

## Article 53

### DRUG AND ALCOHOL TESTING

#### A: Definitions.

As used in this article:

1. **Alcohol test** means a chemical or breath test administered for the purpose of determining the presence or absence of alcohol in a person's body.
2. **Drug** means a controlled substance or a controlled substance analogue listed in schedule 1 or schedule 2 of part 72 of the Michigan public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7201, et seq., of the Michigan Compiled Laws, as may be amended from time to time.
3. **Drug test** means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person's bodily fluids.
4. **Random selection basis** means a mechanism for selecting test-designated employees for drug tests and alcohol tests that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected and (2) does not give the employer discretion to waive the selection of any employee selected under the mechanism.
5. **Reasonable suspicion** means a belief, drawn from specific objective facts and reasonable inferences drawn from those facts in light of experience, that an employee is using or may have used drugs or alcohol in violation of a departmental work rule or a civil service rule or regulation. By way of example only, reasonable suspicion may be based upon any of the following:
  - a. Observable phenomena, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being impaired by, or under the influence of, a drug or alcohol.
  - b. A report of on-duty or sufficiently recent off-duty drug or alcohol use provided by a credible source.
  - c. Evidence that an individual has tampered with a drug test or alcohol test during employment with the State of Michigan.
  - d. Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs or alcohol while on duty, while on the employer's premises, or while operating the employer's vehicle, machinery, or equipment.

6. **Rehabilitation program** means an established program to identify, assess, treat, and resolve employee drug or alcohol abuse.
7. **Test-designated employee** means an employee who occupies a test-designated position.
8. **Test-designated position** means any of the following:
  - a. A safety-sensitive position in which the incumbent is required to possess a valid commercial driver's license or to operate a commercial motor vehicle, an emergency vehicle, or dangerous equipment or machinery.
  - b. A position in which the incumbent possesses law enforcement powers or is required or permitted to carry a firearm while on duty.
  - c. A position in which the incumbent, on a regular basis, provides direct health care services to persons in the care or custody of the state or one of its political subdivisions.
  - d. A position in which the incumbent has regular unsupervised access to and direct contact with prisoners, probationers, or parolees.
  - e. A position in which the incumbent has unsupervised access to controlled substances.
  - f. A position in which the incumbent is responsible for handling or using hazardous or explosive materials.
  - g. Another position agreed to in secondary negotiations.

**B: Prohibited Activities.**

An employee shall not do any of the following:

1. Consume alcohol while on duty.
2. Consume drugs while on duty, except pursuant to a lawful prescription issued to the employee.
3. Report to duty or be on duty with a prohibited level of alcohol or drugs present in the employee's bodily fluids.
4. Refuse to submit to a required drug test or alcohol test.
5. Interfere with any testing procedure or tamper with any test sample.

## **C: Testing Employees.**

The employer may require an employee, as a condition of continued employment, to submit to a drug test or an alcohol test, as provided in this article.

### **1. Tests Authorized.**

- a. Reasonable suspicion testing.** An employee shall be required to submit to a drug test or an alcohol test if there is reasonable suspicion that the employee has violated this article.
- b. Preappointment testing.** An employee not occupying a test-designated position shall submit to a drug test if the employee is selected for a test-designated position.
- c. Follow-up testing.** An employee shall submit to an unscheduled follow-up drug test or alcohol test if, within the previous 24-month period, the employee voluntarily disclosed drug or alcohol problems, entered into or completed a rehabilitation program for drug or alcohol abuse, failed or refused a preappointment drug test, or was disciplined for violating this rule.
- d. Random selection testing.** A test-designated employee shall submit to a drug test and an alcohol test if the employee has been selected for testing on a random selection basis.
- e. Post-incident testing.** A test-designated employee shall submit to a drug test or an alcohol test if there is evidence that the test-designated employee may have caused or contributed to an on-duty accident or incident resulting in death, or serious personal injury requiring immediate medical treatment, that arises out of any of the following:
  - (1) The operation of a motor vehicle.
  - (2) The discharge of a firearm.
  - (3) A physical altercation.
  - (4) The provision of direct health care services.
  - (5) The handling of dangerous or hazardous materials.

### **2. Limitations on certain tests.**

- a. Test selection.** An employee subject to testing under this rule may be required to submit only to a drug test, only to an alcohol test, or to both tests. However, preappointment testing shall be limited to drug testing.
- b. Limitations on follow-up testing.** The employer may require an employee who is subject to follow-up testing to submit to no more than six unscheduled drug or alcohol tests within any twelve-month period.

- c. **Limitations on random selection testing.** The number of drug tests conducted in any one year on a random selection basis shall not exceed fifteen percent (15%) of the number of all test-designated positions. The number of alcohol tests conducted in any one year on a random selection basis shall not exceed fifteen percent (15%) of the number of all test-designated positions.
- d. **Limitations on reasonable suspicion testing.** Before an employee is subject to reasonable suspicion testing, a trained supervisor must document the basis for the reasonable suspicion. In addition, an employee shall not be subject to a reasonable suspicion test until the employer-designated drug and alcohol testing coordinator (DATC), or the DATC's designee, has given express, individualized, approval to conduct the test.

#### **D: Drug and Alcohol Testing Protocols.**

1. **Drug testing protocol.** The employer will adopt the current "Mandatory Guidelines for Federal Workplace Drug Testing Programs," as amended, issued by the U.S. Department of Health and Human Services (the "HHS Drug Guidelines") as the protocol for drug testing under this article.
2. **Alcohol testing protocol.** The employer will adopt the alcohol testing provisions of the current "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," as amended, issued by the U.S. Department of Transportation (the "DOT Alcohol Guidelines") as the protocol for alcohol testing under this article.
3. **Changes in protocol.** During the term of this agreement, the parties may agree to amend the protocols without the further approval of the Civil Service Commission to include any final changes to the HHS Drug Guidelines or the DOT Alcohol Guidelines that are published in the Federal Register and become effective. If the parties agree to adopt any such final changes, the parties shall notify the State Personnel Director in writing of the changes and their effective date. Any other change in the protocols requires the approval of the Civil Service Commission.

#### **E: Prohibited Levels of Drugs and Alcohol.**

1. **Prohibited Levels of Drugs.** It is a violation of this article for an employee to test positive for any drug under the HHS Drug Guidelines at the time the employee reports to duty or while on duty. A positive test result shall constitute just cause for the employer to discipline the employee.
2. **Prohibited Levels of Alcohol.** It is a violation of this article for an employee to report to duty or to be on duty with a breath alcohol concentration equal to or greater than **0.02**. A confirmatory test result equal to or greater than **0.02** shall constitute just cause for the employer to discipline the employee.

#### **F: Penalties.**

1. The employer may impose discipline, up to and including dismissal, for violation of this article. All discipline for violation of any provision of this article shall be subject to the provisions of Article 9 regarding discipline.
2. An employee selected for a test-designated position shall not serve in the test-designated position until the employee has submitted to and passed a pre-appointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the employee shall not be appointed, promoted, reassigned, recalled, transferred, or otherwise placed in the test-designated position. The Department of Civil Service shall also remove the employee from all employment lists for test-designated positions and shall disqualify the employee from any test-designated position for a period of three years. In addition, if the employee interferes with a test procedure or tampers with a test sample, the employee may also be disciplined by the employer as provided in subsection (1). An employee's qualification for appointment in the classified service is a prohibited subject of bargaining and any complaint regarding action by the Department of Civil Service shall be brought only in a Civil Service technical appeal proceeding.

#### **G: Self-reporting.**

1. **Reporting.** An employee who voluntarily discloses to the employer a problem with controlled substances or alcohol shall not be disciplined for such disclosure if, and only if, the problem is disclosed before the occurrence of any of the following:
  - a. For reasonable suspicion testing, before the occurrence of an event that gives rise to reasonable suspicion that the employee has violated this rule.
  - b. For pre-appointment testing, follow-up testing, and random selection testing, before the employee is selected to submit to a drug test or alcohol test.
  - c. For post-incident testing, before the occurrence of any accident that results in post-accident testing.
2. **Employer action.** After receiving notice, the employer shall permit the employee an immediate leave of absence to obtain medical treatment or to participate in a rehabilitation program. In addition, the employer shall remove the employee from the duties of a test-designated position until the employee submits to and passes a follow-up drug test or alcohol test. The employer may require the employee to submit to further follow-up testing as a condition of continuing or returning to work.
3. **Limitation.** An employee may take advantage of the provisions of article G(1) no more often than two times while employed in the classified service. An

employee making a report is not excused from any subsequent drug or alcohol test or from otherwise complying in full with this article. An employee making a report remains subject to all drug and alcohol testing requirements after making a report and may be disciplined as the result of any subsequent drug or alcohol test, including a follow-up test.

**H: Union Representation.**

If an employee is directed to submit to a reasonable suspicion drug or alcohol test, the employee may confer with an available MSEA representative in person (if available on site) or by telephone. However, such contact shall not unreasonably delay the testing process.

**I: Identification of Test-designated Positions.**

Each appointing authority shall first nominate classes of positions, subclasses of positions, or individual positions to be test-designated. The state employer shall review the nominations and shall designate as test-designated positions all the classes, subclasses, or individual positions that meet one or more of the requirements of section A(8) of this article. The designation by the state employer shall not be limited by or to the nominations or recommendations of the appointing authority. The appointing authority shall give written notice of designation to each test-designated employee and to the MSEA at least fourteen (14) days before implementing the testing provisions of this rule.

The MSEA may file a grievance contesting the designation of a particular position. However, an employee occupying a position designated as a test-designated position who is given notice of the designation shall be subject to testing as provided in this article until a final and binding determination is made that the employee is not occupying a test-designated position.

**J: Coordination of Rule and Federal Regulations.**

The provisions of this article are also applicable to employees subject to mandatory Federal regulations governing drug or alcohol testing. However, in any circumstance in which (1) it is not possible to comply with both this rule and the Federal regulation or (2) compliance with this rule is an obstacle to the accomplishment and execution of any requirement of the Federal regulation, the employee shall be subject only to the provision of the Federal regulation.