

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

Purpose

It is the purpose of this policy to inform Utah County employees of the expectations, responsibilities, and consequences associated with abuse or improper use of drugs and/or alcohol in the workplace and of the testing procedures. Utah County believes that a drug-free workplace promotes a healthy, productive, and safe environment for its employees and the public.

I. Policy

- A. It is the position of Utah County that the abuse of drugs and/or alcohol creates a variety of workplace concerns including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, decreased employee morale, decreased productivity, and a decline in the quality of services rendered.
- B. All employees are prohibited from using, possessing, buying, or selling drugs or alcohol in the workplace as specified by this policy, and are prohibited from reporting to work or being subject to work (specifically while on-call or on break) with prohibited drugs active in their systems or while under the influence of alcohol. Utah County also discourages the detrimental or illegal use of alcohol and/or drugs by its employees when off duty.
- C. It shall be a condition of employment and continued employment that all employees, volunteers, prospective employees, and prospective volunteers comply with the provisions of this policy and all other relevant State and Federal Statutes. While the County will be supportive of those who seek help voluntarily, the County will be equally firm in identifying and disciplining those who violate this policy and/or do not seek rehabilitative assistance.
- D. This policy is intended to conform 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 Utah Health Code § 26-61-101, et seq., and the Americans with Disabilities Act. The provisions of any applicable law, statute, regulation, or ordinance (i.e. 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.

II. Procedures

- A. Definitions
 1. "Alcohol": The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

2. "Alcohol Testing": The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.
3. "Blanket or Unit Test": Drug and/or alcohol tests conducted during work time where all employees within a chosen category are tested at the same time.
4. "Controlled Substance" (herein referred to as "Drug"): Any controlled substance including those assigned by 21 U.S.C. 802 and all substances listed on Schedules I through V, as they may be revised from time-to-time (21 CFR 1308), or any substance recognized as a drug by other drug compendia, including Title 58, Chapter 37, Utah Controlled Substances Act, or supplement to any of those compendia. Controlled substances may include, but are not limited to:
 - a. Marijuana
 - b. Cocaine
 - c. Opiates
 - d. Phencyclidine (PCP)
 - e. Amphetamines
 - f. Barbiturates
 - g. Benzodiazepines
 - h. Methadone
 - i. Propoxyphene
5. "Drug Testing": The scientific analysis of a sample for the presence of drugs or their metabolites.
6. "Employee": Any person in the service of Utah County receiving compensation; this definition also includes officers and elected officials.
7. "Medical Review Officer (MRO)": A licensed physician with knowledge of drug abuse disorders that is employed or contracted to conduct reviews of drug test results.
8. "Periodic Testing": Preselected and preannounced drug and/or alcohol testing of safety sensitive employees or volunteers conducted on a regular schedule.
9. "Positive Alcohol Test": Test levels on both the initial screening test and the confirmation test showing an alcohol concentration reading of 0.04 or greater per 210 liters of breath.
10. "Positive Drug Test": Test levels on both the screening test and the confirmation test that are recognized as positive by the U.S. Department of Health and Human Services (DHHS) in its Mandatory Guidelines for the Federal Workplace Drug Testing Program. In the event that the DHHS issues subsequent rules or regulations regarding test levels, this policy will be amended to reflect those changes as necessary.

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

11. "Prospective Employee": Any person who has made a written or oral application to become an employee of Utah County.
12. "Random Testing": The unannounced drug and/or alcohol testing of employees or volunteers who have been selected for testing by using a method uninfluenced by any personal characteristic other than job category.
13. "Reasonable Suspicion for Testing": An articulated belief based on recorded, specific facts and reasonable inferences drawn from those facts that an employee or volunteer has the presence of drugs and/or alcohol in his/her system, or has used controlled substances or alcohol on County paid time.
14. "Rehabilitation Testing": Unannounced but preselected drug and/or alcohol testing done as part of a program of counseling, education, and treatment of an employee or volunteer in conjunction with this policy.
15. "Safety Sensitive Position": Any Utah County position involving duties which directly affects the safety of Utah County employees, the general public, or positions where there is access to controlled substances, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, during the course of performing job duties. Positions designated as safety sensitive by the Utah County Office Human Resource Management, include those performing safety sensitive functions: 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.
16. "Sample": Urine, blood, breath, saliva, perspiration, or hair sample gathered for the purpose of drug or alcohol testing.
17. "Use": To consume, sell, purchase, manufacture, distribute, be under the influence of, report to work under the influence of, or be in the possession of drugs or alcohol. The term "use" shall also include the presence of drugs or alcohol in the body of the individual being tested, including the presence as a metabolite, and the use of a prescription drug without a current valid prescription from a licensed physician or using a prescription drug beyond the prescribed therapeutic dosage.
18. "Volunteer": Any person who donates services to Utah County without pay or other compensation except for expenses actually and reasonably incurred that may be reimbursed.

B. Alcohol Rules – Prohibited Activities

1. The consumption of an alcoholic beverage by an employee on duty will result in immediate termination with no "Last Chance Agreement" as defined in Section 11, herein. The possession of an open alcoholic beverage by an employee on duty shall be cause for

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

- disciplinary action up to and including termination. An exception to disciplinary action for the possession of an open alcoholic beverage while on duty is when the handling of an open alcoholic beverage is incidental to the employee's assigned duties. Sworn law enforcement employees who are working in an undercover capacity and are on duty, working in the legitimate scope of their assignment, are exempt from this paragraph if following established undercover guidelines set forth in the Utah County Sheriff's Office Policy and Procedure Manual.
2. An employee will also be subject to disciplinary action and being placed on a Last Chance Agreement when the consumption of alcoholic beverages at a time proximate to his or her work time has an adverse effect on his or her work performance, causes impairment while on duty or while on-call, or creates a risk of harm to self, others, or County or private property.
 3. If an employee who is required to drive as part of his/her assigned duties has his/her driver's license suspended or revoked, temporarily or permanently, due to an alcohol related offense, the employee must notify his/her supervisor of these circumstances when next reporting to duty. Failure to do so shall be cause for disciplinary action up to and including termination. Provisions of the Utah County Motorized Equipment and Vehicle Policy will be followed in cases of a suspended or revoked driver's license.
 4. The felony conviction of an employee as a result of alcohol while off County premises and not on duty shall be cause for disciplinary action up to and including termination.
 5. It is a violation of County policy to report to work or be in an on-call status while under the influence of alcohol at or having an alcohol concentration of 0.04 grams or greater per 210 liters of breath.
- C. Drug Rules – Prohibited Activities.
1. The unlawful use, manufacture, distribution, dispensation, or possession of a controlled substance by an employee in the workplace or during work hours, including on-call time, is prohibited. Employees in violation of this policy will be terminated with no Last Chance Agreement. An exception to disciplinary action for the illegal possession of a controlled substance while on duty is when the handling of the substance is incidental to the employee's assigned duties. Sworn law enforcement employees who are working in an undercover capacity and are on duty, working in the legitimate scope of their assignment, are exempt from this paragraph if following established undercover guidelines set forth in the Utah County Sheriff's Office Policy and Procedure Manual and in accordance with Utah Code Annotated, Title 58, Chapter 37, Section 8.(11)(b).
 2. The use of any drug which negatively affects performance or the ability of an employee to work in a safe manner may be cause for discipline where the employee knew or reasonably should have known that the drug would adversely diminish his/her capabilities to perform the job.

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

3. Whenever an employee is prescribed a drug by a licensed health care provider or uses over-the-counter medication which may negatively affect his/her performance or ability to perform in a safe manner, the employee shall notify his/her supervisor. An employee who fails to notify his/her supervisor may be subject to disciplinary action and may be placed on a Last Chance Agreement when the use of such drugs by that employee contributes to an accident or incident that results in property damage or injury to a person.
 4. The illegal possession or use of controlled substances while off County premises and while not on duty may be cause for disciplinary action up to and including termination where such conduct can be shown to have a direct and material adverse effect on the County's interests, including public image.
 5. If an employee who is required to drive as part of his/her assigned duties has his/her driver's license suspended or revoked temporarily or permanently, due to a drug related offense, the employee must notify his/her supervisor of these circumstances when next reporting to duty. Failure to do so shall be cause for disciplinary action up to and including termination. Provisions of the Utah County Motorized Equipment and Vehicle Policy will be followed in cases of a suspended or revoked driver's license.
 6. The felony conviction for the possession or being under the influence of controlled substances while off County premises and while not on duty shall be cause for disciplinary action up to and including termination.
 7. The conviction of an employee for the sale or possession with intent to illegally sell controlled substances or abusable prescription drugs while off County premises and while not on duty is cause for immediate termination with no Last Chance Agreement.
 8. Employees must notify their immediate supervisor of any personal drug related criminal conviction for a violation occurring in the workplace no later than five (5) days after such conviction. Failure to notify the immediate supervisor shall result in disciplinary action.
- D. Alcohol and Drug Testing Circumstances. . Utah County maintains the legal right to require any employee, prospective employee, volunteer, or prospective volunteer to take a drug and/or alcohol test under the following circumstances:
1. Pre-employment hiring or volunteer selection procedure. Once Utah County has made a conditional offer of employment or volunteer selection, the offer is contingent upon the prospective employee/volunteer passing a drug test. The Utah County Office of Human Resource will identify specific job classifications and/or duty location assignments that require an applicant selected as a new hire or prospective volunteer to take and pass a drug screening. A positive result from the drug screening may result in the applicant not being hired or the prospective volunteer not being accepted.

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

2. **Post-accident.** Utah County conducts drug and alcohol testing upon an employee or volunteer involved in, and contributing to, a serious on the job accident. A serious accident is defined as a casualty or any accident to which the employee, intern or volunteer contributed that must be reported to the police and that results in one or more injury(ies) that require medical treatment beyond first aid or damage to property in excess of \$1500. Utah County may require testing after any accident when there is reasonable suspicion. Additionally, for Commercial Driver's License (CDL) holders, all drivers who are in an accident resulting in the loss of human life must be drug and alcohol tested; and CDL holders cited for an accident where there is an injury or a vehicle is towed must be tested for the misuse or abuse of drugs and alcohol.
 3. **Reasonable Suspicion.** Utah County may conduct drug and alcohol testing at its discretion and in accordance with the procedures described in Section 7, herein, when a trained supervisor or County officer / elected official observes and records behavior or appearance that is characteristic of alcohol or drug abuse.
 4. **Preannounced Periodic Testing.** Utah County may conduct, at its discretion, preselected and preannounced drug and alcohol testing on a regular schedule of safety sensitive employees or volunteers.
 5. **Random testing in safety sensitive positions.** Utah County may, at its discretion, randomly test employees in safety sensitive positions, conducted on a random, unannounced basis just before, during, or just after performance of work functions or work time. Additionally, CDL holders will be tested for drugs and alcohol in accordance with Department of Transportation rules.
 6. **Rehabilitation programs.** Utah County may, at its discretion, require unannounced tests as part of a program of counseling, education, and treatment of an employee or volunteer in accordance with this policy.
 7. **Compliance with Federal Requirements.** Utah County may conduct drug and alcohol tests in accordance with the Federal Drug Free Workplace Act of 1998 or other federally required drug policies.
 8. **Deadly Force Incident Testing.** Any safety sensitive employee or volunteer employing deadly force resulting in a casualty and/or injury to an individual while serving in an official capacity, whether on or off duty, is subject to drug and alcohol testing immediately following the deadly force incident.
- E. **Medical Review Officer (MCO) Review**
1. If a drug screen is positive for a legal and prescribed controlled substance, the employee, volunteer, applicant or prospective volunteer must provide within 24 hours of request to the MRO, bona fide verification of a valid current prescription for the drug identified in the

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

drug screen and it must be in the individual's name. The MRO will then determine the drug screen results. If the drug is one that is likely to impair the ability to perform job duties or if acceptable prescription verification is not provided, an applicant will not be hired or a volunteer will not be accepted.

F. Retest of Specimen

1. If a positive drug test is reported, the tested individual shall have 72 hours from the time he/she is so notified to request at his/her option that the split urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the tested individual and Utah County. If the tested individual declines to request testing of the split sample before the end of the 72-hour period, Utah County may, at its discretion, proceed to take appropriate action under this policy based upon a positive result. If the split sample tests negative for the presence of drugs, Utah County may consider the results negative. If the split sample is also positive, Utah County will proceed to take action as provided by this policy.

G. Reasonable Suspicion and Post-Accident Testing Steps for Employees and Volunteers

1. Any supervisor evaluating an employee or volunteer for reasonable suspicion and/or post-accident testing shall complete the Utah County "Observation/Incident Report" form provided by the Department of Human Resources. Circumstances which may constitute a basis for determining a reasonable suspicion for testing may include, but are not limited to: a pattern of abnormal or erratic behavior (i.e. a significant change in the quantity or quality of work, unusual mistakes or errors of judgment, unusual absenteeism); a serious work-related accident as defined in Section 4b. herein; the noticeable presence or physical symptoms of drug or alcohol use; or being informed by a County employee or other source that another employee or volunteer is believed to be using or under the influence of drugs or alcohol. Copies of completed Observation /Incident Reports shall be immediately sent to the appropriate department head and the Department of Human Resources.
2. If it is determined that reasonable suspicion indicators exist, whether or not an accident occurred, the employee or volunteer shall be relieved of duty and transported, if necessary, to the drug testing specimen collection site for a drug and alcohol screening. Once the test sample is collected, Utah County will offer to make arrangements to have the employee or volunteer transported home. An employee or volunteer who is incapacitated to the point that he/she cannot provide a sample at the time of the incident shall later provide the necessary authorization for releasing hospital or medical reports that would indicate whether or not the employee or volunteer was under the influence of a drug and/or alcohol. Additionally, testing results conducted at the accident scene and/or in accordance with law enforcement procedures shall also be considered valid for purposes of this policy.
3. An employee will remain on paid status until the test sample is collected. After the sample is collected due to the existence of reasonable suspicion indicators, whether or not an

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

accident occurred, an employee will be placed on leave in the following order as leave benefits are exhausted (1. sick leave, 2. compensatory time, 3. vacation leave and personal preference day, and 4. leave without pay) until the County receives the final test results. If the final test results are negative, the County will return the leave utilized to the employee and/or pay the employee for any period of leave without pay.

H. Refusal to Test

1. The refusal to submit to a drug and alcohol test or to provide the necessary authorization for releasing hospital or medical reports that would indicate whether or not the employee or volunteer was under the influence of a drug and/or alcohol shall be considered the same as a positive test result for a controlled substance. An employee determined to have tampered with, adulterated, or substituted his/her sample will also be considered to have the same as a positive test result for a controlled substance.

- I. Action for a Volunteer's Positive Drug and/or Alcohol Test. A volunteer having a positive test result will be required to immediately cease volunteer service with and for Utah County and will not be cleared to volunteer with Utah County for a minimum of two (2) years from the testing date.

J. Employee Disciplinary Procedures for a Positive Drug and/or Alcohol Test

1. A test resulting in a positive screen for alcohol or the abuse and/or misuse of a controlled substance prescribed or available for retail purchase over-the-counter may result in the following actions.
 - a. First offense: The employee will receive a suspension without pay for a period of time based on the severity of the infraction and shall be required to sign and successfully complete the conditions of a Last Chance Agreement which includes rehabilitation and aftercare. At a minimum, receipt of a suspension without pay must be taken into account and considered when the employee's next performance appraisal is prepared.
 - b. Second offense: The employee will be suspended without pay pending termination.
2. A test resulting in a positive screen verified and confirmed by the MRO for a controlled substance, for which the employee has not received a legitimate prescription, will result in the employee being suspended without pay pending termination.

K. Last Chance Agreement for Employees

1. Refusal to sign a Last Chance Agreement shall be considered just cause for termination. The Last Chance Agreement shall be the final step before suspension pending termination in the disciplinary process for violations of, and in accordance with, this

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

policy. The prescribed treatment and aftercare portion of the Last Chance Agreement will be monitored for compliance by the Office of Human Resource Management.

2. The Last Chance Agreement shall require at least the following:
 - a. The employee to report to a state licensed drug and alcohol rehabilitation and/or treatment program provider within five (5) working days of employee notification of a positive drug and/or alcohol test.
 - b. Compliance with and satisfactory completion of treatment in a Bureau of Alcohol and Drug Abuse certified rehabilitation program as recommended by the providing treatment coordinators. Monthly reports of attendance, reports indicating satisfactory completion of program requirements, random drug and alcohol test results, and any other documents relating to treatment compliance must be submitted to the Office of Human Resource Management.
 - c. Enrollment and continued attendance in an aftercare program, as recommended. Monthly reports of attendance must be submitted to the Office of Human Resource Management.
 - d. The employee must sign an initial and subsequent authorizations to release medical information to Utah County regarding patient records and all other substance abuse treatment program providers for the duration of treatment.
 - e. Certificate of fitness/return-to-duty form signed by the prescribing physician/state certified rehabilitation and treatment program provider releasing the employee to return to work. This form must be received by the Office of Human Resource Management prior to the date the employee returns to duty.
 - f. A minimum of six (6) random drug and alcohol tests over a period of two (2) years from the date of returning to duty or, pursuant to the recommendations of a substance abuse professional, as many as thirty (30) random tests over a period of five (5) years from the date of returning to duty. Testing may be scheduled by the employee's department head and/or the Office of Human Resource Management any time the employee is on duty.
 - h. Statement that failure to comply with all conditions of the Agreement will result in being suspended pending termination from County employment.
- L. Employee Voluntary Request for Rehabilitation Treatment
 1. An employee may voluntarily seek rehabilitation treatment for any substance abuse problem at any time. An employee may ask for Utah County's financial assistance prior to the County first requesting a random, reasonable suspicion, or post-accident drug

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

and/or alcohol test, and/or receiving a valid positive test result from another entity. A voluntary request for assistance will not be considered as a positive test and the request will not result in disciplinary action.

2. Utah County may provide financial assistance to an employee as described in paragraph a. above by paying the portion of expenses not covered by the employee's insurance for an initial substance abuse evaluation.
3. The employee will be required to sign and comply with the same employment conditions detailed in a Last Chance Agreement. Refusal to sign a Last Chance Agreement shall be considered just cause for termination.

M. Confidentiality

Medical reports, laboratory reports, test results, and Observation/Incident Reports shall not be filed in an employee's official employment file. Information of this nature will be contained in a separate confidential medical record that will be securely kept under the control of the Utah County Office of Human Resource Management. Utah County will not release such medical information to anyone without express written authorization of the tested individual unless ordered by means of proper legal procedure and appropriate legal authority, such as court ordered subpoena or in connection with a disciplinary proceeding.

N. Procedures – Testing

1. Testing will occur during or immediately before or after work time of current employees or volunteers. Testing time will be deemed work time for the purposes of compensation for current employees.
2. Except as required otherwise by Federal rules or when validated test results are made available to the County from another entity, testing will be done by the split urine samples method. A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If processing of the 30 ml urine sample results in a positive drug and/or alcohol test, the tested individual shall have 72 hours from the time he/she is so notified to request at his/her option that the 15 ml urine sample be tested for the indicated drugs or alcohol, the expense of which shall be divided equally between the tested individual and Utah County. If the tested individual declines to request testing of the split sample before the end of the 72 hour period, Utah County may, at its discretion, proceed to take appropriate action under this policy based upon a positive result. If the split sample tests negative for the presence of drugs and alcohol, Utah County may consider the results negative. If the split sample is also positive, Utah County will proceed to take action as provided by this policy.
3. The testing will be performed by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the

Utah County Human Resource Management Policy 4-5000: Drug and Alcohol-Free Workplace

American College of Pathology. The instructions, chain of custody forms, and the collection kits including bottles and seals used for sample collection are prepared by the independent laboratory.

4. The collection of samples will be performed under reasonable and sanitary conditions. Samples will be collected and tested in a manner that protects the privacy of the individual being tested and, in a manner, reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples. Sample collection will be appropriately documented to ensure that samples are labeled and sealed so as to reasonably preclude the probability of erroneous identification of samples and test results. Employees, volunteers, prospective employees, or prospective volunteers have the opportunity to provide notification of any information that they consider relevant to the test, including identification of currently or recently used prescription or nonprescription drugs or other relevant medical information. Sample collection, storage, and transportation to the place of testing will be performed in a manner that reasonably precludes the probability of sample misidentification, contamination, or adulteration.
5. Sample testing will conform to scientifically accepted analytical methods and procedures. Before the result of any test may be used as a basis for any action by Utah County, it will verify or confirm any positive initial screening test by gas chromatography, gas chromatography - mass spectroscopy, or other comparably reliable analytical methods and shall provide that the employee, prospective employee, volunteer, or prospective volunteer be notified as soon as possible by telephone or in writing at the last known address or telephone number of the results of the initial test, if it is positive; and told of his/her option to have the 15 ml urine sample tested, as an expense equally divided between the tested individual and Utah County. In addition to the initial test results, the test results of the 15 ml sample shall be considered in taking any subsequent disciplinary action.
6. Utah County will pay all costs of the initial testing and verification process.

III. References