

## **Article 35**

### **DRUG AND ALCOHOL TESTING**

The parties recognize that drug and/or alcohol abuse by an employee often contributes to less than satisfactory attendance and job performance, and may needlessly endanger the safety and well-being of other employees and members of the general public. The parties also recognize that one purpose of this article is to assist employees who may have a problem with drug or alcohol abuse.

#### **A. Testing.**

The employer may require an employee to submit to urinalysis drug screening or alcohol breath testing under the circumstances set forth below in sub-sections 1 through 5.

An employee may refuse to submit to a drug screening or alcohol test but the employee shall be warned that such refusal constitutes grounds for discipline equivalent to discipline imposed for a positive test result, and allowed an opportunity to submit to the testing as though the employee had originally complied with the order.

1. Preappointment Testing: An employee not occupying a test designated position shall submit to a urinalysis drug screening if the employee is selected for a test-designated position. The employee shall not perform any duties of a test designated position until the employee has submitted to and passed a drug screening. 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 or otherwise placed in the test designated position and will be ineligible for appointment to or placement in a test designated position for a period of three years. Also, the employee may be disciplined if the employee fails a drug test, refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample.
  
2. Random testing: An employee in a test designated position may be selected at random from a pool comprised of test designated positions covered by this Agreement. The number of urinalysis drug screenings performed at random each calendar year may not exceed a number equal to 15% (See LOU or page 157) of the number of test designated positions in the pool. The number of alcohol breath tests performed at random each calendar year may not exceed a number equal to 15% of the number of test designated positions in the pool. (See Letter of Understanding, Drug and Alcohol Testing.) If an employee is selected more than twice in a calendar year, the employer agrees to meet with the Union to share specific information used to select that individual and discuss any concerns raised by the Union regarding this information.

3. Reasonable suspicion testing: An employee may be required to submit to urinalysis drug screening or alcohol breath testing based on reasonable suspicion. 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 this agreement or a departmental work rule. 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, or while on the employer's premises, or while operating the employer's vehicle, machinery, or equipment.

The basis of support for the reasonable suspicion drug screening or alcohol test will be documented by a trained supervisor. An employee shall not be required to submit to a reasonable suspicion drug screening or alcohol test without the individualized expressed approval of the employer Designated Drug and Alcohol Testing Coordinator (DATC) or his/her designee.

4. Post Accident Testing: An employee in a test designated position shall submit to a drug test or an alcohol test if there is evidence that the employee in the test designated position may have caused or contributed to a serious work accident. A serious work accident is defined as an on-duty accident resulting in death, or serious personal injury requiring immediate medical treatment, that arises out of any of the following:
  - a. The operation of a motor vehicle
  - b. The discharge of a firearm
  - c. A physical confrontation
  - d. The provision of direct health care services
  - e. The handling of dangerous or hazardous materials

5. Follow-up Testing: an employee shall submit to unscheduled follow-up drug and/or alcohol testing 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 the provisions of this Agreement and employer work rules.

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.

B. Test Designated Positions.

For purposes of this article, test designated positions are:

1. 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.
2. A position in which the incumbent possesses law enforcement powers or is required or permitted to carry a firearm while on duty.
3. 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.
4. A position in which the incumbent has regular unsupervised access to and direct contact with prisoners, probationers, or parolees.
5. A position in which the incumbent has unsupervised access to controlled substances.
6. A position in which the incumbent is responsible for handling or using hazardous or explosive materials.
7. Additional test designated positions in other classifications whose duties are not as provided in subsections 1 through 6 above shall be subject to the provisions of this article pursuant to secondary negotiations.
8. New classifications, or levels added to existing classifications, may include duties consistent with those identified for test designated positions in subsections 1 through 6 above. The Employer shall meet with the Union to review the new classification or level prior to requiring an employee in the new class to submit to testing under this article.

C. Drug and Alcohol Testing Protocol.

The Employer will adopt the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs as the protocol for drug testing and the U.S. Department Of Transportation Procedures For Transportation Workplace Drug And Alcohol Testing Programs for alcohol testing.

After adoption of the protocol, and its implementation, the protocol shall not be subject to change except by mutual agreement of the parties and approved by the Civil Service Commission.

The parties agree to incorporate into this agreement the definitions contained in the U.S. Department Of Health And Human Services Mandatory Guidelines For Federal Workplace Drug Testing Programs, as may be amended, and in the U.S. Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing, as may be amended. In addition, the parties agree to define 'credible source' as:

"One who is trustworthy and entitled to be believed. One who is entitled to have his/her oath or affidavit accepted as reliable, not only on account of his/her good reputation for veracity, but also on account of his/her intelligence, knowledge of the circumstances, and disinterested relation to the matter in question. One who is competent to testify."

D. Union Representation.

Employees may confer with an available Union representative on site (if available on site), or through a telephone conference, whenever an employee is directed to submit to a reasonable suspicion alcohol or drug test, provided such contact will not unreasonably delay the testing process.

E. Review Committee for Drug and Alcohol Testing.

A committee consisting of three (3) representatives of the SEIU Coalition and three (3) representatives of the Employer shall meet prior to the implementation of the drug and alcohol testing program to review and discuss the testing procedures, collection methods, quality assurance, and other matters pertaining to the operation of the testing program. The review committee will also meet, upon request of either party, to review testing data and discuss problems related to the administration of the testing program. The committee may vote on matters it discusses. The committee's recommendations, if any, will be submitted to the Employer for its consideration. Recommendations voted on by the committee will be reported as "without recommendation" if based on 3-3-tie vote and as a "unanimous recommendation" for any vote other than 3-3.

F. Confirmation Alcohol Testing.

If an employee is tested for alcohol and is determined to have a blood alcohol level equal or greater than .02% in both the initial evidentiary breath test (EBT) and the confirmation evidentiary breath test, at the employee's option and at the employee's full cost, the employee may elect to have a second confirmation test carried out by drawing a sample of blood and submitting it for testing at an approved laboratory. This option is only available if the testing site where the two positive breath tests were conducted is equipped to draw the blood and either directly provide for its testing for level of blood alcohol or transport the sample to a laboratory which is certified to test the sample for level of blood alcohol. The protocol for such confirmation blood testing for alcohol (including but not limited to chain of custody, security, integrity and identity of sample, transportation to testing laboratory if required, reporting of results, etc.) shall be determined prior to initiation of alcohol testing under this article and shall be a topic for discussion in the committee established in this article. The employee shall remain off the job until the results of the second confirmation test are provided to the Employer and may use available leave credits, if desired.

G. Self-Reporting.

An employee who voluntarily discloses to the Employer a problem with drugs 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:

1. For reasonable suspicion testing, before the occurrence of an event that gives rise to reasonable suspicion that the employee has violated this agreement or a department work rule.
2. For preappointment testing, follow-up testing, and random testing, before the employee is notified to submit to a drug test or alcohol test.
3. For post-accident testing, before the occurrence of any accident that results in post-accident testing.

After self-reporting, the Employer shall permit the employee an immediate leave of absence, subject to the provisions of Article 23, 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 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.

An employee may take advantage of this provision no more 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.