

**POLICY NUMBER:**

APM - 3 - 12

DATE:

1-14-13

ISSUED BY:

Johnny Martinez  
City Manager

  
SIGNATURE

# CITY OF MIAMI



ADMINISTRATIVE POLICY

REVISIONS

REVISED  
SECTION  
Created

DATE OF  
REVISION  
October 18, 2012

**SUBJECT: DRUG-FREE WORKPLACE PROGRAM**

**Purpose**

As a part of its commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug-free working environment, the City of Miami ("the City") has established this program relating to the abuse of drugs (including alcohol, as defined by Florida's Workers' Compensation Law, Fla. Stat. §440.101-102, and rules promulgated pursuant thereto, hereinafter "FWCL") by its employees. This program is intended to conform to the requirements of the FWCL and Drug Free Workplace Act § 112.0455, Fla. Stat. Drug abuse, while at work or otherwise, seriously endangers the safety of employees, as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and a decline in the quality of products and services provided. This program is established in part to detect and remove abusers of drugs from the workplace, to prevent the use and/or presence of these substances in the workplace, and to assist employees in overcoming any dependence on drugs in accordance with the following guidelines.

The FWCL provides in part that an employee who is injured in the course and scope of his employment and tests positive on a drug test may be terminated and shall forfeit his eligibility for medical and indemnity benefits under the FWCL. It is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and if an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for medical and indemnity benefits. Refusal to take a drug (urine) or alcohol (blood) test will result in the employee forfeiting his/her eligibility for medical and indemnity benefits under the FWCL and the employee being subject to dismissal. The City group medical plan excludes benefits for job related injuries. Therefore, if Worker's Compensation benefits are forfeited pursuant to the drug-free workplace program, the employee injured on the job will be without any City-provided medical benefits.

To the extent that the FWCL or the implementing rules are amended or other statutes and rules requiring drug testing are determined to be applicable to the City

without the necessity of further general notice.

The City's Drug-Free Workplace Program has been prepared so as not to conflict with public policy and, further, not to be discriminatory or abusive. A drug-free workplace should be the goal of every employee and employer in America. Drug testing is only one of the several steps that must be taken to achieve this objective. When incorporated into a comprehensive anti-drug effort, testing can go a long way in combating drug abuse in the workplace.

A copy of the City's drug testing program will also be posted in appropriate and conspicuous locations on the City's premises and copies of the program will be made available for inspection during regular business hours at the City.



**Scope**

All employees are covered by this program and, as a condition of employment, are required to abide by the terms of this program. Any employee in doubt as to the requirements or procedures applicable to their situations may contact the City Human Resources Department, Labor Relations Division for information. Should a provision of this policy conflict with a provision(s) of any collective bargaining agreement ("CBA"), the CBA shall govern.



---

**Definitions**

The definitions of words and terms as set forth in the FWCL shall apply to the words and phrases used in this program unless the context clearly indicates otherwise.

- A. The FWCL defines “drug” as: alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in this paragraph.
  - B. The FWCL defines “safety-sensitive position” as: a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with controlled substances; a position subject to s. 110.1127; or a position in which a momentary lapse in attention could result in injury or death to another person. A list of those job classifications determined to be safety sensitive will be compiled and kept on file in the Human Resources Department. Such list will be periodically updated.
  - C. The FWCL defines “special-risk position” as: a position that is required to be filled by a person who is certified under chapter 633 or chapter 943. A list of those job classifications determined to be “special risk” will be compiled and kept on file in the Human Resources Department. Such list will be periodically updated.
-

---

**Prohibitions**

- A. The use, sale, purchase, possession, manufacture, distribution, or dispensation of drugs or their metabolites on the City property, while at work, while on duty, during duty hours, while conducting the City's business, or while operating the City's vehicles or machinery is a violation of the City's Program and will result in discipline, up to and including immediate dismissal. The prohibition of consumption of alcohol upon the City's property or on duty does not, however, apply to those assignments, premises, or events at which consumption of alcohol is authorized by management. Such authorization does not encourage, sanction, or authorize any individual to consume alcohol in excess to a point of being intoxicated. Therefore, any employee at an event, who in the sole opinion of the management becomes intoxicated may be subject to discipline, must refrain from further consumption of alcohol and, upon request by Management must leave the function. Failure to comply with the request constitutes a violation of the program and will subject the employee to disciplinary action.
- B. Off-duty use of drugs may adversely affect an employee's job performance or adversely affect or threaten to adversely affect other interests of the City, including but not limited to the employee's relationship to his/her job, fellow workers' reputations, or goodwill in the community. Disciplinary action up to and including dismissal may be imposed on this basis.
- C. An employee who management reasonably suspects is under the influence of drugs will be removed immediately from the workplace and will be tested for drugs.
- D. In response to a positive drug test, the City will take further action (i.e., further testing, referral to counseling, and/or disciplinary action) based on medical information, work history, and other relevant factors. The determination of appropriate action in each case rests solely with the City.
- E. An employee who fails a confirmed drug test will be allowed a one-time opportunity to participate in an Alcohol/Drug Rehabilitation Program or the City's Employee Assistance Program (EAP) or other approved program as determined by the City, in lieu of being immediately dismissed based upon such failure. However, allowing the employee to participate in such program in lieu of being dismissed is conditioned upon the employee's meeting the requirements set forth in this program. Furthermore, such an opportunity will not be available to an employee who has previously participated in an Alcohol/Drug Rehabilitation Program, the City's EAP, or other approved, similar program, as an alternative to dismissal. Employees allowed the rehabilitation opportunity described herein may still receive disciplinary action short of dismissal in addition to required participation in the rehabilitation program. Participation in a treatment program – be it entirely voluntary or pursuant to this section, will not excuse additional violations of this Program, work rule violations, improper conduct, or poor performance and an employee may be disciplined or dismissed for such offenses or failure

to perform. As to certain Departments or employee groups, the City may approve further limits on, or elimination of, the rehabilitation opportunity described above. Specifically, the City may discharge a special risk employee based on a first positive confirmed drug test result.

Legal medication (over the counter) or prescription drugs may also affect the safety of the employee, fellow employees or members of the public. Therefore, any employee who is taking any over-the-counter medications or prescription drug which might impair safety, performance, or motor functions shall advise his/her supervisor of the possible impairment before reporting to work under the influence of such medication or drug. A failure to do so may result in disciplinary action. If the City determines that the impairment does not pose a safety risk, the employee will be permitted to work. Otherwise, the City may temporarily reassign the employee or place the employee in an appropriate leave status during the period of impairment. Improper use of prescription drugs is prohibited and may result in disciplinary action. Improper use of prescription drugs includes, but is not limited to, use of multiple prescriptions of identical or interchangeable drugs, and/or consumption of excessive quantities of an individual or therapeutically interchangeable drugs, and/or inappropriately prolonged duration of consumption of drugs, and/or consumption of prohibited drugs for other than valid medical purposes. For the purpose of this Program, consumption of any drug by the employee of more than the manufacturer's maximum recommended daily dosage, or for a longer period of time than recommended, or of any prohibited drug prescribed for or intended for another individual, or for other than a valid medical purpose shall be construed to constitute improper use. Excessive or inappropriate prescribing by the prescriber or prescribers shall NOT constitute a defense for the employee. Prescription medication shall be kept in its original container if such medication is possessed during duty hours or on the City property.

- F. Efforts to tamper with or refusal to submit to a drug test will subject the employee to dismissal.
- G. Employees arrested for a drug-related incident, as indicated on the arrest report, shall notify, as soon as feasible, but in any event no later than the next business day after the arrest, the City management representative having direct administrative responsibility for the arrested employee of the arrest. Failure to comply with this subsection will result in disciplinary action up to and including dismissal.
- H. Violations of drug use prohibitions can subject an employee to disciplinary action up to and including dismissal. Dismissal for a first offense will be considered an appropriate penalty.

---

**Testing**

- A. Testing of Job Applicants for Safety Sensitive or Special Risk Positions
1. Prior to employment, job applicants for safety-sensitive or special risk positions, whether temporary or permanent, will be tested for the presence of drugs.
  2. Any job applicant for a safety sensitive or special risk position who refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment confirmatory drug test, will not be hired and in most cases will be ineligible for hire for a period of at least two (2) years.
  3. Employees who are not in a safety-sensitive or special-risk position and are selected for a safety-sensitive or special risk position may not assume the duties of that position, or have the position transfer be made effective, until they have successfully completed a drug test. Failure to successfully complete the drug test when first scheduled will be cause to withdraw the conditional offer of the position and may subject the employee to discipline, up to and including termination. Employees receiving a conditional offer of a position designated as safety-sensitive or special risk shall report for drug testing within 48 hours of the time they are instructed by Human Resources to do so.
- B. Reasonable Suspicion Testing
1. "Reasonable suspicion testing" means drug testing based on a belief that an employee is using, or has used drugs in violation of the City's Program, drawn from specific, objective and articulated facts and reasonable inferences drawn from those facts in light of experience.

The Department Head or designee shall require an employee to undergo drug testing if there is reasonable suspicion that the employee is in violation of the Program. Circumstances which constitute a basis for determining "reasonable suspicion" may include but are not limited to:

- a. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug.
  - b. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
  - c. A report of drug use, provided by a reliable and credible source.
  - d. Evidence that an individual has tampered with a drug test during his employment with the current employer.
  - e. Information that an employee has caused or contributed to an accident while at work.
  - f. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.
2. Employees whose positions with the City require them to have a commercial drivers' license, will be required to submit to drug testing on

a random basis in accordance with the City of Miami Alcohol and Controlled Substance Testing Policy for Commercial Motor Vehicle Drivers.

C. Follow-up Testing

If the employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the City must require the employee to submit to a drug test as a follow up to such program, unless the employee voluntarily entered the program. In those cases, the employer has the option to not require follow up testing. If follow up testing is required, it must be conducted at least once a year for a 2-year period after completion of the program. Advance notice of a follow up testing date must not be given to the employee to be tested.

D. Routine Fitness-for-Duty

An employee shall submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is routinely scheduled for all members of an employment classification or group.

E. Additional Testing

Additional testing may also be conducted:

1. As required by applicable state or federal laws, rules, or regulations; and/or
2. To the extent that such testing is not prohibited by applicable state or federal laws.

F. Refusal to Test

Employees who refuse to submit to a blood or urine test administered in accordance with this program forfeit their eligibility for all workers' compensation medical and indemnity benefits and will be subject to dismissal.

**Testing  
Procedure**

- A. Tested Substances  
The City may test for any or all of the following drugs:  
Alcohol  
Amphetamines (Binhetamine, Desoxyn, Dexedrine)  
Cannabinoids (i.e., marijuana, hashish)  
Cocaine (coke, crack)  
Phencyclidine (PCP)  
Methaqualone (Quaalude, Parest, Sopor)  
Opiates (opium, heroin, morphine, codeine)  
Barbiturates (Phenobarbital, Tuinal, Amytal)  
Benzodiazophines (Ativan, Azene, Clonopin, Dalmane, Diazepam, Halcion, Librium, Poxipam, Restoril, Serax, Tranxene, Valium, Vertron, Xanax)  
Methadone (Dolophine, Methadose)  
Propoxyphene (Darvocet, Darvon N, Dolene)
- B. Consent Required  
Job applicants for safety-sensitive and special risk positions and employees will be asked to sign the Consent to Test Form. Refusal to execute the consent form constitutes a refusal to be tested, and will subject the employee/applicant to dismissal/failure to hire.
- C. Designated Laboratory  
Because of the potential adverse consequences of positive test results on employees, the City will employ a very accurate testing program. Specimen samples will be analyzed by a highly qualified, independent laboratory which has been selected by the City and certified by the appropriate regulatory agency. The name and address of the certified laboratory currently used by the City is on file with the City Human Resources Department.
- D. Notification of Prescription Drug Use  
Applicants and employees will be given an opportunity, prior to and after testing, on a confidential basis, to provide any information to the Medical Review Officer (MRO) they consider relevant to the test including identification of currently or recently used prescription and non-prescription medications or other relevant medical information on a Drug Use Information Form. This Program also provides notice of the most common medication by brand name or common name, as well as the chemical name which may alter or affect a drug test. Employees and job applicants also have the right to confidentially consult with the MRO for technical information regarding prescription or nonprescription medication.
- E. Testing of Injured Employees  
An employee injured at work and required to be tested, under reasonable suspicion, will be taken to a medical facility for immediate treatment of injury. If the injured employee is not at a designated collection site, the employee will be transported to one as soon as it is medically feasible and

specimens will be obtained. If it is not medically feasible to move the injured employee, specimens will be obtained at the treating facility under the procedures set forth in this program and transported to an approved testing laboratory. No specimen will be taken prior to the administration of emergency medical care. An injured employee must authorize release to the City the result of any tests conducted for the purpose of showing the presence of drugs.

F. Cost of Testing

The City will pay the cost of initial and confirmation drug tests, which it requires of employees and job applicants. An employee or job applicant will pay the cost of any additional drug test not required by the City.

G. Collection Site, Work Site

1. The City will utilize a collection site designated by an approved laboratory which has all necessary personnel, materials, equipment, facilities, and supervision to provide for the collections, security, chain of custody procedures, temporary storage and shipping or transportation of urine and blood specimens to an approved drug testing laboratory. The City may also utilize a medical facility as a collection site which meets the applicable requirements.
2. Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen and transportation of the specimen to the laboratory as applicable will meet FWCL guidelines.

H. Testing Laboratory

1. The laboratory used to analyze initial or confirmation blood or urine specimens will be licensed or certified by the appropriate regulatory agencies to perform such tests.
2. The MRO will provide assistance to the employee or job applicant for the purpose of interpreting any positive confirmed test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

I. Time to Report for Testing

Upon notification by management representatives that a drug test is required, the employee will report to the test site as designated by management, but in no event, later than 4 (four) hours after notification; sign the appropriate consent forms, and submit to the test.

---

---

**Test Results**

- A. Every specimen that produces a positive, confirmed test result shall be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 210 days after the result of the test was mailed or otherwise delivered to the medical review officer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory that performed the test for the employer is responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.
  - B. Within five (5) working days after receipt of a positive confirmed test result from the Medical Review Officer, the City will inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. The City will provide to the employee or job applicant, upon request, a copy of the test results.
  - C. Within five (5) working days after receiving notice of a positive confirmed test result, an employee or job applicant may submit information to the City explaining or contesting the test result, and explaining why the result does not constitute a violation of the City's Program.
  - D. If the employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the City, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, will be provided by the City to the employee or job applicant; and all such documentation shall be kept confidential by the City pursuant to the requirements of the FWCL and shall be retained by the City for at least one (1) year.
  - E. Employees may challenge employment decisions made pursuant to this program as may be authorized by City Administrative Policies, or applicable court.
-

---

**Employee  
Assistance  
Program (EAP)**

- A. The City regards its employees as its most important asset. Accordingly, the City maintains an EAP which provides help to employees who suffer from alcohol or drug abuse and other personal or emotional problems. Employees with such problems should seek confidential assistance from the EAP or other community resources before drug or alcohol problems lead to disciplinary action. The phone number for the EAP is listed on the medical ID card or can be obtained from Risk Management Department, Employee Benefits.
- B. However, use of the EAP or other community resources will not shield the employee from appropriate disciplinary action for violations of the City's Drug-Free Workplace Program if such violations come to the City's attention through other means, including, but not limited to, reports from employees or outsiders, direct observation, or drug testing.
- C. Employees referred to the EAP as a result of a first violation of the City's Program may, at the City's discretion, be allowed to continue their employment with the City provided they contact the EAP and strictly adhere to all the terms of treatment and counseling.
- D. Participation in any evaluation, treatment, or counseling program will be at the employee's expense unless participation in the particular program is required by the City, or unless the employee is entitled to such benefits under the terms of the City's group health plan or by other available benefits. The City will not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the City, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program. Unless otherwise provided by a collective bargaining agreement, the City may select the employee assistance program or drug rehabilitation program if the City pays the cost of the employee's participation in the program.
-

---

**Confidentiality**

- A. Except as otherwise provided by the FWCL, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential and exempt from the provisions of Fla. Stat. § 119.07(1) and § 24(a), Art. I of the State Constitution, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the FWCL or in determining compensability under Chapter 440, Fla. Stat.
- B. The City, laboratories, medical review officers, employee assistance programs, drug rehabilitation programs, and their agents may not release any information concerning drug test results obtained pursuant to the FWCL without a written consent form signed voluntarily by the person tested, unless such release is compelled by an administrative law judge, a hearing officer, or a court of competent jurisdiction pursuant to an appeal taken under this section or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:
1. The name of the person who is authorized to obtain the information.
  2. The purpose of the disclosure.
  3. The precise information to be disclosed.
  4. The duration of the consent.
  5. The signature of the person authorizing release of the information.
- Information on drug test results shall not be used in any criminal proceeding against the employee or job applicant. Information released contrary to the FWCL is inadmissible as evidence in any such criminal proceeding.

The FWCL does not prohibit the City, an agent of the City, or laboratory conducting a drug test from having access to employee drug test information or using such information when consulting with legal counsel in connection with actions brought under or related to the FWCL or when the information is relevant to its defense in a civil or administrative matter.

---

---

**Records  
Training****and**

The City will maintain a current resource file of providers of employee assistance including alcohol and drug abuse programs, mental health providers, and various other persons, entities or organizations designed to assist employees with personal or behavioral problems. The City will inform employees and new hires about various employee assistance programs that the employer may have available. The information shall be made available at a reasonable time convenient to the City in a manner that permits discreet review by the employee. The City has included in this Program a representative sampling of the names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs to employees and applicants.

---

**EMPLOYEE ACKNOWLEDGMENT OF RECEIPT AND UNDERSTANDING OF DRUG FREE WORKPLACE PROGRAM OF THE CITY OF MIAMI**

I hereby acknowledge that I have received from the City of Miami a copy of its Drug Free Workplace Program. I have read and had an opportunity to have all aspects of this material fully explained. I also understand that I must abide by the policy as a condition of employment, and any violation may result in disciplinary action up to and including discharge.

I understand that during my employment, I may be required to submit to testing for the presence of drugs. I understand that submission to such testing is a condition of employment with the City of Miami and disciplinary action, up to and including discharge, may result if:

1. I refuse to consent to such testing;
2. I refuse to execute all forms of consent and release of liability as are usually reasonable and attendant to such examinations;
3. I refuse to authorize release of the test results to the City of Miami;
4. The tests establish a violation of the City of Miami's Drug Free Workplace Program; or
5. I otherwise violate the Program.

I understand that if I'm injured in the course and scope of my employment and test positive, I forfeit my eligibility for medical and indemnity benefits under the Workers' Compensation Act upon exhaustion of the remedies provided in Florida Statute 440.102 (5).

I understand that the City of Miami can establish reasonable work rules relating to any possession, use, sale or solicitation of drugs, and can terminate my employment or deny employment for such conduct.

I ALSO UNDERSTAND THAT THE DRUG FREE WORKPLACE PROGRAM AND RELATED DOCUMENTS ARE NOT INTENDED TO CONSTITUTE A CONTRACT BETWEEN THE CITY OF MIAMI AND ME FOR EMPLOYMENT FOR ANY SPECIFIED PERIOD OF TIME, AND JUST AS I AM FREE TO RESIGN AT ANY TIME, FOR ANY REASON, THE CITY IS FREE TO TERMINATE MY EMPLOYMENT AT ANY TIME, FOR ANY REASON.

My signature below acknowledges that I have read and understood the foregoing statements and that this consent was freely and knowingly given.

---

Employee's Signature

Date

---

Witness' Signature

Date