

KENOSHA COUNTY

DRAFT DRUG-FREE WORKPLACE POLICY SUMMARY

January 2021

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PURPOSE

Kenosha County (“the County”) is committed to providing a safe, healthy, and productive work environment. Therefore, to meet this objective, as well as our obligations under applicable federal and state laws, the County has a Drug-free Workplace Policy and program that provides the County with reasonable measures to ensure that an employee drug or alcohol problem does not jeopardize the successful operation of our business, or otherwise negatively affect the County, our employees, or the general public.

While it is not the County’s intention to intrude into the private lives of its employees, the County does expect employees to report to work in fit condition to perform their duties. We realize that employees with drug and alcohol problems make up only a small percentage of the workforce, and also recognize that having a Drug-free Workplace Policy will benefit all employees.

WHO IS COVERED

The Drug-Free Workplace Policy covers all temporary employees, probationary employees, part-time employees, and full-time employees, including independent contractors, subcontractors, seasonal employees, interns and union employees of Kenosha County.

Employees who are covered under the Department of Transportation/Federal Motor Carrier Safety Administration (DOT/FMCSA) regulations must comply with the DOT regulated rules, as well as Kenosha County’s policy and may contact Human Resources for a copy of the DOT/FMCSA Rules.

AVAILABILITY OF TREATMENT

All eligible part-time, full-time, and temporary employees and their family members have access to the Employee Assistance Program (EAP) at no charge.

Should there be a need for treatment, coverage is based on the parameters set forth in the employee’s medical benefits plan. Employees who participate in another provider’s plan should refer to that plan to determine what coverage is available. Employees are responsible for all costs of treatment that are not covered by their applicable medical benefits plan.

SUPPORT FOR VOLUNTARILY SEEKING HELP

To assist employees in obtaining treatment, the County offers the services of an EAP, which provides assessment, counseling, and referral services for eligible employees with substance abuse and other personal problems. This service may be accessed 24 hours a day, 365 days a year. The EAP provides experienced counselors to help with personal problems, including those related to drug and alcohol. Confidentiality is assured to the extent possible.

Employees who undergo voluntary counseling or treatment that continue to work are subject to the same job performance and behavior standards as other employees. As is the case of all employees, those seeking voluntary counseling or treatment who fail to meet performance standards will be subject to disciplinary action.

When treatment is necessary, coverage is based on the parameters set forth in the medical benefits plan. Employees are solely responsible for all costs of treatment not covered by their applicable medical benefits plan.

INTERVENTION

Due to the fact that substance abuse often involves denial of the problem, many abusers do not voluntarily seek treatment. In such cases, the County reserves the right to intervene.

Intervention by a Manager: Whenever a manager believes an employee or manager's behavior and/or action(s) may be related to the use of drugs or alcohol, the manager will take appropriate action, which may include a drug and alcohol test, as described in the Referral Procedures Section of the Full-length Policy. A manager failing to take action when he/she believes an employee or manager's behavior and/or action(s) may be related to the use of drugs or alcohol may lead to disciplinary action up to and including termination.

Intervention by an Employee: Whenever an employee has concerns or reasonable suspicion, as defined in the Appendix of the Full-length Policy, that the questionable behavior and/or action(s) of a fellow employee or manager may be related to the use of drugs or alcohol, the employee should contact his/her manager who in turn shall contact a Division/Department Head or a member of Human Resources. The information provided to him/her is confidential to the extent possible.

PROHIBITED CONDUCT

For purposes of safety, the County has defined employee conduct that is prohibited on County property, on County business, and in County-supplied vehicles or personal vehicles being used for County business or during working hours. The policy lists the prohibited conduct, with the following as *only examples* of such prohibited conduct:

Use, possession, manufacture, distribution, attempted distribution, dispensation, attempted dispensation, sale, attempted sale, purchase, attempted purchase, cultivation, or storage or being “under the influence” of illicit drugs (defined as a positive test result). This includes use, possess, consume, distribute, store or be under the influence of any synthetic drugs simulating the effects of cannabinoid, cocaine or amphetamine products.

In accordance with Federal law, Kenosha County prohibits any employee from being under the influence of marijuana while on County property or engaging in County business regardless of whether the employee has a medical marijuana card or recommendation for medical marijuana use. In addition, Kenosha County does not allow any employee to use, possess, cultivate, manufacture, distribute, dispense, sell, or store marijuana while on County property or engaging in County business under any circumstance.

- Unauthorized use, possession, or being “under the influence” of alcohol defined as a breath alcohol concentration (BrAC) of .04 or higher (BrAC of .02 or higher for all Kenosha County Sheriff’s Department personnel), unless otherwise specified in the Permitted Conduct section of this policy summary;

In addition, the County prohibits employees who leave County property during work hours to consume alcohol if they will be returning to work (e.g. meals, breaks, between sales or service calls), unless otherwise specified in the Permitted Conduct section of this Policy Summary.

- Conviction for any criminal drug or alcohol statute for a violation occurring in the workplace, while conducting County business, while driving County owned, rented or leased vehicles or personal vehicles being used for County business, or which is directly related to your job or creates an unreasonable risk of harm to property or to the welfare of employees or customers of the County or the general public.

- Failing to notify his/her manager and, in turn, a member of Human Resources of any criminal drug or alcohol statute conviction or arrest within 24 hours or the next working day for a violation occurring in the workplace, while conducting County business, while driving County owned, rented or leased vehicles or personal vehicles being used for County business, or which is directly related to your job or creates an unreasonable risk of harm to property or to the welfare of employees or customers of the County or the general public.
- Failing to report any change in driver's license status (e.g. restrictions, invalid, expired, suspended or revoked), within 24 hours or the next working day, to his/her manager, if his/her job function may include driving a vehicle for County business.
- Failure by an employee to immediately notify his/her manager of any accident.
- Taking a prescription drug that is not according to their physician's direction, as well as not following manufacturers' directions when taking over-the-counter drugs.

Employees in safety-sensitive positions must report to his/her manager the use of a prescription drug that may alter the employee's physical or mental ability to perform his/her safety-sensitive function and must provide a note, based on the employee's job description, from the prescribing licensed physician that the employee is able to continue to perform his/her safety-sensitive job function for the term of the prescription, including any specified restrictions.

The prescription is to be written in the employee's own name only. A prescription from a foreign country is not acceptable. The type of drug being taken and the purpose for taking the drug may not need to be reported but may be required in specific circumstances. The employee's manager and a member of Human Resources will determine whether the employee's job assignment can be temporarily changed while the prescription is being administered. Sick leave, short-term disability, and/or vacation time may be used if available. All other leave will be unpaid.

- Refusing to consent to, remain ready for, cooperate with, submit to, or tampering with a drug and/or alcohol specimen or testing process when required under the policy including switching, substituting, adulterating, or diluting a specimen or conduct that clearly obstructs the testing process;
- Refusing to sign the Drug-Free Workplace Policy Acknowledgment and Consent Form or the Rehabilitation Agreement when required is a violation of the policy;
- Failure to notify the designated manager when contacted to report for duty outside the employee's scheduled shift –(not previously scheduled), when the employee believes that he/she may be under the influence of drugs and/or alcohol, as defined above. The manager contacted by the employee will determine if the employee shall report to work.
- Having any drug or alcohol statute conviction or arrest or engaging in the following conduct, either off County premises or during off-duty hours:
 - Possession, use, manufacture, distribution, dispensation, cultivation or sale of controlled substances, illegally used drugs, or alcohol off County premises that may adversely affect the County, the employee's work performance, or the employee's safety, others' safety at work or the general public
 - Illegal use of legal substances off County premises or during off-duty hours that may adversely affect the County, the employee's work performance, the employee's safety or others' safety at work or the general public

PERMITTED CONDUCT

Kenosha County never encourages the consumption, possession and storage of alcohol. However, Kenosha County permits the consumption, possession and storage of alcohol under the following exceptions. *Even though there are exceptions, as outlined below, to consumption and storage of alcohol, the following are NOT permitted:*

- Being under the influence of alcohol, which is a BrAC of .04 or higher while on County Business, County Property, conducting County Work or attending a County Sponsored event;
- Consumption of alcohol at any time by underage persons;

In addition, all employees who are covered under the DOT/FMCSA regulations to comply with the DOT/FMCSA regulated rules pertaining to the consumption and storage of alcohol.

GUIDELINES:

For purposes of this policy, one drink equals 1.5-ounces of 80-proof alcohol, a 5-ounce glass of wine, or a 12-ounce beer. As a guideline, an individual weighing 180 pounds who consumes two (2) drinks in one hour will have an approximate alcohol level of .04 BrAC. A 120-pound individual consuming two (2) drinks in one hour will have an approximate alcohol level of .06 BrAC. Consuming the same number of drinks containing higher proof liquor or higher gravity beers can cause a greater under-the-influence level.

It is important for employees to note reaching the under-influence level, as defined in this Policy, will vary individual by individual. It is related to a number of factors, such as the person's age, gender, amount of food in the stomach, prior experience with drinking, level of tolerance and the individual's weight.

In accordance with the conditions above, consumption of alcohol will be seen as a violation of the policy unless expressly permitted below.

- Consumption of alcohol is permitted while attending a mandatory or non-mandatory County-sponsored function, if consumption is authorized in advance by the Director of Human Resources.

At any mandatory or non-mandatory County-sponsored function, no alcohol is to be served unless it is served by a professional, licensed bartender, unless otherwise authorized in advance by the Director of Human Resources.

- Consumption of alcohol is permitted while attending professional events, including professional association meetings. However, consumption is not permitted during the normal working hours of 7:00 a.m. to 5:00 p.m. or until the official meeting and/or training sessions have concluded.
- Consumption of alcohol is permitted while conducting business-related entertainment with non-County personnel or while traveling on business. However, consumption is not permitted during the normal working hours of 7 a.m. to 5 p.m., unless there will be no return to work.

NOTE: While traveling overnight on Kenosha County business, the employee is to follow the appropriate conducts established in this policy from the time the employee begins travel until he/she returns from the travel, including after business sessions have concluded.

Based on the exceptions above, if a situation occurs where an employee believes that he/she may be “under the influence” of alcohol, or when a manager believes an employee may be “under the influence” of alcohol, the employee is not permitted to drive a vehicle. If an employee drives a vehicle against the direction of management, it will be considered a violation of the policy. When it is necessary for the employee, while conducting County business, to take a taxicab or Uber or Lyft or to stay in a local hotel, the reasonable costs shall be reimbursed by Kenosha County.

Possession and storage of alcohol containers will be seen as a violation of the policy unless expressly permitted below.

- Storage of unopened, sealed alcohol containers which are not visible and are locked in an employee's vehicle, while the vehicle is on County property, being used for County business, or during working hours is permitted. Storage of unsealed containers of alcohol will be seen as a violation of the policy.
- Kenosha County will provide a storage facility to employees who need to store unopened, sealed containers or opened, unsealed containers of alcohol for County events during working hours. Arrangements for designated storage areas can be made with the Director of Human Resources.
- Possessing, providing and selling of unopened, sealed and/or opened, unsealed containers of alcoholic beverages is permitted when possessed, provided or sold within the scope of the employee's duties and within the course of Kenosha County's business operations.
- Possession and storage of alcohol, controlled substances, illegally used drugs, or drug paraphernalia is permitted by law enforcement when within the scope of law enforcement's job responsibilities and within the course of Kenosha County's business operations

NOTE: For the storage exceptions above, this does not apply to those County-owned vehicles. No containers of alcohol, including those that are unopened and sealed, are to be placed or stored in County owned vehicles, unless otherwise authorized in advance by the Director of Human Resources or for purposes of the transport of alcohol for County business operations or events.

NOTE: In addition, at no time is alcohol permitted to be transported in a DOT/FMCSA regulated vehicle (over 26,001 pounds or more).

KINDS OF TESTING

The only way to know with certainty if an employee is under the influence of drugs or alcohol is to conduct a test. The methods used to determine the presence of alcohol or drugs in the system under this policy include a urine, saliva, blood, and/or breath test. Therefore, for the safety of all our employees, the County tests for drugs and/or alcohol in the following circumstances:

- During the pre-employment offer period;
- Where there is reasonable suspicion of prohibited drug or alcohol use;
- After an accident;
- When required by government or a collective bargaining agreement; and
- As a follow-up to treatment or assessment.

The County has adopted procedures that respect employees' privacy and confidentiality to the greatest extent possible. For example, before the County requests a reasonable-suspicion test, a manager must document all suspected behavior and confer with another manager to discuss the situation and to receive authorization for a referral. Whenever possible, the manager will discuss the reasonable suspicion referral with the employee in a private location. Further, to ensure testing reliability, the County has chosen a testing laboratory, which uses the most accurate and advanced testing methods available.

Finally, before a positive test result is reported to the County, an outside Medical Review Officer (MRO), who is a licensed physician, will review the test result. The MRO will contact the employee for further information. If an employee has a legitimate medical explanation for the positive test and the MRO has verified the explanation, the test will be reported as negative to the County.

CONSEQUENCES

Any violation of the Drug-Free Workplace Policy, even a first offense, may be a basis for disciplinary action, up to and including termination. However, particularly serious violations, such as selling drugs at the County, will normally result in immediate termination and referral for criminal prosecution. In addition, employees should be aware that:

- A positive pre-employment drug test will result in a no hire determination.
- A refusal to submit to or tampering with or a failure to report for a test will result in a no hire determination and/or immediate termination.

Employees who violate the policy and whom the County refers to assessment or treatment will be required to sign a rehabilitation agreement. Employees must comply with all of the treatment conditions, or they may be terminated. Employees are always required to meet the established standards of conduct and job performance while undergoing substance abuse treatment.

For the purposes of Worker's Compensation, should an employee produce a positive drug or alcohol test result or refuse to submit to a drug or alcohol test as required under this policy, his/her eligibility for compensation and benefits may be affected.

COST OF TESTING

The County will pay for any drug and/or alcohol test that it requests or requires, in accordance with this policy. Should an employee request a retest, the cost is to be assumed by the employee unless otherwise required by state and/or federal law or if the cost is voluntarily assumed by the County.

RIGHT TO A RETEST

An employee who tests positive on a confirmatory drug test required by the County may consult with the Medical Review Officer to identify possible legitimate explanations for the positive result. In addition, the employee may request in writing a retest of the original specimen at his/her expense within 5 working days after the employee has been informed of the confirmed positive result. The retest is to be conducted at the County's NIDA Certified Laboratory or another NIDA Certified Laboratory. An employee who tests positive for alcohol by breath is automatically given a retest, at the time of the original collection, as a confirmation. If a retest is requested by the employee, no final disciplinary action will be taken until the result of the re-analysis have been made available.

INSPECTIONS

Should the County have reason to believe that an employee may be in possession of alcohol, drugs, or drug paraphernalia on County property or on County time in violation of this policy, the County may search County property or may request that the employee empty the contents of his or her personal effects or personal vehicle on County property or on County time.

SAFETY-SENSITIVE POSITIONS

Any job position determined by the County which, by the nature of the work involved, is accompanied by such risk that even a momentary lapse of attention could have serious consequences to the safety of the co-worker, other co-workers, customers, the County, or the general public. For purposes of this policy, the following are the designated safety-sensitive positions:

- All personnel driving County owned, rented or leased vehicles
- All personnel driving personal vehicles being used for County business
- All law enforcement personnel
- All Detentions personnel
- All personnel who care for residents at Brookside/Willowbrook
- All Facilities/maintenance personnel
- All dietary/kitchen personnel
- All clinic/nursing personnel
- All Parks/Golf personnel

The purpose of identifying these safety-sensitive positions is employees in these positions need to report a prescription drug that may affect their ability to do their job function. In addition, in some forms of testing are limited to safety-sensitive positions.

CONFIDENTIALITY

All information concerning drug or alcohol testing referrals and testing results, or treatment and rehabilitation of an employee will be kept as confidential as possible. Access to information is limited to those with a legitimate need to know in compliance with all applicable laws.

RESERVATION OF RIGHTS

The Drug-Free Workplace Policy does not create a binding employment contract. Kenosha County reserves the right to amend, correct, edit, modify, rescind and/or revise the policy in whole or in part, with or without advance notice, subject to any state and federal laws and relevant collective bargaining agreements. In addition, changes to applicable federal or state laws or regulations may require Kenosha County to modify or supplement this policy. Such changes will be made in accordance with any obligation pursuant to an existing collective bargaining agreement.

Severability: Unenforceability or invalidity of one or more clauses in this Policy shall not have an effect on any other clause in this Policy. If it is possible, any unenforceable or invalid clause in this Policy shall be modified to show the original intention of the parties.

Drug-Free Workplace Policy Acknowledgment & Consent Form

for

Kenosha County

I have received the *summary* of the Drug-Free Workplace Policy of Kenosha County. In addition, I have been provided the opportunity to read the Drug-Free Workplace Policy in its entirety. I understand that I am required to follow this policy. I also understand that failure to comply with this policy is the basis for discipline, up to and including termination.

I understand the Drug-Free Workplace Policy of Kenosha County establishes conditions under which I may be required to provide a breath, blood, saliva, or urine sample for drug and/or alcohol testing. If this occurs, I hereby consent to such testing. I authorize the testing laboratory to release my test results to the Medical Review Officer (MRO) and/or to designated County managers on a need-to-know basis.

If there is a positive test result, I understand that the MRO may ask me to provide, and I agree to provide, information about any legal nonprescription drugs and other drugs for which I have a prescription that I take routinely or have taken within the last thirty days.

I understand that any communication I may have with the collection site personnel, testing laboratories or MRO does not create or imply a doctor/patient relationship.

Date

Applicant's/Employee's Signature

Applicant's/Employee's Name (Printed)

Date

Parent or Guardian's Signature (Required for Minor Employees)

Note: A determination of the definition of a minor is to be ascertained on a state-by-state basis.