Policy 2508

From Human Resources

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PERSONNEL POLICY MANUAL
MoDOT Personnel Policy Title: Drug Testing Program **Policy Number**: 2508 **Chapter Title**: Employee Conduct **Effective Date**: January 1, 2009 **Supersedes Policy Number** 2508 **Dated** July 1, 2008
Approved By: Micki Knudsen, Human Resources Director (Signature on file)

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POLICY STATEMENT

The department will conduct drug tests on applicants and employees as described in this policy. This testing will be done to provide an efficient, safe work environment for department employees and protect the public by ensuring employees are free from the effects of illegal drug use or drug abuse on the job and to comply with U.S. Department of Transportation (DOT) regulations. Testing procedures will comply with drug testing requirements of DOT.

PROVISIONS/REQUIREMENTS

SECTION I - GENERAL

1. Employees are prohibited from taking any illegal drugs or controlled substances (unless prescribed for them by a person licensed to practice medicine), which might impair performance during working hours. Under Personnel Policy 2507, "Federal Drug-Free Workplace Act," employees are required to inform their immediate supervisor when they are taking lawfully prescribed drugs that may impair their work performance. Supervisors must avoid assigning safety-sensitive functions to employees if their prescriptions cause safety concerns (drowsiness, blurred vision, etc.).

2. The department will conduct drug tests on all external applicants who accept conditional job offers and employees in accordance with this personnel policy. Employees who test positive on drug tests will be dismissed from employment with the department.

3. Employees who unlawfully manufacture, distribute, dispense, possess, or use controlled substances on the job will be disciplined according to procedures of Personnel Policy 2507, "Federal Drug-Free Workplace Act."

SECTION II - TESTING PROCEDURES

4. DOT regulations require the department to conduct drug tests as described in this personnel policy for:

a. External applicants who are offered positions which require a commercial driver's license (CDL).

b. Employees in non-CDL positions who are offered CDL positions.

c. Employees in CDL positions.

Although not specifically required by DOT regulations, the department will also conduct drug tests as described in this personnel policy for:

a. External applicants who are offered non-CDL positions.

b. Employees in non-CDL positions.

Applicants, employees, and collection facilities must be notified whether a drug test is being conducted due to DOT requirements (for CDL positions) or department requirements (for non-CDL positions). This notification may be provided by the local human resources staff for pre-employment/post-offer tests, the district/division risk management staff or by the supervisor for other categories of tests.

SECTION III - TESTING CATEGORIES

Pre-Employment/Post-Offer Testing

5. External applicants will be subject to drug testing after accepting a conditional offer of employment to either a wage or a salaried position. External applicants who test positive will be informed in writing that the department's offer is withdrawn. These applicants (as well as applicants who refuse to be tested, adulterate or substitute a urine sample, or fail to report for a test) will be informed they will not be considered now, or in the future, for employment. They will be given information for referral to a local Substance Abuse Professional (SAP).

Employee Testing

6. Wage and salaried employees will be subject to drug testing if they meet one or more of the conditions listed below. Further explanations of these conditions for testing are provided in paragraphs 7-10.

a. Random testing for employees in CDL and other safety-sensitive positions. (See paragraph 7.)

b. After being given a conditional offer to fill a CDL or other safety-sensitive position. (See paragraph 8.)

c. When evidence provides reasonable suspicion an employee is drug impaired while on duty. (See paragraph 9.)

d. Post-accident testing - when involved in a serious accident. (See paragraph 10.)

Random Testing

7. DOT regulations require the department to conduct random drug tests on employees in positions which require a CDL. Although not specifically required by DOT regulations, the department will also conduct random drug tests on employees in positions which are safety-sensitive but do not require a CDL. The department will ensure the number of tests conducted annually will meet or exceed the federal testing requirements.

Safety-Sensitive Job Fill Testing

8. Wage and salaried employees in non-safety-sensitive positions selected to fill CDL or other safety-sensitive positions (promotion, demotion, or transfer) will receive a conditional offer until they test negative on a drug test. Employees changing from wage to salaried status will be tested

only if they are moving from non-safety-sensitive positions to safety-sensitive positions. Employees who test positive for drugs will be dismissed from employment with the department.

Reasonable Suspicion Testing

9. Wage and salaried employees in any position will be required to complete a drug test when evidence shows reasonable suspicion an employee has:

a. Used illegal drugs on the job.

b. Performed job duties while affected by drugs.

c. Used illegal drugs off the job (for employees in CDL and other safety-sensitive positions only).

The decision to test must be based on a reasonable belief by a supervisor, who has been trained in the detection of illegal drug use, that the employee has worked while affected by drugs. Information on what may provide reasonable suspicion is outlined in Procedures Manual for Personnel Policy 2508. If a drug test is required, it must be completed within 32 hours after the suspicious behavior is observed and discussed with the employee. Employees tested due to a reasonable suspicion will be suspended without pay between the time they provide a urine sample and the test results are known. Employees who have negative test results will be allowed to return to work with back pay and benefits. Employees whose results are positive on this test will be dismissed from employment with the department.

Post-Accident Testing

10. There are two categories of testing under post-accident testing, as noted below. Employees tested under post-accident testing criteria will not be suspended without pay while waiting for test results. These employees will be allowed to return to their normal assignments pending their tests results, per DOT regulations.

a. DOT Required Testing: Wage and salaried employees in CDL positions will be required to complete a drug test when directly involved in a serious accident - an accident in which they are driving a commercial motor vehicle (CMV) on a public road and the accident resulted in either:

(1) A human fatality.

(2) A citation being issued to the driver under state or local laws for a moving traffic violation and one of the following two situations existed:

(a) Serious bodily injury occurred to one or more of the drivers or passengers, which required medical treatment away from the scene of the accident.

(b) Disabling damage occurred to one or more of the vehicles, which required any of the vehicles to be towed away from the scene of the accident.

Due to the restrictions for testing of this category, especially that the accident be on a public road, supervisors are expected to contact law enforcement officials to help investigate the accident. Whether a law enforcement official arrives or not, supervisors are responsible for determining if a drug test should be required.

If a drug test is required, it must be completed within 32 hours following the accident. A drug test cannot be required after 32 hours.

b. Department Personnel Policy Required Testing: Although not specifically required by DOT regulations, the department will also conduct post-accident drug testing on any employee under the circumstances described below. The criteria in both (1) and (2) below must be met to require a drug test by department personnel policy.

(1) When the employee is on department business and directly involved in an accident on public or private property in which the circumstances show the employee either caused the accident, or failed to take reasonable measures to avoid the accident.

(2) The accident caused either:

(a) A fatality or serious bodily injury requiring medical treatment away from the scene.

(b) Property damage (public or private) in excess of $5,000.

If a drug test is required under department personnel policy, it must be completed within 32 hours following the accident. A drug test cannot be required after 32 hours.

SECTION IV – VOLUNTARY REHABILITATION OR EDUCATION

11. The department encourages employees who feel they have a drug problem to voluntarily participate in a drug rehabilitation or drug education program, but these employees are subject to the same tests as any other employee. When employees have been charged with a violation of a criminal drug statute or told to complete a drug test, they may not enter a drug rehabilitation program to avoid disciplinary action.

Employees are responsible for the cost of their rehabilitation or drug education program. Employees may contact the Employee Assistance Program or their insurance provider to learn what coverage they have for a drug rehabilitation or drug education program.

Salaried employees who attend a drug rehabilitation or drug education program may utilize accumulated sick leave, annual leave, or compensatory time, if needed, for time spent in the program during which they are not able to work.ShareLeave will not be available for time spent in a drug rehabilitation or drug education program. Employees who use all their paid leave time may be placed on sick leave without pay status to complete the program; or they may be allowed to claim unpaid Family and Medical Leave (FMLA), if they have not used their limit of FMLA

during the previous 12 months and the leave time qualifies under the Family and Medical Leave Act.

SECTION V – DISCIPLINE

12. Testing positive on a drug test is considered misconduct connected to work and will result in the employee being dismissed from employment.

13. Employees who test positive, refuse to complete a required drug test, adulterate a sample, substitute a sample, or fail to report for a drug test when scheduled, will be dismissed from employment and will not be eligible for rehire with the department. If a test should be cancelled for any reason, then the employee will have a second test and, upon the recommendation of the Medical Review officer, it may be a direct observation collection. The results of this second test will determine if the employee's test is positive or negative.

SECTION VI - TEST RESULT CHALLENGES

14. Applicants and employees who wish to challenge test results when their original drug tests are positive may do so within 72 hours of when the Medical Review Officer (MRO) notifies them of their positive test result. Applicants and employees will be responsible for paying for transporting their sample to the second laboratory, laboratory testing, review by an MRO, and other related costs. The results of these second tests will determine what action will be taken.

If the employee chooses to challenge the results of his/her test results, he/she will remain in a suspension without pay status pending the results of the challenge. If the results of the challenge come back positive, the employee will be terminated from employment. If the results come back negative, the suspension without pay will be cancelled and the employee will be granted back pay credit.

15. Employees who feel they have unfairly been required to complete a drug test under reasonable suspicion may file a grievance through Personnel Policy 2100, "Grievance Procedure." Employees may not file grievances related to other required drug tests. Employees dismissed for a positive drug test may have rights to a termination hearing as outlined in Personnel Policy 2103, "Formal Termination Hearings."

SECTION VII - ADMINISTRATION

16. Administration of the department's drug testing program will be handled by the Risk Management Division who will be responsible for maintaining all records relating to the drug testing program. All information specifically related to drug testing of employees and external applicants is confidential and will be treated as such by those who have a need for the information in the performance of their duties.

17. Except as specifically required by DOT regulations, the director of MoDOT shall have discretion to vary the terms of this personnel policy if individual circumstances warrant.

CROSS REFERENCES

Personnel Policy 2100, “Grievance Procedure”

Personnel Policy 2103, “Formal Termination Hearings”

Personnel Policy 2507, “Federal Drug-Free Workplace Act”

PROCEDURES

2508, "Drug Testing Program"

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