegal drugs.

~~This post-offer drug screen will only include testing for Cannabis/ Tetrahydrocannabinol (THC) for employees who are offered a safety sensitive job position. “Safety Sensitive” positions are defined as those positions directly responsible for health and safety of others.~~

Comment [SA9]: Another option is to test individuals for THC in the pre-employment or post-offer phase if they are in a safety sensitive position. This will arguably strengthen the employer’s argument that it’s policy is more reasonable if challenged. The more reasonable the policy, the stronger the defense if challenged.

This drug screen will be administered by a clinic or lab selected by the Company. *All offers of employment with the Company are contingent on the Company receiving a negative drug test result verified by and independent Medical Review Officer.* This result must be received by the Company prior to the employee beginning active employment.

Should a positive test result exist, the applicant’s offer of employment will be automatically rescinded by the Company. If for any reason the applicant has already begun working for the Company before the Company receives the positive test result, the applicant’s employment will come to an immediate end. However, the applicant can submit documentation supporting the

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legitimate use for a specific drug or the specific drug that resulted in a positive determination. This documentation must be made either prior to or within 24 hours after the positive drug result is communicated to the applicant. Should the applicant's ability to safely and effectively perform his or her job be affected by the legitimate and lawful use of any drug, then the Company will attempt to provide accommodations to the extent required by law. If the offer of employment is revoked or if employment ends, the applicant who tests positive under the provisions of this policy may re-apply for employment with the Company after a time period of twelve (12) months, however, there shall be no guarantee of re-employment.

ANY APPLICANT WHO REFUSES TO CONSENT TO A TEST OR WHO FAILS TO COMPLY WITH ANY TESTING PROCEDURES OR TESTS POSITIVE FOR THE USE OF ILLEGAL DRUGS WILL NOT COMMENCE WORK FOR THE COMPANY, AND THE JOB OFFER WILL BE AUTOMATICALLY RESCINDED. EMPLOYMENT IS EXPRESSLY CONDITIONED ON THE SUCCESSFUL PASSAGE OF THE POST-OFFER DRUG SCREEN.

In recognition of the requirements of the Americans with Disabilities Act (ADA), the Company will not discriminate against an applicant who has successfully completed a drug or alcohol rehabilitation program. However, the ADA does not prevent the Company from refusing to hire any applicant who tests positive for illegal drug use prior to employment.

B) INTRODUCTORY PERIOD TESTING FOR SAFETY SENSITIVE AND KEY MANAGEMENT POSITIONS

The Company recognizes that employees in Safety Sensitive positions and Key Management positions, who are found to be using drugs or alcohol in the workplace, on Company property, while working on Company time, while on call or while operating Company equipment (including vehicles) can cause significant damage to the financial and overall well-being of the Company. "Safety Sensitive" positions are defined as those positions directly responsible for health and safety of others. "Key Management" positions are defined as those positions where an employee is responsible for significant oversight of the Company and/or the Company's financial resources (i.e. CEO, COO, CFO, CMO, CTO, etc.).

Any employee in a Safety Sensitive or Key Management position will be notified by the Company upon offer of employment that they are being hired into such a position and subject to testing pursuant to this policy. Employees in Safety Sensitive or Key Management positions must undergo a drug screen designed to identify whether or not they are using illegal drugs, including cannabis. This particular drug test will be required at any time after being employed for at least 30 calendar days with the Company, but no more than 90 calendar days.

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Comment [SA10]: Alternative to testing anyone for THC pre-employment or post-offer. Employers could simply state that such testing will commence at the conclusion of one's "introductory period" (aka "probationary period.")

This drug screen will be administered by a clinic or lab selected by the Company. The Company will inform the Safety Sensitive or Key Management employee of the test selection date and the Safety Sensitive or Key Management employee shall report directly to the collection site for drug and/or alcohol testing. Refusal to consent to testing and cooperate in testing will be considered insubordination and grounds for termination of employment.

If notice of a positive test result is received from the Medical Review Officer, then the employee will be subject to the disciplinary action, up to and including, immediate termination from employment. If a negative test result is received, then the employee will be immediately returned to work.

C) REASONABLE SUSPICION TESTING & POST ACCIDENT/INCIDENT

The Company has the sole discretion to decide when and under what circumstances an employee is fit for work. Circumstances giving rise to reasonable suspicion testing include, but are not limited to:

1. When the Company has reasonable suspicion to believe an employee's abuse of drugs or alcohol threatens his or her own personal safety or the personal safety of other individuals;
2. Observation of an employee acting or appearing in a manner which suggests drug or alcohol use, such as, behavior, appearance, judgment, coordination, job performance and/or other conduct including, but not limited to, slurred speech, glassy eyes, unsteady walk, disorientation, significant or repeated lapses of concentration, emotional outbursts, substantial mood changes, the smell of alcohol on the employee's breath, etc.;
3. Instances where the Company observes or receives credible information that the employee is using or has symptoms of drugs and/or alcohol use; and/or
4. Other facts which support a reasonable belief that the employee is using or has symptoms of drugs and/or alcohol use in violation of this policy.

All pertinent Company managers and supervisors will receive training to assist them in identifying characteristics or behavior of the use of prohibited substances. Any manager or supervisor who observes such characteristics or behavior must immediately notify the Company's Human Resources Manager in writing of the date, particular facts observed and employee's name. Upon the Human Resources Manager's determination that reasonable suspicion exists, testing can commence. However, once the determination that reasonable suspicion exists, under no circumstances will an employee be allowed back to work until he or she has a negative drug and/or alcohol test.

Additionally, anyone who suffers or is involved in a reportable accident on Company property and/or time must report it within two (2) hours to his or her immediate supervisor or manager, so

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that proper action and/or medical treatment may be provided. Failure to report any injury immediately may adversely affect an employee's benefits and rights under the law, and is grounds for disciplinary action, up to and including, immediate discharge. If the Company has reasonable suspicion to believe an employee's use of drugs or alcohol caused, may have caused, contributed to or may have contributed to a "reportable accident" defined as one of the following: (a) The death of a human being; (b) Bodily injury to any person who, as the result of the injury, receives medical treatment --- including "first-aid"; (c) Damage to property or equipment; or (d) Any "near miss" reportable accident as determined in the reasonable but sole discretion of management, then the employee will be required to undergo a drug test.

Comment [SA11]: We need to be in conformity with OSHA regulation on issue.

In reasonable suspicion and post-accident/incident cases, the Company shall require the employee to be escorted directly to and from the collection site for drug and/or alcohol testing. The employee will be transported to and from the collection site by a Company representative and/or an independent third party. Refusal to consent to testing and cooperate in testing will be considered insubordination and grounds for termination of employment.

If notice of a positive test result is received from the Medical Review Officer, then the employee will be subject to the disciplinary provisions in Section V of this program. However, if a negative test result is received, then the employee will be immediately reinstated for work with back pay, if applicable.

D) RANDOM TESTING

Comment [SA12]: Random should be reserved for those in truly safety sensitive positions.

The Company will also conduct random testing for all employees who hold safety-sensitive positions, as follows:

1. A Company-wide selection process which removes discretion in selection from any supervisory personnel will be adopted by the Company. Random testing will be conducted by a third party removed from the company site.

2. Random testing, once begun, will provide for testing of at least 10% of all Employees during the first twelve (12) months of random testing after this program becomes effective.

Random testing usually selects from 10% up to 100% of all safety sensitive employees. An employee MUST test within 24 hours of being selected.

The annualized rate for random testing following the first twelve (12) months after implementation will be no less than 10% of covered Employees.

If a notice of a positive test result is received from the Medical Review Officer following a random drug and/or alcohol screen, then the employee will be subject to the disciplinary

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provisions in Section V of this program. However, if a negative test result is received, then the employee will be immediately reinstated for work with back pay, if applicable.

E) RETURN-TO-DUTY TESTING

Any employee who has not worked for the Company for a period of 30 consecutive calendar days must undergo testing for illegal drug use upon returning from any leave of absence and commencing active employment. If a notice of a positive test result is received from the Medical Review Officer following said testing, then the employee will be subject to the disciplinary provisions in Section V of this program.

F) FOLLOW-UP TESTING

As part of any “Last Chance Agreement” provided for in this policy (referred to in Section VI below), the Company will subject the employee to certain follow-up testing upon return to work following successful completion of a rehabilitation and/or drug treatment program.

IV.) TESTING METHODOLOGY:

This policy and program allows for the testing for drugs and alcohol. All collection and testing centers and laboratories used to perform or analyze urine, saliva, blood and/or breath testing pursuant to this program will be appropriately accredited or certified.

Drug Screening

Testing will be conducted to screen the presence of the following drugs and their metabolites, to the fullest extent permitted by law:

- Cannabis/
Tetrahydrocannabinol (THC)
- Cocaine
- Opiates
- Amphetamines
- Phencyclidine (PCP)
- Barbiturates
- Benzodiazepines
- Methadone
- Methaqualone
- Propoxyphene

Alcohol Screening

All alcohol breath testing performed under this program shall be performed to determine blood alcohol content only. Any employee having a blood alcohol content of at least .04 shall be deemed to be “under the influence” of alcohol and have tested positive for the use of alcohol and such a result shall subject the employee to the disciplinary provisions contained in Section V of this program.

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Comment [SA13]: Similar to pre-employment or post-offer testing for THC, testing for THC here should be carefully evaluated. Employers may want to reserve for those returning to safety sensitive positions.

Comment [SA14]: Of course, an employer may voluntarily elect to subject an employee to a 5-panel test vs. 10-panel. Some employers, particularly those performing public work, should adopt a 10-panel exam. In particular, construction contractors need to be familiar with the Illinois Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265).

Cannabis/ Tetrahydrocannabinol (THC) Screening

Comment [SA15]: Employers can certainly attempt to examine blood samples. Blood sampling is more invasive, of course.

All Cannabis/ Tetrahydrocannabinol (THC) testing performed under this program shall be performed to determine THC content only. The Company recognizes impairment based on THC under the Illinois Vehicle Code and thus any employee having a 10 or more nanograms of THC in his/her saliva or urine at the time of testing will be considered to be impaired. The Company reserves the right to also rely on additional documented symptoms, evidence or factors of the employee's impairment.

The Company may also determine an employee is impaired based a positive THC test that results in a saliva/urine test result of less than 10 nanograms if the Company also has additional documented symptoms, evidence or factors of the employee's impairment.

The Company shall retain a qualified Medical Review Officer to receive test results from the laboratory and to carry out all actions necessary to confirm positive test results.

An appropriate "chain of custody" will be established for all testing completed in conformity to this policy and program. "Chain of custody" shall mean a procedure used to document the handling of the specimen from the time the employee gives the specimen to the collector until the specimen is destroyed.

V.) DISCIPLINARY PROVISIONS:

An employee who tests positive for the use of a controlled substance (including, but not limited to cannabis) and/or alcohol in violation of this policy or program, as reported to the Company's designated representative (i.e. Human Resources, Human Resources Manager, Director of Risk Management) by an independent Medical Review Officer, shall be unqualified to work for the Company. Further, a positive test result under this policy shall be deemed a failed drug test, and this shall be grounds for immediate termination of employment.

Ability to Contest/Grievance Procedure

Comment [SA16]: For medicinal usage and to establish a stronger defense for employers if challenged, this provision certainly doesn't hurt as the employer controls the ultimate outcome. It is highly recommended to include an internal process for employees or former employees to grieve the adverse action.

If an employee wants to contest any disciplinary action taken by the Company under this policy, the employee must submit whatever documentation or other material or explanation to the Human Resources Department within seven (7) calendar days of the employee being informed of the disciplinary action. The Human Resources Manager will review any and all information submitted by the employee and shall make a final decision whether to uphold the decision or reverse it in a timely manner.

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An employee who “refuses to submit” to an alcohol or drug test as provided herein is subject to immediate termination without any right or option to certain reinstatement provisions. “Refuses to submit” means that an employee:

Comment [SA17]: This language needs to be tweaked to reflect whether a right to reinstatement will be provided. If an employer wishes to allow for a right to reinstatement, then careful language must be added to the policy to reflect such an option/opportunity. That noted... a right to reinstatement on a voluntary basis is one thing, a right to reinstatement after one tests positive under the policy (especially in safety sensitive positions) is quite another.

1. Fails to appear for any test within a reasonable time, as determined by the Company, consistent with this policy after being directed to do so by the Company.
2. Fails to remain at the testing site until the testing process is complete.
3. Fails to provide a specimen for any drug test required.
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the employee's provision of a specimen.
5. Fails to provide a sufficient amount of urine or other bodily substance when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
6. Fails or declines to take a second test the employer or collector has directed the employee to take.
7. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process, or failing to complete all documents, or failing to comply with reasonable directives); or
8. Is reported by the Medical Review Officer as having a verified diluted or otherwise adulterated sample or substituted test result.

VI.) REINSTATEMENT OF EMPLOYEE AFTER POSITIVE TEST

An employee who does not hold a safety sensitive position, and who tests positive for the use of a controlled substance and/or alcohol, thereby supplying the Company with grounds for the immediate discharge of the employee, may be offered a one-time opportunity for reinstatement provided the employee agrees to comply with the following conditions and executes the “Follow-up Testing Agreement,” attached as Appendix D.

Comment [SA18]: Allowing employees to be given the opportunity for reinstatement should be carefully reviewed. This sample policy reserves such opportunity to those in non-safety sensitive positions.

1. The employee must immediately enroll in a qualified program of evaluation and, if necessary, treatment. A qualified program of evaluation and/or treatment can be chosen by the Company or the employee, but it must be approved by the Company. Any cost of rehabilitation not covered by insurance shall be borne by the employee.

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2. Upon receipt of satisfactory progress in the program of evaluation or treatment outlined in Paragraph VI.) 1. above, the employee must submit to a drug and/or alcohol test in which a negative result is obtained. The satisfactory progress report must be received by the Company no later than thirty (30) calendar days from the date that the employee was given notice of the positive test result. If more than thirty (30) days elapse, the Company shall have grounds to discharge the employee. If a positive test for the use of a controlled substance or alcohol is returned after the employee enters a program of evaluation or treatment, then the employee shall be immediately discharged.

3. An employee shall be eligible for reinstatement under this Section on a one-time basis, and the reinstatement is contingent upon the employee returning directly to work for the Company.

4. **Upon reinstatement the Employee may be subject to no less than three (3) additional tests for drugs and/or alcohol without prior notice to occur within six (6) months of the reinstatement and may be subject to no less than three (3) additional tests for drugs and/or alcohol without prior notice to occur within six (6) to twelve (12) months after reinstatement. For the twelve (12) months thereafter, Employee may be subject to no less than three (3) additional tests for drugs and/or alcohol without prior notice.**

VII.) VOLUNTARY SUBMISSION TO EMPLOYEE ASSISTANCE PROGRAM

Any employee who, prior to being selected for testing, voluntarily admits to any form of substance abuse shall be placed on a leave of absence if the employee agrees to enroll in an approved Employee Assistance Program (“EAP”) and upon completion of the EAP submit to the terms of the Follow-up Testing Agreement (Appendix D). A voluntary admission is the same as a positive test result for purposes of Sections V. and VI. herein.

The employee must immediately enroll in a qualified program of dependency evaluation within ten (10) days of notification, and if necessary, receive treatment. The program of evaluation or treatment is to be approved by the Company. Any cost of rehabilitation not covered by insurance is to be borne by the employee.

Upon receipt of satisfactory progress in the program of evaluation or treatment outlined above, the employee must submit to a drug and/or alcohol test in which a negative result is obtained. The satisfactory progress report must be received by the Company no later than thirty (30) calendar days from the date that the employee enrolled in the EAP. If more than thirty (30) calendar days elapse, then the Company shall have grounds to discharge the employee. If a positive test for the use of a controlled substance and/or alcohol is returned after the employee enters a program of evaluation or treatment, then the employee shall be immediately discharged.

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Upon successful completion of the EAP, the individual must agree to submit to the terms of the Follow-up Testing Agreement (attached as Appendix "D"). Failure to submit to the terms of the Follow-up Testing Agreement will disqualify the individual from re-employment with the Company.

NOTICE:

No Alteration of At-Will Employment – Neither the adoption nor implementation of this policy shall be construed as creating a contractual obligation or modifying the at-will employment relationship between the Company and its Employees. The Company also reserves the right to modify or rescind this entire policy in whole or in part at any time with or without notice.

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APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT OF DRUG AND ALCOHOL TESTING PROGRAM AND AGREEMENT TO ABIDE BY PROGRAM

I, _____, hereby acknowledge that I have received a copy of the Company’s Drug and Alcohol Testing Program (“program”).

In conjunction with my receiving a copy of the program, I further acknowledge the following:

1. I have read the program and fully understand the terms contained therein and the consequences for violating any term of the program.
2. I understand that my compliance with all terms of the program is a condition of my employment with the Company, and I agree to abide by all terms of the program.
3. As applicable, if a post-accident drug and/or alcohol test is required under this program and I am seriously injured and unable to provide a specimen at the time of the accident, then this Acknowledgement shall be considered my authorization for the Company to seek information and any records or documents which would indicate whether there were any controlled substances and/or alcohol in my system.
4. I authorize the collection site, laboratory and/or medical review officer retained by the Company to perform any and all functions which those entities and/or individuals may be required to perform pursuant to this program or applicable regulations. Such authorization shall include, but is not limited to, the release of test result information to the Company, verification of the use of prescribed medications, obtaining information from the employee’s physician, hospital, dentist or pharmacist and the reporting of negative test results with a qualifying statement in cases wherein an employee may be taking a legally prescribed drug.
5. I hereby release and hold harmless the Company and its employees and agents from any liability whatsoever arising from the program.
6. **The Company reserves the right to amend or modify this program at any time.**

Employee’s Signature

Date

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APPENDIX B
Current Employee Consent/Refusal Form

I understand that in accordance with Company’s Drug-Free Workplace Policy, all current employees may be tested for controlled substances and/or alcohol.

I consent to testing.

I understand that I can refuse to be drug tested, but if I refuse, it will result in my immediate termination.

Negative and positive test results will be reported to Company. If the test results are positive, the substance will be identified to Company. All positive drug test results will be reviewed by a Medical Review Officer, who is an independent contractor not affiliated with Company.

I understand that a positive drug test result for controlled substances and/or alcohol use in violation of the Company’s policy will require me to immediately enter into a treatment program as outlined in this policy.

I understand the above conditions and hereby agree to comply with them.

I consent freely and voluntarily to the Company's request for a urine, blood, saliva and/or breath specimen now, or at any time during my employment with the Company. I hereby release and hold harmless the Company and its employees and agents from any liability whatsoever arising out of or connected with the testing or my specimen. I have read and understood this Agreement and certify that I am entering into it freely and voluntarily after a reasonable opportunity for deliberation. I also certify that I have not used any illegal drugs or consumed any alcohol in the last twenty-four (24) hours and that I am legally competent to execute this Agreement. I understand that my employment is at-will, and therefore I or the Company may terminate my employment with or without cause and with or without advance notice.

I agree to be tested

I refuse to be tested

Employee’s Name (print)

Employee’s Signature/Date

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APPENDIX C

Post-Offer Consent/Refusal Form

I understand that in accordance with Company’s Drug-Free Workplace Policy, all offers of employment are contingent on the results of testing for controlled substances as a condition for employment.

I consent to such testing for illegal controlled substances.

I understand that I can refuse to be drug tested, but if I refuse, it will result in my not being qualified for employment and my offer of employment will be rescinded.

Negative and positive test results will be reported to Company. If the test results are positive, the controlled substance will be identified to Company. All positive drug test results will be reviewed by a Medical Review Officer, who is an independent contractor not affiliated with Company.

I understand that a positive drug test result for illegal controlled substances will render me unqualified for employment.

I understand the above conditions and hereby agree to comply with them.

I consent freely and voluntarily to the Company's request for a urine, saliva and/or breath specimen now. I hereby release and hold harmless the company and its employees and agents from any liability whatsoever arising out of or connected with the testing or my specimen. I have read and understood this Agreement and certify that I am entering into it freely and voluntarily after a reasonable opportunity for deliberation. I also certify that I have not used any illegal drugs in the last twenty-four (24) hours and that I am legally competent to execute this Agreement. I understand that my employment will remain, at all times, at-will, and therefore I or the Company may terminate my employment with or without cause and with or without advance notice.

I agree to be tested

I refuse to be tested

Name (print)

Signature/Date

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APPENDIX D

FOLLOW-UP TESTING/LAST CHANCE AGREEMENT

This Follow-Up Testing Agreement is entered into by and between Company (hereinafter referred to as the "Company") and _____, (hereinafter referred to as the "Employee").

WHEREAS, the Employee has tested positive for the use of a controlled substance or alcohol in violation of the Company's drug free workplace program and testing policy; and

WHEREAS, the Employee desires to return to work for the Company, and the Company, at its sole discretion, has decided to allow the Employee one last chance to return to work for the Company; and

WHEREAS, both Parties recognize that, if applicable, the following terms and conditions of this Agreement are authorized by law.

IT IS HEREBY AGREED AS FOLLOWS:

1. The Employee must immediately enroll in a qualified program of evaluation and treatment. A qualified program of evaluation and/or treatment can be chosen by the Company or the employee, but it must be approved by the Company. Any cost of rehabilitation not covered by insurance is to be borne solely by the Employee. During Employee's participation in the qualified program of evaluation and, if necessary, treatment, Employee shall not perform any safety sensitive positions and the Company may prohibit Employee from performing any work at its sole discretion.

2. Upon receipt of satisfactory progress in the program of evaluation or treatment outlined in 1 above, the Employee must submit to a drug and/or alcohol test in which a negative result is obtained. Once the negative result is obtained, the Employee may commence work at the Company's sole discretion. However, the satisfactory progress report must be received by the Company no later than thirty (30) calendar days from the date that the Employee was given notice of the positive test result (or, enrolled in a qualified treatment program, if applicable under the Company's drug testing policy). If more than thirty (30) calendar days elapse, then the Company shall have grounds to discharge the Employee. If a positive test for the use of a controlled substance and/or alcohol is returned after the Employee enters a program of evaluation or treatment, then the Employee shall be immediately discharged.

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3. The Employee shall be eligible for reinstatement under this Agreement on a one-time basis, and the reinstatement is contingent upon the Employee returning directly to work for the Company.

4. Upon reinstatement the Employee may be subject to no less than three (3) additional tests for drugs and/or alcohol without prior notice to occur within six (6) months of the reinstatement and may be subject to no less than three (3) additional tests for drugs and/or alcohol without prior notice to occur within six (6) to twelve (12) months after reinstatement. For the twelve (12) months thereafter, Employee may be subject to no less than three (3) additional tests for drugs and/or alcohol without prior notice.

5. If the Employee refuses to be tested under any of the provisions of this Agreement or if the Employee tests positive, then the Employee shall be immediately discharged.

6. Employee understands that he/she will be terminated immediately if he/she: 1) refuses to submit to testing, 2) tests positive for the presence of illegal drugs (including marijuana) or has a blood alcohol concentration of .04 or greater or 3) submits a “cold” sample as determined by the certified specimen collector or an “adulterated” sample as determined solely by a certified testing laboratory.

7. Employee agrees and understands that the Company may conduct searches on its property, including inspection of the Employee’s vehicle, locker, desk, briefcase, package, etc. Employee understands that refusing to submit to a search or inspection when requested by management will be cause for immediate discharge. Employee also understands that any controlled substance found on Company property may be turned over to appropriate law enforcement authorities for investigation and possible criminal enforcement action. Employee acknowledges that he/she has no expectation of privacy to any property that may be located at or on the Company’s property.

8. Employee understands that he/she may be terminated if he/she violates or revokes any paragraph of this Agreement.

9. Employee understands that drug tests will be conducted to screen the presence of the following drugs and their metabolites:

- Cannabis
- Cocaine
- Opiates
- Amphetamines
- Phencyclidine (PCP)
- Barbiturates
- Benzodiazepines
- Methadone
- Methaqualone
- Propoxyphene

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EMPLOYEE, INDIVIDUALLY, ACKNOWLEDGES THE FOLLOWING:

I consent freely and voluntarily to the Company's request for a urine, blood, saliva and/or breath specimen now, or at any time during my employment with the Company. I hereby release and hold harmless the company and its employees and agents from any liability whatsoever arising out of or connected with the testing or my specimen. I have read and understood this Agreement and certify that I am entering into it freely and voluntarily after a reasonable opportunity for deliberation. I also certify that I have not used any illegal drugs or consumed any alcohol in the last twenty-four (24) hours and that I am legally competent to execute this Agreement. I understand that my employment is at-will, and therefore I or the Company may terminate my employment with or without cause and with or without advance notice.

Company

EMPLOYEE

By _____

Dated _____

Dated _____

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