

POLICY IMPLEMENT
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION

P.I. Number: A-28

DeIDOT Expanded Drug & Alcohol Policy

References:

www.fhwa.dot.gov

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Primary Responsibility:

Human Resources Director

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I. Purpose

The purpose of this policy is to establish procedures for the Delaware Department of Transportation (DelDOT) drug and alcohol-testing program. This policy will apply to employees other than those who are required to possess and maintain a Commercial Driver's License (CDL). There is a federally required program in place to cover all employees required to have a CDL. DelDOT is dedicated to providing a safe working environment for its employees, and by extension, to the public at-large.

II. Applicability

A. This policy is applicable to all DelDOT employees in safety sensitive positions (except those who are required to possess and maintain a CDL and other Union employees) and applicants.

If there is a conflict between this policy and the Merit Rules, the Merit Rules shall prevail unless superseded by a Collective Bargaining Agreement (CBA.)

III. Definitions

Applicant - An individual who is offered employment.

- A. **BAT**- Breath Alcohol Technician, trained individual in performing an Evidential Breath Testing Device (EBT.)
- B. **Chain of custody** - The method of tracing each urine specimen to maintain control from initial collection to final disposition. A chain of custody log will be maintained to ensure the integrity of the specimen.
- C. **Collection sites** - The designated locations where applicants or employees present themselves to provide urine specimens.
- D. **Confirmation test** - An analytical procedure to identify the presence of a specific drug or metabolite, which is independent of the initial test, performed on the same specimen and which uses a different chemical principle from that of the initial test to ensure reliability and accuracy.
- E. **Confirmed positive result** - The presence of a controlled substance in the pure form or its metabolites at or above the cutoff level as identified in two consecutive tests on the same sample which employ different test methods and which is determined not to have been caused by an alternative substance.
- F. **Contractor** - Entity outside the DelDOT which is paid on a contractual basis and is responsible for the following:
 - o Maintenance of a list of employees in the random testing pool;
 - o Selection of random samples of employees to be tested;
 - o Collection of urine specimens for random test, follow-up, return to duty, pre-employment, post-accident testing and testing based on reasonable suspicion;
 - o Training to departmental supervisors regarding reasonable suspicion testing and informational meeting for employees;
 - o Provision of collection sites or transmission of samples to laboratory;
 - o Interpretation of results and notification to DelDOT of results deemed positive via Medical Review Officer (MRO.)
- G. **EAP** - Employee Assistance Program, provides an employee who has used prohibited drugs or misused alcohol a Substance Abuse Professional.
- H. **EBT**- Evidential Breath Testing Device, measures an individual's alcohol concentration level.

- I. **Employee** - An individual, or supervisor of an individual, currently employed in a safety-sensitive position.
- J. **Employee Testing Number** - Social Security number used in identifying each employee in the random testing pool.
- K. **Follow-up testing** - Established by the Substance Abuse Professional (SAP,) once an individual is allowed to return to work following a confirmed positive or refusal to test, the employee shall be subject to unannounced follow-up testing based upon the recommendation of the SAP. Testing will be at least 6 times in the first 12 months and not more than 60 months of scheduled testing.
- L. **Initial test** - A screen to eliminate negative urine specimens from further consideration.
- M. **Negative Result** - The total absence or presence below the cutoff level of a controlled substance in the pure forms or its metabolites in sufficient quantities to be identified by either an initial test or confirmatory test. Negative results will not be reported out to the employee unless the employee makes a request to Human Resources.
- N. **Post Accident Testing** - Testing required as a result of any incident involving death or serious physical injury to a DeIDOT employee or civilian, or loss or significant damage to DeIDOT or privately owned property.
- O. **Random Testing** - Test based upon an appropriate random sampling technique, with significant samples of DeIDOT employees in safety sensitive positions being tested on a periodic basis with all such employees having an equal chance of being tested.
- P. **Reasonable Suspicion** - When the DeIDOT, acting through its supervisory personnel, has reasonable suspicion that the appearance or conduct of a DeIDOT employee is indicative of his/her having been impaired by an illegal drug or alcohol.
- Q. **Return To Duty testing** - Before any employee is allowed to return to duty, employee must have a verified negative screen.
- R. **Safety Sensitive Position** - Any of the following positions in DeIDOT:
 - o Anyone assigned a State owned vehicle.
 - o Anyone regularly using a State owned vehicle, regularly being defined as an average of 2 to 3 times a week.
 - o Anyone assigned to group use vehicles of 3 users or less.
 - o Anyone regularly required using power tools in their job description.
 - o Anyone whose job description regularly requires them to come in contact with hazardous materials covered by the Right to Know Act.
 - o Anyone who has significant degrees of responsibility for the safety of others or whose impaired performance or undue influence could potentially result in death or injuries to employees or to others.
 - o Anyone reasonably deemed to be in a safety sensitive position.
 - o Anyone volunteering to be included in the DeIDOT's Drug and Alcohol Policy.
 - o Certain employees exempt from the Merit System as designated by the Secretary.
- S. **SAP** - Substance Abuse Professional, evaluates an employee who has tested positive and determines what assistance the employee needs.

IV. Policy

- A. DeIDOT has a pre-eminent interest in assuring that its employees are physically and mentally able to perform their duties. As employees in safety sensitive positions, any diminution of their abilities jeopardizes their safety, the safety of their co-workers, and the safety of the public.
- B. DeIDOT personnel hold positions of public trust. The use of illegal drugs is a breach of that trust and completely contrary to their status as DeIDOT employees.

- C. The DelDOT demands that its employees maintain the integrity of their positions by not engaging in the use of illegal drugs. Such misconduct conflicts with their duties and responsibilities and discredits the DelDOT in the eyes of the public.
- D. The use of illegal drugs shall be cause for removal from the workplace without pay. Employees on initial probation shall be dismissed without recourse to the grievance procedure.

V. Objective

The objectives of the testing program are to detect and deter the use of illegal drugs by employees of DelDOT and to detect and deter related illegal or prohibited activities.

VI. Procedures

A. **Random Selection Process**

1. In order to assure that employees are selected on a random basis and that every employee has the same chance of being selected, the selection process shall be performed by computer program based on social security numbers and not names.
 2. Each year, the percentage rate of random drug screens will be based on the number of employees in the pool. Formula: 1 to 100 = 10%, 101 to 200 = 20%, 201 to 300 = 30%, 301 to 400 = 40%. Etc. Alcohol percentage rate will be 5% of the pool. Drug testing percentage will not exceed the percentage rate established by the U.S. Department of Transportation (DOT) and Federal Motor Carriers Safety Administration (FMCSA)
 3. The employees notified to report for testing shall report to the site specified. No requests to be excused or rescheduled shall be granted. Any failure to report, refusal to be tested or to cooperate with the testing procedure shall be processed as a positive screen and cause for removal from the workplace without pay.
 4. Employees on initial probation, who refuse to be tested or cooperate, shall be dismissed.
 5. Since the testing of employees is done on a random basis, some employees may not be tested during the course of a year. Other employees may be selected more than once. Employees shall cooperate each time their name is selected.
- B. **Applicant Testing** - All selected for positions will be tested as part of the hiring process.
- C. **Post Accident Testing** - In the event of an accident, the ranking supervisor will contact Human Resources. If the decision is made to test, the supervisor will contact the Contractor to arrange the testing.
- D. **Reasonable Suspicion** - In the event there is evidence of Reasonable Suspicion, the ranking supervisor will contact Human Resources. If the decision is made to test, the supervisor will contact the contractor to arrange the testing.
- E. **Follow-up Testing** - Follow-up's are prescribed by the SAP. These test are unannounced and occur at least 6 times in the first 12 months and can last as much as 60 months following the individual's return to duty after a positive or refusal screen, as determined by the SAP.
- F. **Return to Duty testing** - Conducted before an individual who has refused to test or who has tested positive, can return to duty.

VII. Testing Procedures

- A. Tests will be conducted at a collection site where every effort will be taken to assure the integrity of the testing procedure and the privacy and dignity of employees being tested. Every effort shall be made to preclude any other person from observing the testing procedure.
- B. When an employee reports for testing, the contractor shall check the employee's photo identification card and/or driver's license to ensure that the correct person has reported for testing.
- C. If the employee has difficulty in providing an adequate specimen to permit testing, the employee shall be permitted to consume water to assist in providing the specimen.
- D. If the contractor administering the test determines that the employee is attempting to substitute or adulterate his/her specimen, the contractor shall document the facts and direct the employee to provide another specimen. Both specimens shall be forwarded to the laboratory.
- E. Immediately after collecting the specimen, the contractor shall tightly cap and properly seal the bottle with evidence tape and label it in the presence of the employee tested who shall initial both the label and any accompanying forms. The storage, transportation, and delivery of specimens to the laboratory for testing shall be under the strict supervision of the contractor who will maintain an unbroken chain of custody throughout the procedure.
- F. The contractor must maintain a chain of custody log. The chain of custody log shall indicate the social security number of the employee or applicant being tested and the name of the contractor representative who collected the specimen. To ensure the integrity of the specimen and the identity of the individual, the log must be maintained for a period of at least five years or, in the event of challenges, until all legal remedies have been exhausted. The employee or applicant providing the sample and the contractor representative must initial the label on the specimen bottle.

VIII. Laboratory Procedures

- A. The laboratory shall test for marijuana, cocaine, opiates, amphetamines and phencyclidine. The cutoff levels for screening are subject to change by the Department of Health and Human Services (DHSS) as advances in technology or other considerations warrant identification of these substances at other concentrations. Levels used by DelDOT will be the ones established by the DHSS and used by the U.S. DOT Federal Highway Administration (FHWA.)
- B. All specimens identified as positive shall be confirmed. The authorized confirmation method is the Gas Chromatography/Mass Spectrometry (GC/MS), which shall be conducted on the same specimen.

IX. Preservation

Specimens determined to contain drugs will be preserved at the laboratory for a period of twelve months. An employee who has tested positive may, when contacted by the MRO arrange to have his/her specimen retested. The employee requesting the additional test must make arrangements with the MRO to have his/her specimen delivered to the named laboratory. All costs including laboratory fees, transportation, and salary of the messenger(s), shall be borne in total by the employee requesting the additional test.

X. Positive Test Results

A. Alcohol Misuse

An employee who engages in prohibited alcohol conduct by testing between 0.02 and 0.039 in an evidentiary breath test will be removed from work without pay for 24 hours. An employee who engages in prohibited alcohol conduct by testing 0.04 or greater, or who fails to meet testing requirements, must be immediately removed from work. Any such employee will be informed of the results. The individual will be removed from the workplace without pay until he/she contacts the EAP for an appointment.

Employees who have engaged in alcohol misuse by testing 0.04 or greater, or who fail to meet testing requirements, cannot return to work until they have been evaluated by a SAP and have complied with all treatment plan requirements, and pass Return To Duty testing.

Before returning to work, the employee must meet with the appropriate Section Head/Manager who will verify that:

- The employer has received a written recommendation from the SAP to return to work,
- The employee has passed a Return to Duty (EBT), scheduled by DeIDOT.

Both requirements must be met before an employee may return to work.

B. Drug Violations

As with any alcohol misuse violation, if the DeIDOT's MRO reports a positive drug test, or the employee fails to meet testing requirements, the employee must be immediately removed from work without pay. It is understood that the first testing results were positive and that either the employee did not request a test of the "split sample" specimen, or that the split sample specimen was also positive. Employees with positive drug tests will be informed by the MRO. The MRO will inform Human Resources of the positive test.

A positive drug test is a violation of this policy. Any covered employee who does not pass, or who refuses to submit to drug testing, must be immediately removed from work. Any such employee will be informed of the results. The individual will be removed from the workplace without pay until he/she contacts the EAP for an appointment.

If there is no evidence of on-the-job drug use, the employee will be offered an opportunity for rehabilitation (in accordance with this policy) by being referred to the EAP for assistance.

If there is conclusive evidence of prohibited drug ingestion while on duty, confirmed by a positive drug test, the employee will be dismissed.

Before returning to work, the employee must meet with the appropriate Section Head/Manager who will verify that:

- The employer has received a written recommendation from the SAP to return to work,
- The employee has passed a Return to Duty test scheduled by DeIDOT.

Both requirements must be met before an employee can return to work.

Casual/Seasonal employees and employees on initial probation are NOT eligible for a DeIDOT rehabilitation program and their employment will be terminated if they fail either a drug or alcohol test.

If the employee refuses rehabilitation or does not successfully complete a DeIDOT approved rehabilitation program, he/she will be dismissed from employment. Relapse or tendency for relapse will lead to employee dismissal. Relapse or tendency for relapse is defined as a positive test prior to the employee completing follow-up testing.

XI. Administrative Procedures

- A. Failure to report for testing as ordered will be grounds for removal from the workplace without pay, and disciplinary action up to and including dismissal.
- B. If the laboratory results are negative, the sample shall be destroyed.
- C. If the laboratory results are positive, a copy shall be forwarded to the MRO who will contact Human Resources. Human Resources will immediately notify the appropriate supervisor. The supervisor will notify the employee and immediately remove him/her from the workplace without pay.
- D. Attached "Form A" shall be used as certification that the employee has received a copy of this policy. The signed form will be maintained in the employee's personnel file.

XII. Participation in an Approved Treatment Center (Casual/Seasonal and Initial Probationary employees are not eligible.)

- A. If an employee receives a confirmed positive drug or alcohol test result, the employee may elect to participate in an accredited drug or alcohol abuse assistance or rehabilitation program.
- B. If an employee elects not to participate in an accredited drug or alcohol abuse assistance or rehabilitation program, the employee will be dismissed.
- C. Upon completion of the approved drug or alcohol abuse assistance or rehabilitation program, the employee must provide a release of clinical verification to Human Resources showing that the employee has successfully completed the accredited drug or alcohol assistance or rehabilitation program.
- D. For the purposes of the drug-testing program, "successful completion of a drug assistance or rehabilitation program" means that the employee has achieved and maintained a drug-free state as determined by a negative result from an authorized drug test.
- E. The employee will be required to submit to a return to duty test and to subsequent drug or alcohol tests during the authorized drug or alcohol abuse assistance or rehabilitation program. For a period of five years after the program ends, if the employee tests positive, he or she will be dismissed without the option of participation in treatment.

XIII. NOTICE OF TESTING

This policy will act as an official notice for periodic drug and alcohol testing. No other announcement will be made. Each employee subject to random testing will receive a copy of this policy and will return the attached receipt to the Division of Human Resources.

XIV. Effective Date

This policy shall become effective thirty days after signature by the Secretary, or, if applicable, upon compliance with the regulatory process required by the Administrative Procedures Act (29 Del.C. Ch. 101).

**DELDOT'S SNOW VOLUNTEER
ACKNOWLEDGMENT AND CONSENT
OF DRUG AND ALCOHOL TESTING**

As a CDL and/or Non-CDL Snow Volunteer, I acknowledge that I understand DelDOT's Drug and Alcohol Testing Program, and do hereby give my consent to abide by the requirements of the DelDOT Expanded Drug and Alcohol Testing Policy.

I understand that I will be entered into DelDOT's random drug and alcohol pool, and that I am required to be subject to testing for alcohol and prohibited drugs.

I understand that if the test results indicate the presence of drugs or alcohol, I am subject to immediate termination.

Name *(printed)*

Signature/Date

**This form is to be retained by employer in a secured location separate from
employee's personnel file**