Policy 2511

From Human Resources

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PERSONNEL POLICY MANUAL
MoDOT Personnel Policy Title: Alcohol Testing Program **Policy Number**: 2511 **Chapter Title**: Employee Conduct **Effective Date**: January 17, 2012 **Supersedes Policy Number**: 2511 **Dated**: January 1, 2009
Approved By: Micki Knudsen, Human Resources Director (Signature on file)

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POLICY STATEMENT

The department will conduct alcohol breath tests on 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 alcohol while on the job. These procedures will comply with alcohol testing requirements of the U.S. Department of Transportation (DOT).

PROVISIONS/REQUIREMENTS

SECTION I - GENERAL

1. All employees are prohibited from possessing or consuming alcohol on the job. Employees are also prohibited from performing work or reporting for work while affected by alcohol. Employees in safety-sensitive positions are prohibited from performing safety-sensitive functions within four hours after consuming alcohol (eight hours for pilots). Employees in safety-sensitive positions are also prohibited from consuming alcohol within eight hours following an on-the-job accident or until they complete an alcohol test, whichever occurs first.

2. Wage employees and salaried employees who have not completed their initial probationary period (first six months in a salaried position) will be dismissed from employment with the department if they test positive on an alcohol test with a blood-alcohol content (BAC) level of 0.02 or higher.

3. Salaried employees who have completed their initial probationary period and test positive on an alcohol test with a BAC level of 0.04 or higher will be dismissed from employment with the department.

4. Salaried employees who have completed their initial probationary period and test positive on an alcohol test with a BAC level of 0.02-0.039 will receive a 40-hour suspension without pay, a recommendation to contact the Employee Assistance Program (EAP), and will be subject to and must pass a return to duty test. These employees will also be on disciplinary probation for one year. If a second positive test occurs (at a BAC level of 0.02 or above), the employee will be dismissed from employment with the department.

5. The department will conduct alcohol tests on employees in positions which require a commercial driver's license (CDL) if performing safety-sensitive functions during the work shift in which the test is to be conducted. The department will also conduct alcohol tests on employees who work in positions which are safety-sensitive but do not require a CDL. Alcohol testing conducted on these employees is done under department personnel policy rather than DOT requirements.

Employees and collection facilities must be notified whether an alcohol test is being conducted due to DOT requirements (for CDL positions) or department requirements (for non-CDL

positions that are safety-sensitive). This notification may be provided by the local human resources staff, district/division Risk and Benefits Management (RB) staff, or the supervisor.

6. The department will not conduct tests for:

A. External applicants.

B. Employees in non safety-sensitive positions.

C. Employees in safety-sensitive positions who are performing non safety-sensitive functions during their work shift.

Examples of when employees are performing entirely non safety-sensitive functions include, but are not limited to, the following:

1) Attendance at a training program such as computer training. If the training involves the use of a commercial motor vehicle (CMV), such as operation of equipment for snow removal, the training is considered to be a safety-sensitive function.

2) Attendance at an all-day staff meeting, team meeting, or conference. If employees drive a CMV to and from training programs, meetings, etc., they have performed safety-sensitive functions during their work shift and are subject to testing.

SECTION II - TESTING CATEGORIES

Employee Testing

7. Wage and salaried employees who work in safety-sensitive positions will be subject to alcohol testing as listed below. Further explanations of these conditions for alcohol testing are provided in paragraphs 8-11.

A. Random testing (see paragraph 8).

B. When evidence provides reasonable suspicion that employees reported to work or performed work while affected by alcohol, or consumed alcohol on the job (see paragraph 9).

C. Post-accident testing, when involved in a serious accident (see paragraph 10).

D. Return to duty testing (see paragraph 11).

Random Testing

8. Employees who work in safety-sensitive positions will be subject to random testing. The department will ensure the number of alcohol tests conducted annually will meet or exceed the federal testing requirements. Alcohol tests will be conducted in this random category only if employees perform safety-sensitive duties during their work shift.

Reasonable Suspicion Testing

9. Wage and salaried employees in safety-sensitive positions will be required to complete an alcohol test when evidence shows reasonable suspicion that employees have:

A. Reported for work while affected by alcohol;

B. Performed safety-sensitive functions while affected by alcohol;

C. Consumed alcohol while performing safety-sensitive functions;

D. Reported for work or performed safety-sensitive functions while in the possession of alcohol.

Alcohol tests will be conducted in this category only if employees are performing safety-sensitive functions during their work shift.

The decision to test must be based on a reasonable belief by a supervisor, who has been trained in the detection of alcohol abuse, that employees have violated A, B, C, or D above. Information on what may provide reasonable suspicion is outlined in Procedure 2511, "Alcohol Testing Program."

If an alcohol test is required, it should be completed within two hours but must be completed within eight hours after the suspicious behavior was observed. Employees who pass this test will be allowed to return to work with no loss in pay.

Post-Accident Testing

10. There are two categories of testing under post-accident testing 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 test results.

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

1) Human fatality; or

2) A citation being issued to the employee 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; or

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 when an accident occurs 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 an alcohol test should be required.

If an alcohol test is required, it should be completed within two hours and must be completed within eight hours after the accident. Testing cannot be required after eight hours. Employees involved in serious accidents are to be told they cannot consume alcohol for eight hours following the accident or until an alcohol test is completed, whichever occurs first.

B. Department Personnel Policy Required Testing: Although not specifically required by DOT regulations, the department will also conduct post-accident alcohol testing on employees in CDL positions and safety-sensitive positions which do not require a CDL under the circumstances listed below. The criteria in (1), (2), and (3) below must all be met to require an alcohol test by department personnel policy.

1) When an employee is 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 employee was operating a CMV or any type of heavy equipment other than a motor vehicle (car, pickup, etc.).

3) The accident caused either:

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

b. Combined property damage (public or private) in excess of $5,000.00.

Return to Duty Testing

11. Salaried employees (beyond initial probation) who test positive on an alcohol test with a BAC level of 0.02 – 0.039 will not be allowed to return to work until they pass an alcohol test (return to duty test) and complete the required suspension without pay.

SECTION III - VOLUNTARY REHABILITATION OR EDUCATION

12. The department encourages employees who feel they have problems with alcohol to voluntarily participate in an alcohol rehabilitation program; however, even if in such a program, employees should be aware that they are subject to the same tests as any other employee. Discipline for positive results will be administered in accordance with the guidelines outlined in this personnel policy. Employees are responsible for the cost of their alcohol rehabilitation program. Employees may contact the EAP or their insurance provider to learn what coverage they have for a rehabilitation program. Information about alcohol rehabilitation centers in Missouri will be provided by the RB Division. Employees who attend an alcohol rehabilitation

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 rehabilitation. 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 (FML), if they have not used their limit of FML during the previous 12 months and the leave time qualifies under the Family and Medical Leave Act.

SECTION IV - DISCIPLINE

13. Testing positive on an alcohol test is considered misconduct connected to work.

14. Employees who complete an alcohol test will be immediately informed of the results of their test. Employees who pass this test will be allowed to return to work.

15. All employees who refuse to complete any required alcohol test or fail to report for an alcohol test when scheduled will be dismissed from the department. Salaried employees (beyond initial probation) who tested positive on an alcohol test at a BAC level of 0.02-0.039 and refuse to take the required return to duty test will be dismissed from the department. Employees dismissed under this paragraph may have rights to appeal such termination as outlined in Personnel Policy 2100, “Grievance Procedure,” and Policy 2103, “Formal Termination Hearings.”

16. Employees who are dismissed or voluntarily resign as a result of any action related to alcohol testing will not be eligible for consideration for re-employment with the department.

SECTION IV - TEST RESULT CHALLENGES

17. When an alcohol test is performed, employees will be given a confirmation test if their initial (screening) test is at or above 0.02 BAC. The confirmation test will be completed in no less than 15 minutes from the completion of the screening test. The confirmation test will be used to determine the results of the alcohol test. Employees may not request further tests or challenge the results of the confirmation test.

18. Employees who feel they have unfairly been required to complete an alcohol test under reasonable suspicion may file a grievance through Personnel Policy 2100, "Grievance Procedure." Employees may not file grievances for other required tests or for discipline related to failing an alcohol test except that employees dismissed for a positive alcohol test may have rights to appeal such termination as outlined in Personnel Policy 2100, “Grievance Procedure,” and Policy 2103, “Formal Termination Hearings.”

SECTION V - ADMINISTRATION

19. The department's alcohol testing program will be administered by the RB Division who will be responsible for maintaining all records relating to alcohol testing. All information specifically related to alcohol testing of employees is confidential and will be treated as such by those who have a need for the information in the performance of their duties.

20. 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”

PROCEDURE

Procedure 2511, "Alcohol Testing Program"

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