



Approved:

City of Commerce, California  
Human Resources Policy and Procedure Manual

*Teresa McAllister*  
Director of Human Resources  
*[Signature]*  
City Administrator

Number: III-5 Effective Date: 8/3/10

**SUBJECT:**           **REASONABLE SUSPICION AND POST-ACCIDENT DRUG AND ALCOHOL TESTING POLICY FOR NON –COMMERCIAL DRIVERS**

**PURPOSE:**

To provide a framework for city staff to follow when dealing with issues relating to reasonable suspicion and post-accident drug and alcohol testing for city employees. The policy also covers issues relating to fatigue.

**GENERAL BACKGROUND:**

The City of Commerce (“the City”) recognizes that its employees are its most important resource. The City also has a “zero tolerance” approach to employee use and misuse of drugs/alcohol related to the performance of required duties. Employees also have a responsibility to take reasonable care for the health and safety of others and cooperate with employers in their efforts to provide a safe workplace.

This policy for reasonable suspicion and post-accident drug and alcohol testing for all affected City employees is intended to accomplish the following objectives:

1. To provide a safe working environment for City employees;
2. To protect the safety of persons and property;
3. To provide the highest quality of public service;
4. To promote efficiency and productivity;
5. To avoid adverse effects on employee health and well-being, as well as to minimize the City’s related health costs;
6. To prevent loss of public confidence in City employees and damage to the City’s reputation;

7. To prevent drug-related theft and other employee misconduct;
8. To encourage employees to seek voluntary assistance to deal with alcohol and/or drug use;
9. To comply with the Drug Free Workplace Act of 1988 (41 U.S.C. 702-706) and the City's Drug-Free Workplace Policy.

**DEFINITIONS:**

Drug abuse is defined as:

1. The excessive use or intentional misuse of lawfully obtained prescription drugs or over-the-counter drugs when such use impairs job performance, alters behavior, and/or creates a risk to the health and/or safety of the employee or others; and/or,
2. The intentional use of illegal drugs or controlled prescription drugs obtained unlawfully.

Both legal and illegal drugs can be broadly categorized as depressants, stimulants or hallucinogens. Most drugs, even in very low doses, can affect the capacity of an employee to carry out their duties safely.

There are a number of chemicals used in workplaces, which can have a similar effect of types of drugs. Where these are used, a strict hierarchy of hazard control should be employed and employees should be educated in the potential hazards.

Alcohol use considered in violation of this policy is defined as:

1. Using or possessing alcohol on the job.
2. Consuming alcohol within 4 hours of reporting for regular assignment, and overtime assignment, or while on call to provide public service, in any capacity, as a City employee.
3. Having a blood-alcohol concentration of 0.02 or greater while at work.
4. Allowing alcohol to impair job performance or create a safety risk.

**POLICY:**

The consumption of alcohol is prohibited during a work-shift (including breaks and/or meals), during an overtime assignment, while on call, or within four hours of a scheduled shift or of being on call. The use of illegal drugs or the excessive use or intentional misuse of lawfully obtained prescription drugs is prohibited at any time.

Employees shall be tested for drugs and/or alcohol under the following conditions:

1. When there is a reasonable cause/suspicion that an employee may be impaired by the use of drugs or alcohol;
2. After a motor vehicle accident, involving either a City vehicle or a personal vehicle being used on City business, in which there is a fatality, or in which there is a citation issued to the City employee, or from which a vehicle is towed from the scene, or in which someone is medically treated away from the scene.
3. Upon an employee's return to duty after testing positive for drugs and/or alcohol;
4. Follow-up testing after it has been determined that an employee has tested positive for alcohol or drug use.

#### **Medications (Over the Counter and Prescribed)**

Some medications that may be prescribed by a doctor or obtained over the counter may cause impairment. In the event that an employee is on a medication that may cause impairment, they should either seek a certificate from their doctor indicating that they are not impaired or advise their supervisor, manager or Department Head, who can conduct an impairment assessment.

Medication should be taken as per the directions on the label or as advised by the pharmacist or doctor. Employees should outline the duties of their job to their doctor and seek advice as to whether they will be impaired or affected by the medication they are taking.

Employees should check with their doctor that they are safe to work in their current job while taking prescription medicine and with their pharmacist while taking over the counter medication. Depending on individual circumstances, employees who are unable to perform normal duties due to medication are entitled to access their accrued sick leave. The employee may be taken off their normal working duties and may be assigned alternate duties if available and at the sole discretion of the City. At the City's discretion, employees who are reasonably determined to be impaired and cannot be safe at work may be asked to leave the workplace and return with a physician's note clearing them to return to work without limitations or restrictions. This section shall not preclude an employee's request for a reasonable accommodation and the City's obligation to conduct an interactive process in accordance with the Americans with Disability Act.

#### **Compassionate Use Act of 1996 (Medical Marijuana)**

The Compassionate Use Act of 1996 does not apply to employment law. The City of Commerce is not required to accommodate employee's who are using medical marijuana. The possession of a valid medical marijuana card does not exonerate an employee under this Policy on its use nor is it intended to eliminate the City's legitimate interest in whether

employees use drugs banned by Federal law. Employees must disclose to the City in a timely manner their use of medical marijuana. For the purpose of applying this policy, impairment at the workplace brought about by the use of marijuana shall be subject to discipline including but not limited to termination.

**Reasonable Suspicion:**

To ensure the safety of the employee, the public and co-workers, when an employee has reasonable suspicion or information that a co-worker or subordinate has consumed or is under the influence of drugs/alcohol while at work, they must immediately report their suspicion and/or information to their Department Head and/or Supervisor for further impairment assessment. Whenever a manager or supervisor observes, or is advised of, a health or safety risk as a result of possible intoxication, they should contact their Department Head or designee and the Human Resources Department to carry out an assessment.

All impairment assessments must be conducted by the Department Head or designee and concurred by the Human Resources Department, who have been properly trained and are considered to be competent to conduct the impairment assessment. The employee has the right to representation during these assessments.

If an impairment assessment is conducted and the employee is deemed fit to continue duties, no further testing is required.

Upon concurrence of the Human Resources Department that an employee is reasonably deemed to be impaired, the employee shall be transported immediately to a medical facility to be examined by a physician and take the appropriate test for drug or alcohol use. The examination shall be conducted while the employee is "on the clock". The City shall bear the expense of the examination, and shall provide transportation to and from the medical facility and the employee's work station. The supervisor shall use good judgment and at their discretion may request assistance from another staff to assist them when transporting an employee who is reasonably believed to be under the influence of drugs/alcohol. A Supervisor shall contact the Transportation Department if a vehicle is required for transport.

The employee will be placed on paid administrative leave pending the results of the drug/alcohol test. The employee shall not be allowed to drive himself/herself home. Either the employee may arrange for someone to transport him/her to their home or the supervisor and one other employee may transport the employee home. If the employee refuses to be transported home and insists on operating a motor vehicle, then the supervisor will be responsible for calling the appropriate contacts including law enforcement to report the circumstances, in order to prevent the employee from driving away in a car and to protect the employee and the public. If an employee gets behind the wheel of any vehicle and proceeds to activate the vehicle after being admonished not to do so, said action will be deemed insubordination and grounds for immediate termination.

Failure to submit to an examination and test, when so ordered by the department head or designee, will be considered insubordination, and grounds for immediate termination.

If the examination shows that the employee is under the influence of drugs and or alcohol, or over-the-counter medications in excess of prescribed dosages, the City's drug and alcohol policy has been violated and the employee shall be subject to immediate termination. Pre-employment drug tests are subject to the Personnel Policy and Procedure, Pre-Employment Medical Exams.

In addition, the following shall apply:

1. City management will evaluate the circumstances of a positive test to determine if the case merits the opportunity for rehabilitation in lieu of termination.
2. Employees who test positive for drugs and/or alcohol and who are given the opportunity for rehabilitation or who self-identify and seek rehabilitation prior to an incident that violates policy shall use accrued sick leave, vacation, and other benefits while they are participating in rehabilitation programs prior to being released to return to work. Employees who have exhausted their sick leave or vacation accruals may be eligible for a leave of absence without pay, based upon the City's Employee Assistance Program's treatment plan.
3. The City of Commerce is not responsible for the costs of medical treatment for employees who test positive for drugs and/or alcohol. Employees may use options provided under their medical coverage, if applicable.
4. The City's decision on whether to retain an employee who violates the City's Policy prohibiting drug/alcohol abuse shall be within the sole discretion of the City. The City may consider the severity of the incident, the nature of the employee's job, previous overall performance, tenure of employee, potential risk to other City employees and/or the public, mitigating circumstances and overall commitment of employee to change behavior. Should any full-time employee request a last chance agreement, the City will give reasonable consideration to any such request.

**Self Identification:**

Supervisors and managers should encourage any employee who is having difficulty controlling their use of drugs or alcohol to self identify and enter into a recognized drug rehabilitation program. If a person self identifies, the employer will support and assist the employee to return to work within a reasonable period of time.

An employee who self identifies notifies their Department Head and/or Supervisor, and the Director of Human Resources. The employee's Department Head is informed and the person is taken off safe working duties and may be assigned alternative duties if available and at the sole discretion of the City. The employee is paid at his or her base pay rate. A six months period will apply to these arrangements.

The employee may then either:

1. Consults his or her own doctor and enters into a recognized rehabilitation program.
2. Consults with the Human Resources Department to help identify a recognized rehabilitation program.

The employee shall be responsible to provide:

1. Evidence from the provider that the employee has entered into treatment
2. Regular progress reports that identify when an employee is ready to return to work and the level of responsibility to which the employee can return.

Where an employee is absent due to rehabilitation they shall utilize their accrued sick or vacation leave while in a rehabilitation program.

A return to work program shall be arranged and agreed to, depending on:

1. The advice of the provider
2. The advice of the employee's doctor
3. The criticality of the work performed by the employee
4. Agreement to enter the random blood and/ or urine tests.

All affected employees shall be given a copy of this policy.

**Employee Assistance Program:**

As part of the City's commitment to achieving and maintaining safe, healthy, equitable and productive workplaces, employee assistance services are available to help employees and their families resolve personal and work-related problems and associated stresses. Managers, supervisors, association representatives or colleagues should encourage an employee to seek counseling when they are aware that he or she has a problem.

**Confidentiality:**

Confidentiality is fundamental to dealing with problems in the workplace that are related to the misuse of alcohol and other drugs in order to protect the privacy of individuals and to encourage employees' acceptance of prevention and treatment measures. Conversations relating to work performance or the misuse of alcohol or other drugs must be conducted in private and information relating to counseling must be treated as confidential.

**PROCEDURE:**

<b><u>Responsibility</u></b>	<b><u>Action</u></b>
Human Resources	<ol style="list-style-type: none"><li>1. Provides notice to employees of reasonable suspicion and post-accident drug and alcohol testing policy.</li><li>2. Provides informational programs on the risks associated with drug and alcohol abuse.</li><li>3. Provides drug and alcohol counseling and rehabilitation programs through employee assistance program.</li><li>4. Provides Reasonable Suspicion Training opportunities to all supervisory and management employees.</li></ol>
Department Head	<ol style="list-style-type: none"><li>5. Ensures that every supervisor and manager takes training in Reasonable Suspicion for Drug and Alcohol Use no less than every two years.</li></ol>
Supervisor	<ol style="list-style-type: none"><li>6. When a supervisor has reasonable suspicion or has information that an employee has consumed or is under the influence of alcohol or drugs, he/she shall immediately report him/her to his/her Department Head to ensure the safety and well-being of all.</li></ol>
Department Head	<ol style="list-style-type: none"><li>7. If the Department Head concurs, he/she contacts Human Resources if they believe that an employee may be under the influence of drugs or alcohol.</li></ol>
Human Resources	<ol style="list-style-type: none"><li>8. Completes Reasonable Suspicion checklist assessment on any employee whose demeanor or behavior leads to suspicion that he/she may be under the influence of drugs or alcohol.</li><li>9. Facilitates immediate testing for drugs and/or alcohol.</li></ol>

10. Takes the lead role in an appropriate disciplinary action, up to and including termination. Disciplinary action may include mandated participation in a drug/alcohol abuse assistance or rehabilitation program approved by federal, state, or local health, law enforcement, or other appropriate agency.
  11. Participates in drug/alcohol abuse assistance or rehabilitation programs, if required as a condition of continued employment, utilizing medical coverage and vacation/sick leave or other approved leave of absence.
  12. Keeps Department informed relative to the status of an employee's ability to return to work.
  13. Monitors an employee's satisfactory completion of any mandated drug/alcohol assistance or rehabilitation program.
- Employee
- Human Resources