



Policy 3285 Drug, Alcohol, and Cannabis Testing (Non-DOT)

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Effective Date: 8/01/2023

Board or Administrative: Administrative

Policy Statement

It is the policy of Dakota County to provide a safe workplace for all employees. Employees who are impaired because of drugs, alcohol, or cannabis jeopardize the safety and health of themselves, their coworkers, and the public. This policy describes the circumstances in which Dakota County requires certain applicants and employees to undergo drug and alcohol testing prior to being hired and during employment.

Definitions

- “Adulterated” means a specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.
- “Cannabis” means marijuana, tetrahydrocannabinol, cannabis flower as defined in Minnesota Statutes Section 342.01, subdivision 16 (2023), cannabis products as defined in Minnesota Statutes Section 342.01, subdivision 20 (2023), lower-potency hemp edibles as defined in Minnesota Statutes Section 342.01, subdivision 50 (2023), and hemp-derived consumer products as defined in Minnesota Statutes Section 342.01, subdivision 37 (2023).
- “Cannabis testing” means the analysis of a body component sample according to the standards established under one of the programs listed in Minnesota Statutes Section 181.953, subdivision 1 (2023), for the purpose of measuring the presence or absence of cannabis.
- “County” refers to the officers, employees, agencies, and facilities of Dakota County, Minnesota government.
- “Dilute” means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.
- “Drug” means a controlled substance as defined in Minnesota Statutes Section 152.01, subdivision 4 (2023), but does not include cannabis.
- “Drug and alcohol testing,” “drug or alcohol testing,” and “drug or alcohol test” mean analysis of a body component sample according to the standards established under one of the programs

listed in Minnesota Statutes Section 181.953, subdivision 1 (2023), for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.

- “Non-negative” means a urine specimen that is reported as adulterated, substituted, or invalid.
- “Reasonable suspicion” means a basis for forming a belief based on specific facts and inferences drawn from those facts. Reasonable suspicion may arise from, among other things, direct observation by a supervisor or manager, co-worker reports or complaints, performance decline, attendance or behavioral changes, results of searches or other detection methods, an employee’s appearance, or an odor of drugs or alcohol.
- “Safety-sensitive position” means a position, including any supervisory or management position, in which impairment caused by drug or alcohol use would threaten the health and safety of any person as defined in Minnesota Statutes Section 181.950, subdivision 13.
- “Substituted” means a specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Source

Drug and Alcohol Testing in the Workplace Act, Minn. Stat. §§ 181.950 (2023), *et seq.*

General

WHO IS SUBJECT TO THIS POLICY

County employees and job applicants who are not subject to Policy 3286 Drug and Alcohol Testing (DOT).

TESTING CIRCUMSTANCES

The County will conduct drug and alcohol testing and cannabis testing of employees and job applicants subject to this policy in the following circumstances:

Pre-Employment

Every offer of employment for positions permissible under Minnesota law and identified as safety-sensitive by the County (including any offer to re-hire after termination of employment for any reason and any current employee seeking a transfer) is subject to and conditioned on: (1) the job applicant’s consent to drug and alcohol testing and cannabis testing; and (2) negative test results from such tests:

Refusal to submit to drug or alcohol testing or cannabis testing or a verified positive result from drug and alcohol testing or cannabis testing will result in withdrawal of an offer of employment. The County will not withdraw an offer of employment on the basis of a positive result from an initial screening test that has not been verified by a confirmatory test.

Reasonable Suspicion

The County may require an employee to submit to reasonable suspicion drug, alcohol, or cannabis testing under the circumstances described in Minn. Stat. § 181.951, subd. 5, including upon reasonable suspicion that the employee is under the influence of drugs, alcohol, or cannabis or has violated Policy 3282 Drug, Alcohol, and Cannabis-Free Workplace. Observations leading to a determination of reasonable suspicion will generally be reasonably contemporaneous with the request for a drug or alcohol test.

Treatment Program Testing

All employees referred by the County for treatment or evaluation, or who are participating in a treatment program under an employee benefit plan, will be required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for the two-year period following completion of the treatment program when such testing is job-related and consistent with business necessity. Such testing may include a return-to-duty drug and/or alcohol test.

DISCIPLINE

Employees who violate this policy are subject to discipline, up to and including termination of employment. Positive results from initial screening tests will be verified by a confirmatory test before discipline is imposed.

The County normally will not discharge an employee if the employee tests positive on a confirmatory test and the confirmed positive is the employee's first such result under this policy (i.e., the employee is a first-time offender). Instead, the County will normally give the employee an opportunity to participate in counseling or rehabilitation at the employee's expense or pursuant to any coverage under an employee benefit plan. The County may discharge an employee who refuses to participate in counseling or rehabilitation, fails to successfully complete the program as evidenced by withdrawal from the program before its completion, or has a positive result on a confirmatory test after completing the counseling or rehabilitation program. Further, the County may discharge a first-time offender if the employee's conduct while under the influence of drugs or alcohol violates the law and/or the County's policies.

PROCEDURAL REQUIREMENTS

Test Refusal

An employee or job applicant has the right to refuse testing. However, a refusal to test will be treated as a failure to comply with the County's policies and may result in withdrawal of a job offer or disciplinary action, up to and including termination of employment.

Notice of Negative Test Result

Within three (3) working days after receipt of a negative test result from the testing laboratory, the County will inform a job applicant or employee, in writing, of (1) the negative test result on the initial screening test or confirmatory test; and (2) the right to request and receive a copy of the test result report.

Notice of Positive Test Result

Within three (3) working days after receipt of a positive confirmatory test result from the testing laboratory, the County will inform a job applicant or employee, in writing, of (1) the positive result on the confirmatory test; (2) the right to request and receive a copy of the test result report; (3) the right to explain the result; and (4) the right to request a confirmatory retest of the original sample, at his or her own expense.

Non-Negative Result

An employee or job applicant whose test result is non-negative will be required to immediately provide a new specimen for testing, under direct observation of testing site staff. Failure to immediately provide a new specimen for testing will be deemed a refusal to test.

Dilute Result

A positive test that is dilute will be considered a positive result and subject to the confirmatory testing and retesting provisions of this policy. An employee or job applicant whose negative test result is dilute will be required to immediately provide a new specimen for testing, under direct observation of testing site staff. Failure to immediately provide a new specimen for testing will be deemed a refusal to test. If the new specimen yields a negative test result that is dilute, the County may withdraw a job offer or impose disciplinary action, up to and including termination of employment.

Explaining Result

Within three (3) working days after notice of a positive result on a confirmatory test, the employee or job applicant may submit information to the County to explain the result. Additionally, after a positive result on a confirmatory test, the County can request that the employee or job applicant indicate any over-the-counter or prescription medication that they are currently taking, or have recently taken, as well as any other information relevant to the reliability of, or explanation for, the result.

Confirmatory Retesting

Within five (5) working days after receipt of notice of a positive result on a confirmatory test, an employee or job applicant may request a confirmatory retest of the original sample, at his or her own expense. All such requests must be made in writing and directed to the Employee Relations Director.

Within three (3) working days of receiving a confirmatory retest request, the County will notify the original testing laboratory that the employee or job applicant has requested that the laboratory conduct a confirmatory retest, or arrange for the transfer of the sample to a laboratory selected by the employee or job applicant, provided that the laboratory selected must be licensed in accordance with Minn. Stat. § 181.953. If the confirmatory retest does not conform to the original positive test, the County will not take any adverse personnel action based on the original positive test.

Costs

The County will pay the costs of all drug and alcohol tests it requires of employees or job applicants, provided that employees and job applicants are responsible for all costs associated with confirmatory retests.

Confidentiality

A laboratory may only disclose to the County test result data regarding the presence or absence of drugs, alcohol, or their metabolites in a sample tested. Test result reports, and other information acquired in the drug and alcohol testing process will be reported to the Employee Relations Department and are private data on the employee or job applicant tested that may not be disclosed by the County or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested. Results will only be disclosed within the County on a need-to-know basis and as required or authorized by law. Results will be retained in a secure location with controlled access.

However, evidence of a positive test result on a confirmatory test may be (1) used, if relevant, in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under state or local law, or a judicial proceeding; (2) disclosed to any federal agency or another unit of the United States government as required under federal law, regulation, or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment.

Appeal Procedures

No other appeal procedures are available under this policy.

Reservation of Rights

The County reserves the right to interpret and administer this policy and, at any time and in its sole discretion, to amend, supplement, modify, revoke, rescind, or change this policy in whole or in part, with or without notice or consideration. This policy is not an express or implied contract of employment, nor is it to be interpreted as such. Additionally, this policy does not in any way affect or change the status of any at-will employee. At-will employees continue to be free to terminate or resign their employment at any time, and the County continues to be free to terminate at-will employees

without or without cause or notice, for any lawful reason, or for no reason at all. Nothing in this policy is a promise or guarantee or should be interpreted as a promise or guarantee, that the County will follow in any circumstances any particular course of action, whether disciplinary, rehabilitative, or otherwise.

Collective Bargaining Agreements

To the extent any provision of this policy conflicts with any provision of a collective bargaining agreement, the provision of the applicable collective bargaining agreement will control for employees who are covered under the collective bargaining agreement, provided that all other provisions of this policy shall remain in full force and effect.

Procedures

Procedures will be maintained by the Employee Relations Department.

History

Version	Revision Date
1.0	12/19/2019
2.0	8/01/2023

Related Policies

- Policy 3282 Drug, Alcohol, and Cannabis-Free Workplace
- Policy 3286 Drug and Alcohol Testing (DOT)

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Approval

/s/ Matt Smith; August 1, 2023