

## CITY OF NEWTON

### **ALCOHOL AND DRUG ABUSE POLICY FOR CDL DRIVERS STATEMENT OF PURPOSE AND POLICY**

The U.S. Department of Transportation (DOT) regulations (Federal Register 49 CFR Part 40 and Part 382) were revised in August 2001. As part of the City of Newton's ("City") continued commitment to provide a safe work environment for all employees and to safeguard the health of our employees, while supplying our citizens with the highest quality of service possible, we are issuing this update of the City's drug and alcohol policy for Commercial Driver's License (CDL) drivers. Any employee who, as of July 1, 2002, now has or who shall obtain his/her CDL license after his/her initial date of employment, for use, or possible use, in the course of his/her employment with the City, shall be included in this Alcohol and Drug Abuse Policy for CDL Drivers. The goal of the City is to provide a safe work environment free from the adverse effects of alcohol and drug use. Substance abuse can seriously endanger the safety of employees and citizens.

City employees are highly visible and active members of the communities where they live and work. Employees are seen as role models for the citizens of Newton. Employees should represent the City in a responsible and credible manner, reflecting pride in the City and their work.

The City recognizes that each employee has a private life, and does not want to intrude into private lives. The City also recognizes that off the job as well as on the job involvement with drugs and alcohol may have a detrimental impact on the work place and on our ability to provide a safe work place free of alcohol and drugs.

The execution and enforcement of this policy will follow set procedures to provide for screening body fluids (urinalysis), conducting breath testing, and/or searching all driver applicants for alcohol and drug use, and those drivers suspected of violating this policy who are involved in a U.S. Department of Transportation ("DOT") reportable accident or who are periodically or randomly selected pursuant to these procedures. These procedures are designed not only to detect violations of this policy, but to ensure fairness to each driver. Every effort will be made to maintain the dignity of drivers or driver applicants involved. Disciplinary action will, however, be taken as necessary and appropriate.

Neither this policy nor any of its terms are intended to create a contract of employment or to contain the terms of any contract of employment. The City shall notify the Union of any changes, amendments, or modifications to any term or provision of this policy, and provide opportunity to impact bargain. This policy is effective August 1, 2002, and will supersede all prior policies and statements relating to alcohol or drugs.

## **SUBSTANCES PROHIBITED / PRESCRIPTION MEDICATIONS**

The City's Drug and Alcohol testing policy prohibits all covered employees from engaging in any of the following activities:

### **A. Alcohol Prohibitions**

The new alcohol rule prohibits any alcohol use that could affect performance of safety-sensitive functions, including but not limited to:

1. Use while performing safety-sensitive functions.
2. Use during the 4 hours before performing safety-sensitive functions.
3. Reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater.
4. Possession, distribution, dispensation, or sale of alcohol on City premises, in the course of City business, or in City supplied vehicles.
5. Storage of alcohol in a locker, desk, or other repository on City premises.
6. Use during 8 hours following an accident or until he /she undergoes a post accident test.
7. Refusal to take a required alcohol related test.
8. Failure to adhere to the requirements of any alcohol treatment or counseling program, which the employee is enrolled in pursuant to this policy, will be subject to disciplinary action up to and including termination.
9. Refusal of each employee in the testing pool to sign and date when they have received a copy of the policy/program or to sign a drug/alcohol counseling agreement.

### **B. Drug Prohibitions**

The regulations prohibit any drug use that could affect performance of safety-sensitive functions, including but not limited to:

1. Use of any drug, except by doctor's prescription, and then only if the doctor has advised the driver that the drug will not adversely affect the driver's ability to safely operate the Commercial Motor Vehicle (CMV).
2. Use, possession, manufacture, distribution, dispensation or sale of illegal drugs or any controlled substance on City premises, in the course of City business, or in City supplied vehicles.
3. Unauthorized use, possession, manufacture, distribution, dispensation, or sale of illegal drugs or any controlled substance in City supplied vehicles.
4. Storage in a locker, desk, or other repository on City premises of any illegal drugs or controlled substance whose use is unauthorized or illegal.
5. Testing positive for drugs.
6. Refusing to take a required drug-related test.
7. Failure to adhere to the requirements of any drug treatment or counseling program, which the employee is enrolled in pursuant to this policy, will be subject to disciplinary action up to and including termination.
8. Refusal of each employee in the testing pool to sign and date when they have received a copy of the policy/program or to sign a drug/alcohol counseling agreement.

All drivers will inform the alcohol and drug testing site of any required therapeutic drug use prior to performing a safety-sensitive function.

## **DRUG & ALCOHOL AWARENESS PROGRAM**

To assist employees and their families to understand and to avoid the perils of drug/alcohol abuse, the City has developed a comprehensive drug awareness program. The City will use this program in an educational effort to prevent and eliminate drug/alcohol abuse that may affect the workplace. The drug/alcohol awareness program will inform employees about:

- The danger of drug/alcohol abuse in the workplace.
- The City's drug/alcohol policy.
- The availability of treatment and counseling for employees who voluntarily seek such assistance.
- Sanctions for violations of the City's drug/alcohol policy.

Any drug and/or alcohol use, which imperils the health and well being of City employees or citizens, or threatens City business, will not be tolerated. Employees have the right to work in a drug free environment. Employees who use illegal drugs, abuse alcohol and/or use other controlled substances on or off duty tend to be less productive, less reliable, and prone to greater absenteeism and risk of injury. This, in turn, can result in increased cost, delays, and risk to the safety of the abuser and all other workers and citizens around him/her. Early recognition and treatment of drug/alcohol abuse is important for successful rehabilitation. Whenever feasible, the City will assist employees to overcome drug abuse by providing an Employee Assistance Program (EAP) and information on treatment opportunities and programs. However, the decision to seek diagnosis and treatment for drug abuse is primarily the individual employee's responsibility.

Employees seeking assistance should see either their supervisor or the drug program administrator, or call the EAP contact person at (617) 243-6522. The EAP will treat all such requests as confidential and will refer the employee to the appropriate treatment and counseling service.

## TESTING

### PRE-EMPLOYMENT

All driver applicants will be required to submit to and pass a urine drug test as a condition of employment. Job applicants who are denied employment because of a positive test may reapply for employment after six months has elapsed.

Offers of employment are made contingent upon passing the City's medical review, including the drug test. Driver applicants who have received firm employment offers are to be cautioned against giving notice at their current place of employment, or incurring any costs associated with accepting employment with the City until after medical clearance has been received. All newly hired drivers shall be on a probationary status for 6 months, contingent upon medical clearance for use of illegal or controlled substances, as well as other conditions explained in the personnel policies, Massachusetts General Laws, and Federal Laws. Under no circumstances may a driver perform a safety-sensitive function until a confirmed negative test result is received from the Medical Review Officer (MRO).

Driver applicant drug testing shall follow the collection, chain-of-custody and reporting procedures as set forth in CFR 49 Part 40.

### POST ACCIDENT

As soon as practicable following an accident involving a CMV (recommend within 2 hours for breath alcohol, and within 32 hours for drug screening), each employee shall be tested for alcohol and controlled substances in the following cases:

1. When the employee was performing safety-sensitive functions with respect to the vehicle.
2. If the accident involved the loss of human life, or
3. When the employee receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
  - Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or
  - One or more motor vehicles incurring disabling damages as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

### REASONABLE SUSPICION

The City shall test any employee for drugs and alcohol when there is reasonable suspicion to believe the employee is using an illegal drug or controlled substance or is under the influence of alcohol. The City's determination that reasonable suspicion exists to require the employee to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or odors of the employee. The observations may include indications or recognizable symptoms of the chronic use of illegal drugs or controlled substances or the physical effects of withdrawal there from.

Two supervisors, who are trained in detection of the possible symptoms of drug and alcohol use, who has reasonable suspicion that an employee is under the influence of illegal drugs, controlled substances or alcohol, will complete the observation check lists attached to this Policy, and make the decision whether to test the employee.

## TESTING (continued)

### RANDOM

Any employee who, as of January 1, 2002 already has or obtains his/her CDL license after his/her initial date of employment, which may be used in the course of his/her employment with the City, shall be included in the City's drug/alcohol random testing pool. All employees, including those who do not drive a qualifying vehicle as part of their usual job function, but hold a CDL for possible use in the course of his/her employment with the City, must be in a random testing pool at all times, just as a full-time driver (Interpretations, §382.305, Question 2).

The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method. The City utilizes a computer-based random number generator to randomly select drivers.

The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the FHWA Administrator.

The City will ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

The City will require each driver who is notified of selection for random alcohol and/or controlled substances testing proceed to the test site immediately.

#### Alcohol Testing:

- The minimum annual percentage for alcohol testing shall be 25 percent of the average number of driver positions.
- A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, about to perform, or immediately available to perform a safety-sensitive function. A supervisor, mechanic, or clerk, etc., who is on call to perform safety-sensitive functions may be tested at any time they are on call, ready to be dispatched while on-duty.

#### Drug Testing:

- The minimum annual percentage rate for random controlled substance testing shall be 50 percent of the average number of driver positions.

### RETURN TO DUTY AND FOLLOW-UP TESTING

Any employee who does not pass a drug or alcohol test, which the employee is directed to take under this Policy, may not return to a safety-sensitive position until the employee subsequently passes a drug and/or alcohol test administered under this Policy, and the MRO has determined that the employee may safely return to such work. After the employee undergoes rehabilitation, and once he/she returns to work, any such employee will be subject to follow-up periodic drug/alcohol testing for no less than 12 months but no more than 60 months after the employee returns to work.

Follow-up testing will be announced, and will be performed as directed by a substance abuse professional in accordance with the provision §382.605(c)(2)(ii). Follow-up testing will only be conducted when the driver is performing safety-sensitive functions, just before or after safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

## **DISCIPLINARY ACTIONS FOR VIOLATING DRUG AND ALCOHOL TESTING POLICY**

Any employee covered by this policy who refuses to participate in the random testing program will be terminated immediately.

### ALCOHOL

- The Designated Employer Representative will be contacted by the Breath Alcohol Technician immediately upon the result of a breath alcohol concentration of 0.02 or greater.
- An employee will be immediately suspended without pay, for up to five days, and a Civil Service hearing will be held for any alleged violation of the DOT alcohol regulation.
- An employee who is found to have violated the DOT alcohol regulation will be suspended, without pay, for a maximum of 30 days.
- When an employee has violated DOT drug and alcohol regulations, they cannot again perform any DOT safety-sensitive duties for any employer until and unless he/she completes the Substance Abuse Professional (SAP) evaluation, referral, and education/treatment process set forth in the subpart and in applicable DOT agency regulations.
- Payment for the SAP evaluation and services will be the responsibility of the employee. This may be covered by health insurance, in which case only a co-payment will be necessary.
- In order to return to the performance of safety-sensitive functions, he/she must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment.
- The SAP will establish follow-up testing. At a minimum, the employee must be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to work requiring the performance of safety-sensitive functions. An employee can be follow-up tested for up to 60 months.
- Any employee who is found after a hearing to have violated the DOT alcohol regulation for a second time will be terminated after a civil service hearing.

### DRUG

- The Medical Review Officer, or one of his staff members, will call the Designated Employer Representative and confidentially report that the employee has tested positive for drugs. The MRO is required to report the test as positive, and the drug(s)/metabolites(s) for which tested positive pursuant to CFR §40.163(c)(5)(6).
  - If an MRO receives a report from the laboratory that a specimen has been adulterated or substituted, the MRO will treat this as a positive test for a drug or drug metabolite, and report it as such to the Designated Employer Representative.
  - If a drug test is reported as diluted, the employee will be required to repeat the test immediately.
  - An employee will be immediately suspended without pay, for up to 5 days, and a Civil Service hearing will be held for any alleged violation of the DOT drug regulation.

## **DISCIPLINARY ACTIONS FOR VIOLATING DRUG AND ALCOHOL TESTING POLICY - CONTINUED**

### DRUG (continued)

- An employee who is found after a hearing to have violated the DOT drug regulation will be suspended, without pay, for a maximum of 30 days.
- When an employee has violated DOT drug and alcohol regulations, they cannot again perform any DOT safety-sensitive duties for any employer until and unless he/she completes the SAP evaluation, referral, and education/treatment process set forth in the subpart and in applicable DOT agency regulations.
- Payment for the SAP evaluation and services will be the responsibility of the employee. This may be covered by health insurance, in which case only a co-payment will be necessary.
- Follow-up testing will be established by the SAP. At a minimum, the employee must be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to work performing safety-sensitive functions. An employee can be follow-up tested for up to 60 months.
- Any employee who is found after a hearing to have violated the DOT drug regulation for a second time will be terminated, after a civil service hearing.

## COLLECTION OF BREATH AND URINE SPECIMENS AND LABORATORY ANALYSIS

For purposes of this Policy, the Occupational Health Services Department, Health At Work, Newton Wellesley Hospital, Newton Massachusetts has been designated as the collection site and will coordinate collection sites for the City.

The City reserves the right to change to the designated collection site under this Policy, and the designated collection site may be any suitable where a specimen can be collected under the conditions set forth in DOT regulations (CFR 49 Part 40). In the case of post accident drug and alcohol testing, the specimen may be collected in the hospital or emergency medical facility where the employee has been taken for medical attention, provided that it meets the collection conditions set forth in the DOT regulations. Also, any site, which meets the requirements of the DOT's collection regulations, may be substituted by the City if it is impracticable for a drug or alcohol test to be performed at the designated collection site.

### Breath Alcohol Testing

- Any result less than 0.02 percent alcohol concentration is considered a negative test.
- If the alcohol concentration is 0.02 percent or greater, a second test must be conducted. If the second test confirms the first test, the employee must be removed from safety-sensitive functions for a period of at least 24 hours, is subject to return to safety-sensitive function requirements, and is subject to a disciplinary hearing.
- At the time of testing for alcohol the employee will be notified of the test results.
- Refusal to complete and sign the testing form, or refusal to submit to a breath alcohol test, will be considered a positive test, and the driver will be immediately removed from safety-sensitive functions.

### Drug Testing

The employee will provide a urine specimen in a location that affords privacy. The "collector" will seal and label the specimen, complete the paperwork, and prepare the specimen for shipment to the drug testing laboratory. The collection procedures will be designed to ensure the security and integrity of the specimen provided by each driver, and those procedures will strictly follow the chain-of-custody guidelines.

- At the time the specimen is collected it is subdivided into two parts labeled "primary" and "split," both of which are sealed and sent to the lab.
- The "primary" specimen is tested, and the results are sent to the MRO before they are sent to the employer.
- If the laboratory reports a positive result to the MRO, the MRO contacts the employee (typically by telephone) and conducts an interview to determine if there is a medical explanation for the drugs found in the employee's urine specimen.
- An employee who has been informed of a positive drug test result from the MRO must decide within 72 hours if they want the split specimen tested.



## COLLECTION OF BREATH AND URINE SPECIMENS AND LABORATORY ANALYSIS (continued)

### Drug Testing (continued)

- If the employee provides appropriate documentation, and the MRO determines that there is a legitimate medical use of an illegal drug or a controlled substance, the drug test result is reported as negative to the City.
- Refusal to complete and sign the testing form, or refusal to provide a urine sample, will be considered a positive test, and the driver will be immediately removed from safety-sensitive functions.
- Report of adulterated or substituted test results will be deemed a positive test.

### Laboratory Standards

All drug testing required under this Policy shall be performed by laboratories certified by the US Department of Health and Human Services (“HHS”) under DOT procedures. Services of such laboratories are contracted by the City for the purpose of compliance with this policy. Employees of the laboratory are not employees of the City, and neither the laboratory nor its employees are under the direction or control of the City. All such laboratories are, and are intended to be, independent contractors.

For purposes of this Policy, the following has been designated as the laboratory for the purpose of testing urine samples for the presence of prohibited drugs: LabCorp.

The City reserves the right to use other HHS certified laboratories for purposes of drug testing under this Policy.

## **THE MEDICAL REVIEW OFFICER**

### Duties and Qualifications

The MRO will be a licensed physician (Doctor of Medicine or Osteopathy).

The MRO must have basic knowledge in the following areas:

- Knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.
- Knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.
- Knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom he/she evaluate drug test results, and must keep current on any changes to these materials.
- Must have qualified training.
- Must complete continuing education.
- Must maintain documentation showing that he/she is currently meeting all requirements of the DOT standard.

The MRO will be responsible for receiving all drug testing results generated by the City's drug testing program.

Until further notice by the City, the MRO under this Policy shall be a licensed physician who is an employee of the Occupational Health Services Department, Health At Work, Newton Wellesley Hospital.

The City reserves the right to substitute MROs.

## **CONFIDENTIALITY OF INFORMATION**

As an employer, the City is prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent, except in the circumstances detailed below.

Except as provided in this section, the MRO shall not disclose to any third party, medical information provided by the employee to the MRO as part of the testing verification process.

The MRO may disclose such information to the City, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualifications of the employee regarding all applicable DOT agency regulations.

The MRO shall also disclose information if:

- a. An applicable DOT regulation permits or requires such disclosure.
- b. In the MRO's reasonable medical judgement, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule/regulation.
- c. In the MRO's reasonable medical judgement and in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his/her job duties could pose a significant safety risk to himself/herself or others.

Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided herein.