City of Winder Personnel Policy Manual
Title: Post-Accident and Incident Testing
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Policy: 92

Mayor

City Administrator

92.10 Purpose

The purpose and intent of this policy is to establish guidelines for employees involved in an accident while on duty. Research and practical experience shows that even small quantities of alcohol, illegal drugs, or prescription drugs can impair reflexes and judgement. This impairment can have catastrophic results, particularly for employees operating vehicles, certain equipment items, or public safety weapons. Therefore, we have adopted a policy that all employees must report to work completely free from the presence of alcohol, illegal drugs, or drugs whose legitimate prescription usage constitutes a threat to safety.

92.11 Definitions

A. **Alcohol** means any beverage or liquid containing more than one-half of one percent of alcohol by volume alone or when diluted.

B. **Dilute Sample** – A urine specimen where the sample concentration has been reduced by drinking or adding excess fluids or diluting by other means.

C. The terms "**drugs**" and "**controlled substances**" have the same meaning according to this policy. Both terms include marijuana (THC), cocaine, opiates, barbiturates, benzodiazepine, phencyclidine (PCP) and amphetamines (including methamphetamines) or any synthetic drug designed to mimic the pharmacological effects of the original drug, while intending to avoid classification as illegal and/or detection in standard drug tests, or the use/possession is regulated by Federal Law.

D. **Involved in an accident** means that the employee was in, or in control of, the vehicle or piece of City equipment at the time of the accident, or caused damage to City property. Passengers will not be tested unless the accident investigation determines the passenger(s) affected the person in control of the vehicle or equipment. Only City employee passengers are subject to testing in accordance with this policy. A vehicle accident does not necessarily mean that a collision occurred. An injury involving the operation of a vehicle is sufficient to meet this definition.

E. **Illegal drugs** means any controlled substance, medication, or other chemical substance that (1) is not legally obtainable; or (2) is legally obtainable, but is not being used legally, or is not being used for the purpose(s) for which it was prescribed or intended by the manufacturer. Thus, "illegal drugs" may include over-the-counter medications, if they are not being used for the purpose(s) for which they were intended by the manufacturer or used in a greater dosage/amount.

F. **Prescription drugs** means prescribed or over-the-counter drugs that are legally obtained and used for the purpose(s) for which they were intended by the manufacturer.

G. **Safety-Sensitive Positions** - Positions of employment with the City where a lapse of judgment or impaired physical/mental ability in performing any essential job function could reasonably result in a significant threat of harm to the employee, co-workers, or the public. Safety-sensitive positions include, but are not limited to, those which, as a part of the essential job functions:

1. Require the performance of law enforcement duties as a POST-certified law enforcement officer or involve possession of a firearm.
2. Require or involve providing emergency medical, rescue, or fire suppression services.
3. Require or involve maintenance or operation of a motor vehicle, motorized equipment, or heavy machinery/equipment.
4. Require or involve performing duties which directly affect public health or safety.
5. Are specified as an employee that are covered under the Anti-Drug and Alcohol Plan for natural gas pipeline operators; or transport hazardous materials/chemicals.

92.12 **Post- Accident Compliance**

A. An employee will be automatically required to submit to drug and/or alcohol testing if the employee is involved in:

1. A motor vehicle accident while operating a City vehicle where the vehicle has made contact with another vehicle resulting in damage or exchanged information for a potential insurance claim.
2. A motor vehicle accident where the employee receives a citation or the vehicle is disabled or deemed unsafe to operate.
3. A motor vehicle accident where non-City property is damaged and requires repair.
4. Any accident that results in an emergency shutdown, explosion, or fire.
5. Any accident that results in off-site medical treatment for anyone involved in the accident.

B. The City Administrator, Personnel Officer, and Department Heads are authorized at their discretion to require alcohol and drug testing when an employee is involved in an accident while on-duty or when utilizing City equipment.

C. If it cannot be determined who was driving a City's vehicle or operating a piece of equipment at the time of an accident, then anyone who was driving the vehicle or operating the equipment during the applicable time period will be required to submit to testing.

D. The City reserves the right to test employees seeking medical treatment for any Worker's Compensation injury.

E. Once tested the employee shall refrain from drinking any alcoholic beverages for eight (8) hours after the post-accident testing in the event that they are required to provide additional samples.

92.13 **Testing Procedures**

A. The employee shall notify their immediate supervisor to respond to the scene of the accident immediately after the accident occurs.

B. The Department Head or their designee shall within two (2) hours of the accident contact the Human Resources Department when an accident occurs that would require post-accident compliance within normal business hours.

C. The employee will not be allowed to proceed alone or drive to or from the testing/collection site. A supervisor or designated police officer shall accompany the employee to the testing/collection site.

D. Immediately after the drug test sample is collected, the employee will be allowed to return to work unless the circumstances of the accident indicate:

1. An initial positive test result.
2. Reasonable suspicion that alcohol or drugs have impaired the driver's ability at the time of the accident or during testing.
3. The employee disclosed information indicating they may be impaired.
4. The employee requires off-site medical attention.
5. The employee is showing signs of anxiety or other conditions that would detract from performing essential job duties.

E. If the post-accident testing is not administered within two (2) hours, the supervisor/department head must prepare a written statement outlining why the test was not administered within that time and submit the response to the Personnel Officer within two (2) business days.

F. Once an employee has been notified to take a post-accident test, unless hospitalized, no sick leave, vacation, or other leave may be authorized until the collection process is completed.

G. The City shall utilize any of the following tests in order to determine alcohol and drug uses.

1. Breath - In testing for alcohol, an Evidential Breath Testing Device (EBTD) will be used to determine a breath alcohol concentration. The device will conform to specifications established by federal regulations. Tests will be administered by a certified Breath Alcohol Technician.
2. Urine - In testing for drugs, a urinalysis will be the preferred test. Any employee who uses a controlled substance under a physician's prescription is responsible for reporting that information, prior to providing a urine specimen, to personnel at the specimen collection site. If the urine sample is outside the normal temperature for human urine, a second collection will be taken under direct observation in accordance with collection standards.
3. Saliva – A saliva kit may be administered on-site and will be the primary test used for after-hours testing.
4. Blood - Blood testing is the most accurate approach for detecting drugs and will be requested in accidents that require off-site medical treatment.
5. Hair – A type of minimally invasive drug test is a hair test. This test may be requested if a timeline for long term consumption is required.

92.14 Commercial Drivers' License (CDL) and Safety Sensitive Positions

A. CDL operators and those in safety sensitive positions testing positive for drugs or alcohol above prescribed limits in accordance with applicable laws shall be reported to the Department of Motor Vehicles (DMV).

B. CDL Operators that have been involved in a motor vehicle accident will be required to have their drug and alcohol testing completed offsite at an approved provider.

C. A CDL holder subject to post-accident testing shall remain available for such testing unless off-site medical treatment is required. Failure to be available for testing shall be considered a positive test and deemed just cause for termination.

D. The City or the designated medical services provider will submit all positive test results to the DMV or professional boards in accordance with all applicable laws.

E. Following a positive test for alcohol and drugs, CDL operators and safety sensitive employees that are not terminated, must be tested before they are allowed to return to work. CDL operators and safety sensitive employees permitted to continue in their positions after a positive test or a self-referral (prior to an accident) to an Employee Assistance Program must have at least six unannounced tests during the course of the next 12 months of employment and may be subject to unannounced testing for up to 60 months as determined by a panel consisting of the Personnel Officer, Chief of Police, and one supervisor selected by the City Administrator.

92.15 Testing Procedures During Normal Business Hours

A. This testing is to be performed in addition to any drug or alcohol test(s) ordered by law enforcement authorities. It is the responsibility of the immediate supervisor to ensure the involved employee(s) reports within two (2) hours of the accident for testing.

1. The supervisor may utilize an on-site saliva kit or use another approved collections method if there are no medical injuries as a result of the accident.
2. The employee shall be directed to a testing facility for a blood or urine test if anyone involved in the accident requires off-site medical treatment. *A complete list of authorized facilities are on file in the Human Resources Department.*

B. Any employees covered under the Federal DOT Anti -Drug and Alcohol Plan (Utilities Department) tested during normal business hours for post-accidents or reasonable suspicion are to be completed offsite at the approved facility, or through an approved third party provider as determined by the Human Resources Department.

92.16 Testing Procedures After-Hours and Holidays

A. The employee to be tested outside of the normal business hours of Monday – Friday between 7:30 a.m. and 5:00 p.m. for post- accident or reasonable suspicion will be required to submit to a drug and/or alcohol test as deemed necessary by the Department Head or the City Administrator. This can be done by means of oral fluid (saliva), breath, and/ or urine.

B. If the presence of alcohol is detected by the saliva test, the employee will be required to submit to a breathalyzer test for confirmation or be directed to an authorized testing facility.

C. After-hours and holiday post-accident tests can be collected at the emergency room if authorized due to circumstances with the approval of the Department Head or City Administrator.

D. Afterhours post-accident testing for CDL Operators and employees covered under the Federal DOT Drug and Alcohol Plan, must be completed at an approved facility determined by the Human Resources Department.

E. When the accident occurs after normal business hours and requires off-site medical treatment for anyone involved in the accident, the Department Head shall contact the City Administrator.

92.17 Testing Procedures When Outside of the City

A. Any employee involved in a motor vehicle accident while driving a City vehicle outside the city limits but within a 50-mile radius of the City, shall promptly contact their supervisor. The supervisor or designee shall be dispatched to the accident and follow the same procedures as if the accident occurred within the city limits. *A police report shall be obtain for any accident as required by policy.*

B. If a motor vehicle accident occurs outside of the designated 50-mile radius of the City (which results in damage to the City vehicle or requires medical attention), the employee shall immediately contact their supervisor. If the vehicle is able to be driven, the employee shall drive the vehicle to a safe location and leave it parked until the employee is released to drive the vehicle from their supervisor. The City Administrator or the employee's direct Department Head shall have the discretion to have the employee(s) tested at a designated facility while out of town or upon returning to work. *A police report shall be obtain for any accident as required by policy.*

92.18 Medical Treatment

A. Nothing herein shall be construed to require the delay of necessary medical attention or to prohibit the employee from leaving the scene of the accident for the period of time necessary to obtain assistance in responding to the accident, obtain necessary medical treatment for injured people, or to obtain materials necessary to secure the accident site.

B. Any employee who is seriously injured and who cannot be tested at the time of the accident shall, as soon as possible, sign all necessary medical authorization forms for withdrawal of blood or submit to other testing in order to test and release the test results to City of Winder.

C. Worker's Compensation benefits, if the injury is determined to have resulted from intoxication from alcohol and/ or illegal or controlled substance (including marijuana), may be denied.

92.19 **Testing Results**

A. The City shall contact the employee within one business day after receiving the results of a test. The City shall provide all information to the employee in regards to which drugs were verified as positive. The Human Resources Department shall also inform the employee what proposed action will be taken in compliance with the City Policy.

B. Negative - test for alcohol or drugs will be taken as confirming that the employee was not impaired. No additional actions will be taken unless the circumstances of the accident warrant disciplinary action not related to the post-accident results.

C. Negative dilute - In instances where the employee produces a negative dilute urine specimen for testing, the employee may be required to undergo a second test immediately.

D. Positive - test results will be taken as confirming that the employee was impaired on the job or was found to have a substance that was in violation of policy.

1. The employee will have up to 24 hours to request an additional test after they receive notification of a positive test.
2. Should the employee wish to have the original sample retested, he may do so at his expense. The City shall only charge the employee the actual retesting cost, not to exceed one-hundred dollars ($100.00).
3. A second test involving a new sample will not be conducted using urine, and the additional testing method shall be approved by the MRO. However, if the employer has access to the original urine (or split specimen) no additional samples may be required.
4. The employee will be placed on suspension without pay until the results of the additional test are reviewed by the City's MRO and the employee's Department Head is notified of the results. If the employee's second test is confirmed to be negative, the employee's suspension will be with pay and the employee will be reimbursed for testing cost paid.

E. Adulterated – Indicates the specimen has been altered, as evidenced by results showing a substance not pertaining to a normal constituent of urine, or an abnormal concentration of a substance. This is considered a refusal to test.

F. Substituted – Test results not consistent with human urine. This is considered a refusal to test.

G. Invalid – When a result cannot be established. The designated testing facility will contact the MRO to determine whether additional testing is required.

H. Upon receipt of the drug test results, in the event that drug tests are negative the employee shall be allowed to return to work.

1. Where appropriate a signed physician's release may be required by the City before the employee is returned to work.

2. If the behavior or accident that led to the initial testing was not due to drugs or alcohol but was noted as a medical impairment that may hinder job performance, the City may request the employee to undergo further medical evaluations.
3. Time lost due to an illness will be charged to sick leave or when applicable available disability insurance.

92.20 **Refusal to Test or Tampering**

A. Refusal to submit to a post-accident or reasonable suspicion alcohol or drugs/controlled substance test shall be considered a positive test.

B. The employee will not be permitted to return to work and will be place on suspension without pay immediately.

C. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action. All reasons for refusal shall be documented in writing and signed by the employee within one (1) business day. Unwillingness to comply with this request will be grounds for termination.

D. An employee tampering or attempting to tamper with the specimen or collection procedure, or failing to produce an adequate test sample without satisfactory reason, will be treated as if they had tested positively.

E. An employee delaying arrival, or failure to appear, at a designated collection site for any test in the time allotted or a failure to remain at the test site until the testing process is completed may be considered a refusal to test.

F. Failure to permit an observed or monitored collection (when required and conducted within standard collection protocol) will be considered a refusal to test.

G. If the MRO reports a verified adulterated or substituted test result the City will consider these actions as tampering.

92.21 **Testing Standards**

A. The City will contract with a third-party vendor or vendors to provide collection services, laboratory testing and medical review of the test results.

B. The vendor or vendors will utilize only laboratories that are certified in accordance with applicable requirements to do drug testing.

C. All urine specimens collected for testing under this policy shall use the split specimen collection method when applicable.

92.22 **Medical review officer (MRO)**

A. The MRO will notify the employee of any positive result and will examine any medical explanations for the positive result.

B. All confirmed positive drug test results will be reviewed by a Medical Review Officer who is a licensed physician with knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate confirmed positive test results together with medical history and other relevant biomedical information.

C. An employee shall cooperate fully and promptly with the MRO. This may include a medical history, review of the employee's current prescribed medications and any relevant biomedical factors.

D. The MRO will make all reasonable attempts to contact the employee. The MRO may verify a test as positive without interviewing the affected employee if more than five (5) days elapse after the MRO first attempts to contact the employee.

E. After a full review, the MRO may conclude that an apparent positive test is actually a negative test or inconclusive based on the existence of additional information. In such a conclusion the MRO shall report the test result as a negative to the City.

92.23 **Confidentiality**

A. All records required to be maintained under the applicable regulation, rules or laws shall be maintained in a secure location with controlled access and will not be released except as required by law.

B. Upon written request, an employee is entitled to copies of any records pertaining to the employee's use of drugs/controlled substances or alcohol, including any records pertaining to their controlled substances tests.

C. All results of controlled substances testing conducted pursuant to this policy shall be made available upon request to all State or local government agencies with regulatory authority to investigate the situation/accident.

D. The City may be required to disclose information pertaining to an employee's results to authorized individuals as it relates to a lawsuit, grievance, or other proceedings initiated by or on behalf of the accident.

92.24 **Rehabilitation**

The City of Winder encourages employees and dependents to seek early voluntary treatment for substance abuse problems through the City's Employee Assistance Program (EAP), which provides counseling and referral services. However, those who test positive in connection with random selection, post-accident testing, being intoxicated or having a detectable amount of alcohol in their system or being in possession of controlled substances or alcoholic beverages while on duty, are subject to discipline up to or including termination.