

# Davis County Human Resources Policies

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## Drug & Alcohol-Free Workplace #340

### 1.0 Purpose & Scope

The purpose of this policy is to provide procedures and processes for maintaining a workplace free from drug and alcohol abuse. This policy applies to full-time employees, part-time employees, volunteers, contractors, interns, and applicants during all working hours, whenever an individual is conducting business or representing the County, and while an individual is on call, on County property, and at County-sponsored events.

### 1.1 Policy

Employees will maintain a work environment free from the effects of alcohol, drugs, or other intoxicating substances.

**1. Laws and Regulations.** This policy conforms to the requirements set forth in the Local Governmental Entity Drug-Free Workplace Policies Act, Utah Code Annotated, title 34, Chapter 41, and all other relevant State and Federal statutes including the Americans with Disabilities Act. The provisions of any applicable law, statute, regulation, or ordinance (e.g. The Omnibus Transportation and Employee Testing Act of 1991 and the Federal Highway Administration and Department of Transportation rules of February 1994) shall prevail in the event of any conflict with the provisions of this policy. When federal requirements are stricter than the requirements of this policy, positions requiring a Commercial Driver's License (CDL) are subject to federal requirements. Drug and alcohol testing will be carried out in compliance with any applicable state and federal laws and regulations.

The County follows Utah Code 26B-4-207.

- a. The use of Medical Cannabis for a medical cannabis cardholder will be treated the same way the County treats employee use of any prescribed controlled substance, and an employee's status as a medical cannabis cardholder or an employee's medical cannabis recommendation from a qualified medical provider or limited provider will be treated in the same way the County treats an employee's prescriptions for any prescribed controlled substance.
- b. A County employee who has a valid medical cannabis card is not subject to retaliatory action for failing a drug test due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or otherwise adversely affected in the employee's job performance due to the use of medical cannabis.
- c. Subsections 1.a. and 1.b. do not apply where the application would jeopardize federal funding, a federal security clearance, or any other federal background determination required for the employee's position; if the employee's position is dependent on a license or peace officer certification or public safety dispatcher certification that is subject to federal regulations, including 18 U.S.C. Sec. 922(g)(3); or if an employee uses medical cannabis during the twelve (12) hours immediately preceding the employee's shift or during the employee's shift.

**2. Prohibited activity.** Employees and volunteers are prohibited from the following when reporting for work, while on the job, on County or customer premises or surrounding areas, or in any vehicle used for County business:

- The unlawful use, possession, transportation, manufacture, sale, dispensation, or other distribution of an illegal or controlled substance or drug paraphernalia.

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- The unauthorized use, possession, transportation, manufacture, sale, dispensation, or other distribution of alcohol.
- Being under the influence of alcohol or being impaired by an illegal or controlled substance.

**3. Criminal conviction.** Any employee convicted under any criminal drug statute for a violation occurring while on the job, on County premises, or in any vehicle used for County business must notify the County no later than five (5) days after such a conviction. If the employee's position is dependent on peace officer certification, public safety dispatcher certification, or a Commercial Driver's License (CDL) the employee must notify the county regardless of when or where the violation occurred. A conviction includes any finding of guilt or plea of no contest and/or imposition of a fine, jail sentence, or other penalties. Employees who have committed drug-related crimes regardless of whether they occurred during working hours or on an employee's own time may subject the employee to disciplinary action up to and including termination.

## 1.2 Definitions

**Controlled Substances:** Substances whose sale is controlled by federal or state law including all prescription medications, medical cannabis, and alcohol.

**Drug and/or Alcohol Test:** Any evaluation used to detect the presence of illegal drugs and/or alcohol, or the metabolite of a drug in an individual's system.

**Employee:** See Human Resources Policy #100 Definitions.

**Employee Subject to DOT (Department of Transportation) Regulations:** Employees who are required to have a CDL in order to perform the essential functions of their job.

**Illegal Drug:** Any (a) illegal substance, including but not limited to, narcotics, hallucinogens, cocaine, marijuana, and designer drugs; and (b) controlled substance, including, but not limited to, amphetamines and barbiturates, that is used either without being prescribed by a licensed physician or in excess of the amount prescribed by a licensed physician.

**Safety Sensitive Positions:** Those positions involving tasks that, if performed improperly, could harm the individual performing the tasks or others; this includes all positions: a) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 b) directly related to law enforcement c) involving direct access or having control over direct access to controlled substances d) directly impacting the safety or welfare of the general public e) requiring an employee to carry or have access to firearms.

**Volunteer:** any person who donates services as authorized by the County without pay or other compensation except expenses actually and reasonably incurred.

## 1.3 Procedures

**1. Testing.** To ensure accuracy and fairness, all testing will be conducted according to Substance Abuse and Mental Health Services Agency (SAMHSA) guidelines, where applicable, and will include a screening test; a confirmation test; the opportunity for a split sample; review by a Medical Review Officer, including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody. All drug-testing information will be maintained in separate confidential records.

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## a. Pre-employment Testing

i. Prospective employees and volunteers. Prospective employees and volunteers for positions requiring pre-employment drug testing as designated by the Administrative Officer with approval from the Human Resources Director will be required to take and pass a drug and/or alcohol test before they are hired. Pre-employment drug testing must be completed within 48 hours of the job offer unless more time is needed and approved by Human Resources. Pre-employment drug testing for Davis County Sheriff's Office applicants must be completed within 24 hours of the job offer unless more time is needed and approved by the Sheriff or designee.

ii. Testing In-House Applicants. Employees applying for a position in another County department shall submit to a drug test if they are selected for a position requiring a drug test and were not drug tested for their current position. Employees transferred due to reduction-in-force or other administrative reasons unrelated to poor performance shall not be tested.

## b. Employment Testing

i. **Random Testing.** Certain positions deemed safety sensitive as designated by the Administrative Officer with approval from the Human Resources Director are subject to random drug/alcohol testing. Employees in these positions may be randomly selected to provide a specimen for a drug and/or alcohol test. Random testing will take place on a quarterly basis unless a different time frame is established.

ii. **Reasonable Suspicion Testing.** If there is suspicion that an employee or volunteer is under the influence of drugs and/or alcohol while on Davis County property or time, the County may require the employee to take a drug and/or alcohol test.

a. Reasonable suspicion will be based on observable contemporaneous behaviors such as, but not limited to the following: Slurred speech; Unsteady walking/uncoordinated movements; Shakes or tremors; Unexplained sweating or shivering; Fidgeting/inability to sit still; Sleeping at work or difficulty staying awake; Unusual body or breath odor; Actual observation of drug or alcohol use; and/or other behaviors of concern.

b. The supervisor and/or Risk Management will determine "reasonable suspicion" and coordinate with Human Resources to ensure the observable behaviors are not related to a documented medical condition.

c. Testing will be coordinated by Risk Management. Tests will be administered within 2 hours of the observed behaviors where practicable and no more than 8 hours for suspected alcohol use and 32 hours for suspected drug use. After testing is complete the employee will be immediately removed from duty and assisted in getting home.

iii. **Post-accident Testing.** Employees or Volunteers who are directly involved in, or whose actions contributed to, an accident on the job must submit to a drug and/or alcohol test under the following conditions: There is reasonable suspicion that drugs or alcohol use contributed to the accident; the accident is an Occupational Health and Safety Administration (OSHA) recordable incident, action, or omission including near-miss accidents and accidents involving injury requiring first aid or off-site medical attention;

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or the accident resulted in vehicle/property damage caused by human error. When alcohol use is suspected the test must be administered within 8 hours after the accident; when drug use is suspected the test must be administered within 32 hours after the accident. Risk Management will coordinate all post-accident testing. After testing is complete the employee will be immediately removed from duty and assisted in getting home.

- iv. **CDL Requirements.**
  - a. The United States Department of Transportation (DOT) requires that all employees maintaining a CDL and operating commercial motor vehicles be subjected to the drug screen policies outlined in this policy. CDL employees, per the DOT, are required to submit to a minimum five-panel drug screen for the presence of Amphetamines; Opiates; Phencyclidine (PCP); Cocaine; and THC (Marijuana/Cannabinoids); The DOT Alcohol Testing Form (ATF) will be used to document the results of an alcohol screening test.
  - b. A positive test result requires the employee to be immediately removed from operating any commercial motor vehicles on public roadways. In addition, employees whose test produces a positive result must complete return-to-duty and follow-up testing after completion of an approved rehabilitation program as prescribed by a substance abuse professional. Follow-up testing must include a minimum of six unannounced, directly observed drug screens within 12 months of the initial return-to-duty screen.
- v. **Removal from duty.** Any employee or volunteer who tests positive will be immediately removed from duty.
- vi. **Refusal.** Refusal to take a drug and/or alcohol test will be considered a positive test result, which subjects the employee to disciplinary action(s) up to and including termination. Job applicants who refuse to submit to drug and/or alcohol testing will not be considered for employment. Volunteers who refuse to submit to drug and/or alcohol testing will be subject to the termination of their volunteer assignment. Each of the following actions constitutes a refusal to submit to testing: Failure to provide adequate urine, blood, breath, or saliva specimens for a drug and/or alcohol test without a valid medical explanation; Failure to be escorted to a testing facility; Tampering with; adulterating or diluting a specimen; and/or Refusing to sign a Chain of Custody form at the testing facility.

## 2. Collection of Specimens and Testing Results

- a. **Collection.** Davis County subscribes to the collection and testing procedures outlined by the Substance Abuse and Mental Health Services Administration. This protocol protects the privacy and confidentiality of the employee. Under certain circumstances, protocol requires that specimen donors provide a fresh specimen in the presence of a witness; however, this only occurs if there is suspicion of any of the following: The specimen is not from the donor; The specimen was altered or tampered with; The collection is part of a post-treatment monitoring program; The donor adulterated the previous specimen.
- b. **Custody & Control.** Specimens will be tracked using a Custody and Control Form from the point of submission through destruction. Employees submitting specimens will be required to sign the Custody and Control Form. If an employee does not sign this form, a retest will be requested. An

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employee who refuses to sign after it is requested of them will be considered as having refused to test and will be subject to disciplinary action(s).

- c. **Laboratory Testing.** All drug and/or alcohol testing will be conducted in a laboratory certified by the Department of Health and Human Services (HHS). Specimens will be screened for
- Marijuana (THC) 50 ng/mL
  - Cocaine (BE) 300 ng/mL
  - Opiates 2000 ng/mL
  - Amphetamines 1000 ng/mL
  - Phencyclidine (PCP) 25 ng/mL
  - Methamphetamine (METH) 100 ng/mL

Test results will be confirmed by gas chromatography/mass spectrometry (GC/MS). Davis County reserves the right to test for other substances as well.

- d. **Results.** A test is considered positive if the results indicate a detectable level of alcohol, illegal drugs, controlled substances, or other substances.
- i. No specimen will be considered positive until it has been confirmed at the level established by HHS. If no established levels have been set by HHS for a tested substance, Davis County will hold the testing provider responsible for establishing an acceptable level.
  - ii. Test results with a blood alcohol content of .04 or greater are considered positive.
  - iii. Positive test results will be reported to the Medical Review Officer (MRO), who will then contact the employee to discuss the results. Should the MRO be unable to contact the employee, they will contact Davis County for assistance. If the MRO cannot make contact with the employee within five days of testing or the results reveal a major safety concern, the MRO may disclose positive test results to Davis County. At that point, Davis County reserves the right to take the employee off active duty until the MRO is able to contact the employee. When the MRO does contact the employee, and the employee can provide a viable reason for why the test came back positive, the positive test result will be reported to Davis County as a negative result.
- e. **Confidentiality.** Results of all drug and/or alcohol testing will be kept separate from employee personnel files and treated as confidential information. No results, whether positive or negative, will be shared with anyone outside of the employee's direct supervisory chain of command, except when necessary for treatment, physician confirmation purposes, or legal obligations.
- f. **Cost & Time.** The County will pay the cost of any drug and/or alcohol testing that it requires or requests employees submit to, including re-testing of confirmed positive results. Any additional tests that the employee requests will be paid for by the employee. Time spent participating in an employment-testing process as outlined in section 1.3.1.b. is considered work time and will be compensated at the employee's regular rate of pay.

### 3. Resources and Treatment.

- a. Employees who voluntarily come forward before violating this policy will be given the opportunity to seek treatment.
- b. In the event of a positive drug and/or alcohol test result, Davis County may take corrective action up to and including termination of employment. At the County's discretion, the employee may be referred to available treatment resources, either at the employee's expense or, if applicable,

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as covered by the County's health plan or Employee Assistance Program. Treatment referrals may be in conjunction with corrective or disciplinary action and in some circumstances, with Human Resources approval, in lieu of corrective or disciplinary action. If treatment requires time away from work, the time will be unpaid, unless paid vacation, sick leave, or other earned time away is used. Upon return to work, the employee may be required to submit to drug and/or alcohol testing for a specified time period, typically six months, at the discretion of Davis County.

## 4. Responsibilities and Awareness.

- a. Use of Prescribed Controlled Substances and Medical Cannabis. Nothing in this policy prohibits the appropriate use of prescribed controlled substances and medical cannabis as legally prescribed by a licensed healthcare provider. If an employee or volunteer's use creates side effects during work time that could infringe on the safety of the employee or others, the employee or volunteer must notify Human Resources or Risk Management immediately. Failure to contact Human Resources or Risk Management may result in disciplinary action(s), up to and including termination.
- b. Drug & Alcohol-Free Awareness Program. Human Resources and Risk Management will inform County employees about the requirements of this Policy and Procedure, sharing, on a periodic basis, educational materials with employees, posting notices, and providing other educational information regarding a drug & alcohol-free workplace.
- c. Supervisors will receive training that addresses job performance, safety, identifying substance, alcohol, and drug abuse problems, and the application of this policy as needed. The Human Resources Director or designee shall coordinate disciplinary actions and rehabilitation efforts.

## 5. Disciplinary Actions

Employees who test positive for drugs and/or alcohol, or who refuse to submit to testing, may be subject to disciplinary action(s), up to and including termination. Individuals who test positive for drugs and/or alcohol will not be allowed to return to work until they complete the following:

- Successfully complete an assessment and/or treatment for drug and/or alcohol abuse or training assigned by Risk Management and submit to random testing for up to one year.
- Receive certification from a qualified medical professional that they are free from drug and/or alcohol use or take a drug and/or alcohol test and receive negative test results.

## 6. Exceptions

- a. The consumption, possession, or purchase of alcohol while on duty will not be considered a violation of this policy where use or possession is permitted by law and is considered a normal and approved part of job duties.
- b. Sworn law enforcement personnel who are working in an undercover capacity and are on duty, working in the legitimate scope of their assignment, are exempt from certain restrictions regarding the handling of alcohol, illegal drugs, or intoxicants if they follow established undercover guidelines set forth in the Davis County Sheriff's Office Policy and Procedure Manual.

## 1.4. Policy History:

1. Effective Date: 9/12/2023
2. Previous Catalog: Replaces Drug-Free Workplace #340 & Drug-Free Workplace Testing #350
3. Previous Revisions: #340 05/01/1995; #350 08/04/2009