

# HUMAN RESOURCE POLICY

#31 (ADMIN)

## CDL DRUG TESTING

Approved by: **Personnel Board 5/26/2011**

**City Council 6/28/2011**

**Mayor of Omaha: Jim Suttle**  
**City Council President: Tom Mulligan**  
**Human Resource Director: Richard A. O’Gara**

*Pursuant to the Omaha Municipal Code, Section 23-65, this document is a Human Resource policy of the City of Omaha. Please check the City’s website, <http://www.cityofomaha.org/humanresources/public-documents/hr-policies> for the latest version of this policy. Where no policy or guideline exists or if there are questions on this policy, please contact the Assistant Human Resources Director/Labor Relations Director in the Human Resources Department.*

### **Purpose:**

The purpose of this policy is to comply with the “Omnibus Transportation Act of 1991,” which sets out drug testing requirements for commercial driver’s licenses (CDLs). Except as specifically altered or changed in this policy or any other City Personnel Policy, all the provisions of the City’s Drug and Alcohol Policy shall apply to CDL employee testing. All tests performed in accordance with this policy shall comply with the rules issued by the Federal Highway Administration (FHWA), the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA), and/or the Federal Motor Carrier Safety Regulations (FMCSR).

### **Policy:**

CDL employees shall not be allowed to perform any work for the City under the following circumstances:

1. While having an alcohol concentration of 0.04 or greater, as indicated by an alcohol breath test;
2. While using alcohol;
3. Within four (4) hours after using alcohol;
4. Using alcohol within eight (8) hours after an on-duty motor vehicle accident or until he/she undergoes a post-accident alcohol test, whichever is first.

The unauthorized use of illegal drugs (i.e., controlled substances) by CDL employees on, or off, duty is specifically prohibited. Legally prescribed controlled substances may not be used if they can impair a CDL employee's ability to safely perform his/her duties. A CDL employee must report any medical use of any controlled substances to his/her supervisor before performing any work.

### **Tests:**

In order to comply with federal CDL requirements and to better ensure employees perform their jobs unimpaired by drugs or alcohol, the following tests will be performed on CDL employees as indicated:

1. Pre-Employment: Before the applicant (or employee who moves from a non-CDL job to a CDL-required job) performs any CDL work.
2. Post-Accident: After accidents involving drivers whose performance would have contributed to the accident (as determined by a citation for a moving traffic violation) and for all fatal accidents, even if the driver is not cited for a moving traffic violation.
  - a. For drivers of commercial motor vehicles requiring a CDL who are involved in accidents defined in 390.5 of the FMCSR shall undergo post-accident drug/alcohol testing in accordance with 382.303 of the FMCSR. Drug/alcohol testing will be documented on the appropriate Federal drug/alcohol testing forms.
  - b. For drivers of vehicles involved in accidents not defined in a. above (i.e. non-CDL vehicles), if drug/alcohol testing is performed it shall be documented on the appropriate "non-Federal" drug alcohol testing forms.
3. Reasonable Suspicion: Based upon the City's Drug and Alcohol Policy.
4. Random: Conducted on a randomly announced basis just before, during, or just after performance of safety sensitive functions. (See below.)
5. Return to Duty and Follow-up: Conducted when an employee who has violated this policy returns to performing safety sensitive duties. Follow-up tests shall be unannounced; and, if the violation was for alcohol, at least six tests will be performed in the first 12 months after the employee returns to duty. Follow-up testing may be extended up to 60 months following return to duty.

### **Random Testing Procedures:**

The Labor Relations Director shall ensure that a complete and accurate list of City employees who hold job classifications requiring a CDL and are in actual possession of a CDL or a CDL learners' permit is maintained on an on-going basis. At any time, the Labor Relations Director may generate or ask the appropriate personnel to generate random lists of employees from the above complete CDL list to be tested for drugs and/or alcohol. The method of generating these lists shall be as follows:

1. First, the Labor Relations Director shall determine the percentage of the total pool to be tested with such percentages be either at or above the FMCSR minimum thresholds. The FMSCR minimum thresholds are 50% of the relevant testing pool for random drug testing and 10% of the relevant testing pool for random alcohol testing. Should the FMSCR change such minimum testing thresholds in the future, the City shall continue to test its employees at or above the FMSCR set thresholds.
2. Each employee in the total pool shall be assigned a number in the fashion the Director shall choose.
3. All such numbers shall then be provided to DOT.Comm, who shall also be informed of the percentage of such pool to be tested.
4. DOT.Comm will then provide to the Labor Relations Director a list of numbers to be tested. In selecting such numbers, DOT.Comm shall generate a computer file in a probability sampling technique known as "simple random selection with replacement." This file shall then generate a list of numbers based on the percentage provided by the Labor Relations Director. The purpose of this procedure is to ensure that each employee on the total CDL pool list has an equal probability to be selected for testing.

The City's third-party administrator of drug and alcohol testing may also generate random testing lists as long as such lists are generated to ensure randomness and are in accordance with FMSCR guidelines.

At all times, the Labor Relations Director shall take care that any testing date or time shall remain unannounced and that such testing shall be done with unpredictable frequency throughout the year. Employees selected for random testing under this policy may, by nature of random selection, be tested for both drugs and alcohol during one visit to the City's designated testing facility.

#### **Random Testing - Alcohol:**

The Labor Relations Director shall direct the randomly-selected employees to be screened for blood alcohol content just before, during, or just after their work shift. Such testing shall be done in accordance with the FMSCR, including using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration.

If the test result of such screening test is less than 0.02 alcohol concentration, the test shall be considered “negative.” If alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. Alcohol concentrations of 0.02 and greater but less than 0.04 will result in the employee being suspended from working their safety-sensitive functions for a minimum of twenty-four (24) hours. Alcohol concentrations of 0.04 and greater shall be considered “positive.” An employee whose alcohol concentration is less than .04 percent may be considered impaired depending on a consideration of all of the circumstances, and thus be subject to possible disciplinary action.

Each calendar year, the Labor Relations Director shall ensure that at least 10 percent of the employee pool is randomly tested for alcohol or such a percentage as to comply with the Omnibus Transportation Act of 1991.

### **Random Testing - Other Drugs:**

The Labor Relations Director shall direct the randomly-selected employees to report for a drug test. The testing facility shall divide the urine specimen into two bottles and label one “primary” and the other “split.” (This shall be in addition to other specimen labeling requirements outlined in the City’s Drug and Alcohol Policy and the testing facility).

If the analysis of the primary specimen confirms the presence of an illegal controlled substance, the employee shall have 72 hours to request that a different certified lab analyze the split specimen. Such split test shall be at the employee’s expense.

Each calendar year, the Labor Relations Director shall ensure that at least 50 percent of the employee pool is randomly tested for drugs other than alcohol or such a percentage as to comply with the Omnibus Transportation Act of 1991.

### **Test Results:**

No test conducted in accordance with this policy shall be considered “positive” unless, and until, all procedures of the City’s Drug and Alcohol Policy and relevant federal laws/guidelines are complied with. Positive test results may result in disciplinary action up to and including termination of City employment. Any disciplinary action shall be taken in accordance with the City’s Drug and Alcohol Policy, the appropriate union contract, and/or Chapter 23 of the Omaha City Code.

If an employee tests positive on any drug or alcohol test given pursuant to this policy and is not terminated from City employment, he/she (as a condition of continued employment) will be required to undergo follow-up testing pursuant to this policy, the City’s Drug and Alcohol Policy, the appropriate union contract, and/or Chapter 23 of the Omaha City Code, and any relevant federal laws/guidelines.

In the event that the test result is positive and the employee is not terminated from his/her City employment, such employee cannot perform any DOT safety-sensitive duties for the City until and unless such employee completes the Substance Abuse Professional (SAP) evaluation, referral, and education/treatment process, which includes negative drug test results on a return-to-duty drug/alcohol test. The City or any of its service agents, including the City's Employee Assistance Program, shall provide the employee with a listing of approved and readily available SAPs. Pursuant to DOT regulations, the City is not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated DOT drug and alcohol regulations. Payment for SAP evaluations and services for employees shall be the employee's responsibility. However, the City shall maintain the discretion, based on the circumstances of each individual case, to allow any SAP evaluations and/or services to be covered under the City's health insurance plan. It is mandatory that employees comply and complete all SAP requirements, including any necessary evaluations, referred education and/or treatment options, follow-up evaluations, and any SAP-directed follow-up treatment, aftercare or support group services. Any employee failing or refusing to comply with SAP recommendations and requirements will be subject to disciplinary action, up to and including termination. Employees who test "negative, but diluted" shall be immediately retested within 48 hours of when the diluted test results were obtained and the City will follow the recommendations of the Medical Review Officer from the third-party administrator of the drug and alcohol testing program