



Memo

TO: Jackson County Board of Commissioners

FROM: Kathleen Breedlove, Human Resources Director

DATE: October 19, 2021

SUBJECT: Article V. Conditions of Employment, Section 11 – Drug-Free Workplace

After a rewrite of the Drug-Free Workplace policy, along with a review by our Drug Testing vendor and the NCACC Risk Manager, I recommend retitling the policy to read Drug Free Workplace and Substance Abuse Policy.

The Substance Abuse component of the policy now provides details about the testing process, the Medical Review Officer's role in the review of non-negative results and the employee's right to a retest of the initial specimen at their expense, when the county may conduct an investigation, and consequences of violations. Additionally, an employee charged with violation of any criminal drug or alcohol statute would be required to report the charge to the Human Resources Office on the first business or scheduled work day (whichever occurs first) following the filing of the charge. This is to ensure the HR Director will be able determine the work status of the employee in conjunction with the County Manager. The previous Drug-Free Workplace Agreement and Acknowledgement forms signed by employees will be combined into one document.

It is recommended the Jackson County Board of Commissioners approve the updated Drug Free Workplace and Substance Abuse Policy for inclusion in the Jackson County Human Resources Manual.

Attachments

Section 11. Drug-Free Workplace and Substance Abuse Policy

Drug-Free Workplace

All County work sites will be maintained as a drug-free workplace. As a condition of employment, each employee must abide by the terms of this policy and the regulations to maintain the County as a drug-free workplace. Any employee who violates this policy will be subject to disciplinary action up to and including dismissal.

The specifics of the policy are as follows:

A. Controlled Substances

1. Jackson County does not differentiate between drug users and drug pushers or sellers. Any employee who gives, or in any way transfers, a controlled substance to another person, or sells or manufactures a controlled substance while on the job or on County premises will be subject to discipline up to, and including, termination.
2. The term "controlled substance" means any drug listed in 21 U.S.C. 812 and other federal regulations. Generally, these drugs have a high potential for abuse. Such drugs include, but are not limited to, Heroin, Marijuana, Cocaine, PCP, and Crack. They also include "legal drugs" which are not prescribed to the employee by a licensed physician.

B. Violations

1. Each employee is required by law to inform the County within five (5) days after he or she is convicted for a violation of any federal or state criminal drug statute where such violation occurred on the County's premises. Notification of such conviction should be made to the Human Resources Director. A conviction means a finding of guilt (including a plea of nolo contendere) or the imposition of a sentence by a judge or jury in any federal or state court.
2. The Human Resources Director must notify the U.S. Government agency with which the contract was made within ten (10) days after receiving notice from the employee or otherwise receives actual notice of such a conviction.
3. If an employee is convicted of violating any criminal drug statute while in the workplace, he or she will be subject to discipline up to, and including, termination. Alternatively, the County may require the employee to successfully finish a substance abuse program sponsored by an approved private or governmental institution.

C. Objectives of Maintaining a Drug-Free Workplace

1. To provide Jackson County employees with a safe, drug-free workplace and to promote high standards of employee health.
2. To carry out the County's basic responsibility to serve the public safely and without undue interruption.
3. To establish a drug-free awareness program for County employees.
4. To comply with the federal Drug-Free Workplace Act of 1988.

D. Provisions of the Federal Drug-Free Workplace Act of 1988¹

1. The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited while in a County facility or vehicle, or while performing County business.
2. Any employee convicted under any criminal drug statute for a violation occurring in the workplace must notify County officials no later than five (5) days after such conviction.
3. In the event that any employee is convicted under a criminal drug statute for a violation occurring in the workplace, the County shall take the following action:
 - a. Discipline, up to and including discharge, and/or
 - b. Require satisfactory participation in a substance abuse assistance or rehabilitation program.

The County shall take either action within thirty (30) days of receiving notification of such a conviction. The County has notice of a conviction when an employee notifies the County of such a conviction, or when the County learns of the conviction from some other source.

4. To further educate its employees, the County's ongoing drug-free awareness program will inform employees about:
 - a. The dangers of substance abuse in the workplace;
 - b. The County's policy of maintaining a drug-free workplace;
 - c. The availability of substance abuse counseling, rehabilitation, and employee assistance programs;
 - d. The penalties that may be imposed on employees for substance abuse violations.
5. Compliance with this drug-free workplace policy is a condition of employment. Employees shall be given a copy of this policy and shall be asked to sign a statement to acknowledge receipt and agree to comply with the policy.

E. Additional Drug-Free Workplace Provisions

1. The unlawful manufacture, distribution, dispensation, possession or use of any controlled substance by County employees, while on-duty or off-duty, is prohibited.
2. The unlawful manufacture, dispensation, possession, or use of illegal drug paraphernalia, while on-duty or off-duty, is prohibited.
3. The unauthorized use, possession, or sale of alcohol while on County premises, while on County business, while operating or riding as a passenger in any County-supplied vehicle, or at any time while an employee is on-duty is prohibited.
4. Any use of alcohol while off-duty or off County premises that adversely affects an employee's work performance, his/her own or others' safety at work, or the County's reputation in the community is prohibited.
5. Being under the influence of alcohol or an illegal controlled substance while on County premises or while on County business, while operating or riding as a passenger in County-supplied vehicles or while on-duty is prohibited. Being under the influence of alcohol is defined as a blood alcohol content of .04. With respect to marijuana, cocaine, amphetamines, phencyclidine and opiates, being under the influence shall mean testing positive under the procedures and at the levels set by DOT regulations. (49 C.F.R. part 40)
6. Being under the influence of any other controlled substance listed under 21 C.F.R. Sections 1308-11 through 1308.15, Schedules of Controlled Substances, shall mean testing positive at a level to be set by the County. Testing levels utilized by the County shall be applied in a uniform and nondiscriminatory manner.

¹ Compliance with the Federal Drug-Free Workplace Act of 1988 is not required unless the County has a contract to provide \$25,000 or more of property or service to a federal agency or receives grant funds from a federal agency. However, most counties have nonetheless adopted this policy.

7. Storing any illegal controlled substance or any illegal drug paraphernalia or unauthorized alcohol in a locker, desk, vehicle, or other repository on County premises is prohibited.
8. Employees must satisfactorily participate in any drug or alcohol treatment or counseling program required by the County pursuant to the provisions of this policy.
9. The County shall take the following actions for any violation of these provisions:
 - a. Discipline, up to and including discharge, and/or
 - b. Requiring satisfactory participation in a drug abuse assistance or rehabilitation program.

F. Training

1. As required by the federal Drug-Free Workplace Act of 1988, the County shall establish an ongoing drug-free awareness program.
2. As required by Department of Transportation regulations, all drivers, supervisors, and County officials shall receive at least sixty (60) minutes of training on:
 - a. The effects and consequences of controlled substance use on personal health, safety, and the work environment; and
 - b. The manifestations and behavioral changes that may indicate controlled substance use or abuse.

G. Responsibilities

1. All County employees are responsible for abiding by this policy, as a condition of their employment.
2. Management Officials and Supervisors:
 - a. All supervisors are responsible for being alert to possible violations of this policy by employees under their supervision.
 - b. Any possible violation of this policy should be reported to the Human Resources Director.

Substance Abuse

A. Purpose

Employees are Jackson County's most valuable resource, and for that reason, their safety and health are of paramount concern. Jackson County (hereafter referred to as "the County") maintains a strong commitment to its employees to provide a safe workplace and to establish programs promoting high standards of safety and health. Consistent with the spirit and intent of this commitment, the County expects employees to report to work in proper condition to perform their duties.

The intent of these guidelines is to prevent the use and presence of drugs and alcohol in the working environment. Use of these substances poses a serious threat to the health and safety of all employees and the general public we serve.

B. Scope

All employees at all levels of the County are covered by the terms of these guidelines. Employees who occupy positions covered under US Department of Transportation (DOT) regulation shall be subject to this policy in the case of accidents not meeting the definition of the appropriate DOT agency and at times when the employee is not involved in safety-sensitive function as defined by the appropriate DOT agency.

Applicants for employment are included in this policy only insofar as is expressly stated.

C. Definitions

1. Drugs and drug usage, as used in this policy, refer to the use of illegal drugs or other controlled substances as defined in 21 USC 812. This will include, but is not limited to, abuse of marijuana, cocaine, phencyclidine, amphetamines, and opioids.
2. Alcohol usage, as defined in this policy, is the consumption of alcohol in any of its forms, i.e. liquor, beer, wine, etc., including medications or other preparations containing alcohol.
3. County premises and all areas in which the County operates includes, but is not limited to, its property; County-owned or -leased vehicles or equipment; privately owned vehicles entering or parked on the property, or in use on the property; lockers; desks; work space; storage facilities: and any area where County business is conducted.
4. Accident shall be defined as any incident resulting in a human fatality; a resulting injury requiring assessment or treatment; property damage to a County vehicle, County property, or to private property while in operation of a County vehicle or County equipment; or receipt of law enforcement citation; a sequence of minor accidents or injuries where medical treatment may not have been required; "reasonable suspicion" based on facts that conclude an accident was due to the employee's drug or alcohol impairment.
5. Refusal to test is failure to provide an adequate specimen for either a drug or alcohol test without medical certification of a condition that renders the employee/applicant unable to provide such a specimen. Any obstruction of the process (such as failure to follow the directions of the collector or providing a substituted or adulterated specimen) is also a refusal to test.

D. Components

1. **Discipline for Substance Abuse**
 - a. Employees reasonably suspected of sale, possession, transfer, use, purchase of, or being under the influence of alcohol or illegal or nonprescription, mood-altering drugs as well as prescribed drugs that induce an unsafe mental or physical state will be subject to disciplinary action, up to an including termination.
 - b. For the purpose of this policy, an employee is irrefutably presumed to be under the influence of drugs or alcohol if urinalysis, blood test, or other acceptable positive quantitative proof shows drug or alcohol usage in excess of established allowable levels.
2. **Investigation**
 - a. An Employees reasonably suspected of sale, possession, transfer, use, purchase of, or being under the influence of drugs or alcohol on County premises or during working hours may be suspended without pay pending an investigation of the circumstances. The County will endeavor to complete its investigation within three (3) working days.
 - b. To ensure that such drugs and alcohol do not enter or affect the work place, the County may take any and all of the following steps while employees are on County premises or during working time:
 1. Observe actions of employees.
 2. Counsel employees.
 3. Conduct searches of employee's personal items, vehicle, and person.

4. Conduct chemical screenings (e.g., urinalysis, blood tests, etc.).

Searches of an employee's personal property will take place only in the employee's presence and only when there is reason to believe use or conveyance of controlled substances has taken place on County property or while conducting County business. All searches under this policy will occur with the utmost discretion and consideration for the employee(s) involved. Employees refusing to allow a search when required will be discharged.

3. Testing

- a. The County may conduct drug and/or alcohol testing at its discretion.
- b. Drug testing will be conducted in two steps:
 1. Initial drug screening will be done by methods such as the Enzyme Immunoassay Test (EMIT) or other currently acceptable methods.
 2. Confirmation of positive screening test will be conducted by an approved method, such as the use of Gas Chromatography/Mass Spectrometry (GC/MS) equipment by a Substance Abuse and Mental Health Services Administration (SAMHSA) or College of Pathology (CAP) approved laboratory as identified in the Federal Register.
- c. Testing for the presence of alcohol may be conducted by currently approved breath testing apparatus (Breathalyzer) or other appropriate currently accepted devices such as saliva tests. Confirmation of an initial screen test showing a positive result for alcohol will be confirmed by a currently accepted method meeting the standards of the National Highway Traffic Safety Administration (NHTSA). Confirmation tests must be conducted using evidential testing devices commonly referred to as "Breathalyzer."
- d. The County reserves the right to require drug and alcohol testing of all employees, including but not limited to the following categories or groups, at any time:
 1. **Reasonable Suspicion** - "For cause" testing may be required of any employee when a trained observer notes physical, behavioral, or psychological signs that may be indicative of substance abuse. Reasonable suspicion testing is conducted to eliminate substance abuse as the cause of such indicators and, in the event of a negative test result, the County will refer the employee to appropriate medical or psychological professionals for assistance in determination of the actual cause and possible treatment or correction of the observed behaviors.
 2. **Post-Accident** – Testing will be required as part of any investigation involving an on-the-job accident or near accident, including but not limited to any accident where an employee suffers an on-the-job injury or is involved in an incident/accident that results in property damage. Employees covered under DOT testing regulations may be subject to testing under this policy when the characteristics of the accident do not fit the accident definition for DOT testing.
 3. **Post-Counseling / Rehabilitation or Return to Work** – Testing may be required when an employee returns to work from a long illness, disabling injury, extended absence, or upon completion of a drug or alcohol treatment or counseling program.
 4. **Random** – All employees appointed to safety-sensitive positions are subject to random, unannounced drug and alcohol screens at any time. The County will determine those positions considered to be safety-sensitive and will notify all employees in such positions of the

determination of safety-sensitive. All DOT-covered employees are safety-sensitive but must be tested from a pool of DOT-only employees.

5. **Contractual** – The County will test as necessary to comply with the contractual or legal obligations of its customers, clients, or the federal government. Those employees affected by these types of tests will be notified as to the specific requirements as information becomes available.
 6. **Pre-Employment/Post Offer** —Applicants for employment with Jackson County, rehires, and employees receiving a promotion will be required to take and pass a post-offer, pre-employment drug screen. A positive result or refusal to test will disqualify the applicant from further consideration.
- e. Refusal of an employee to submit to or cooperate with the administration of an alcohol or drug test shall result in termination. Any attempt to invalidate or circumvent a drug or alcohol test will also result in termination.
 - f. Any non-negative result returned from the laboratory will be returned to the medical review officer (MRO) prior to any notification of the result to the County. The MRO will attempt to contact the employee/applicant to inform the donor of the result from the laboratory and to determine if there is medical validation for the drug/drugs found in the system. Any medical information provided will be considered by the MRO and, if the MRO determines that there is justified medical purpose for the drug in the system, the MRO will declare the result to be negative. If the MRO is unable to contact the donor after reasonable attempts fail, the MRO will declare the lab result stands as the final result. A report of a positive, adulterated, or substituted result will be returned to the County at this point.

Any employee/applicant who has a non-negative drug test or alcohol test will be notified in writing within thirty (30) days of the date the County receives such notice. An employee may have the initial drug test specimen retested at his or her expense at a SAMHSA approved lab of his/her choice, by making a written request within ninety (90) days of notification by the employer of the initial test result. The employee will be responsible for the costs of such testing, and the final result of the retest done by the second lab will be the final result with no further appeal.

4. Consequences of Violation

- a. Any employee who fails a drug or alcohol screen will be subject to termination. The County may afford an employee who fails a drug or alcohol screen a single, one-time-only opportunity for probation and treatment. The employee who fails a drug or alcohol screen may be referred to a substance abuse treatment program for a recommended treatment. The employee must complete the treatment program recommended by the treatment agency and must provide to County all substance abuse treatment information to be eligible. The employee will be responsible for payment of treatment. The employee will be subject to a probation period of one year from the time the positive test result is confirmed. The employee may be suspended from duty after confirmation of a positive drug or alcohol screen until it can be determined that he/she can safely return to duty when the second chance opportunity is invoked.
- b. Any employee who is allowed to return to work after a positive drug or alcohol screen will be subject to return-to-duty and follow-up testing (at least six (6) screens during the following year) as recommended by the substance abuse treatment professional or as deemed necessary by the County. This testing is in

addition to any testing that may be required (random, reasonable suspicion, post-accident) as a part of the regular County substance abuse program. The cost of return-to-duty and follow-up testing shall be deducted from the employee's payroll.

- c. Any employee who is allowed to return to work after a positive drug or alcohol screen will be subject to termination upon confirmation of any subsequent positive or refused drug or alcohol screen result.
- d. The second chance opportunity is not available to an employee who refuses to test as required by this policy.

5. Employee Responsibilities

- a. Employees who are required to test are required to make themselves immediately available for testing. If directed to go to a collection site, the employee is to proceed immediately and without delay to the designated collection site and remain at the site until the test is completed. Failure to arrive at the collection site in a timely manner or leaving the site without completing the test will be considered a refusal to test.
- b. Any attempt to circumvent testing (substitution, adulteration, or obstruction of the collection process) will be considered a refusal to test.
- c. Any employee charged with violation of any criminal drug or alcohol statute must report the charge to the County Human Resources Department on the first business or scheduled work day (whichever occurs first) following the filing of the charge. The Human Resources Director will make a decision as to the work status of the employee during the time before adjudication. It will be the responsibility of the employee to report the progress of the case as required by the Human Resources Director.
- d. Any employee convicted of a criminal drug or alcohol offense must report the conviction to the Human Resources Director on the first business or scheduled work day (whichever occurs first) following the adjudication. This report is required even in the event of an appeal of the conviction. The Human Resources Director will then make a decision regarding the future employment status of the employee and the reporting of the conviction to any federal agency whose program or grant involves the affected employee.
- e. All employees are required to adhere to this policy and to follow the substance abuse policy. To that end, it is expected that all employees become familiar with the policy and any subsequent addenda or deletions that may become part of policy.
- f. Management officials and supervisors are required to be alert to possible violation of this policy by employees under their supervision. Any possible violation of this policy shall be reported to the Human Resources Director without delay.
- g. The Human Resources Director will oversee the overall application of this policy.



Drug-Free Workplace and Substance Abuse Policy Certification, Agreement and Acknowledgment

My signature below indicates the following:

I hereby certify that I have received, read and fully understand Jackson County’s Drug-Free Workplace and Substance Abuse Policy which includes the requirements of the Drug-Free Workplace Act of 1988. I agree to abide by the contents of this policy as a condition of my employment. I understand that if I violate the provisions of the policy, I may be immediately dismissed.

I hereby acknowledge the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on the county’s premises, vehicles or while performing county business. Any violation of this policy may subject me to disciplinary actions up to and including termination of employment.

I hereby agree to notify the Jackson County Human Resources Department of charged violations of any criminal drug or alcohol statute on the first business or scheduled work day (whichever occurs first) following the filing of the charge.

I hereby agree to comply with the Drug-Free Workplace Act of 1988, the terms of this policy and notify my employer of any criminal drug conviction for a violation occurring in the workplace no later than five (5) days after such conviction. I acknowledge federal law mandates that the employer communicate the conviction to the federal contracting agency and I waive any and all claims that may arise for the conveyance of this information to a federal agency.

I hereby acknowledge the county reserves the right to require drug and alcohol testing of all employees in accordance with policy and refusal to submit to or cooperate with the administration of an alcohol or drug test shall result in termination.

Printed Employee Name

Employee Signature

Date

Witness Signature

Date