

## **PRE-EMPLOYMENT DRUG TESTING POLICY**

### **PURPOSE:**

The purposes of this policy are to provide a safe and productive working environment, to prevent accidents, injuries and property damage which may result from drug abuse, and to protect vulnerable clients who are dependent on public services.

### **SCOPE:**

This policy covers applicants for all positions which have met the standards identified in Appendix A, including applicants for temporary and seasonal positions, part-time working less than half time, limited term, and non-represented employees on employment agreements. The master list of the actual positions which are eligible for pre-employment drug testing will be kept in the Department of Employee Services.

This policy does not apply to current County employees who are internal applicants for open positions.

### **POLICY STATEMENT:**

Clackamas County is committed to a workplace which is free from the effects of unauthorized drug use. Unauthorized drug use may pose serious risks to the user and his or her colleagues, as well as to the public we serve. Therefore, Clackamas County has chosen to conduct pre-employment screening to prevent the hiring of individuals whose unauthorized use of drugs creates a potential for impaired or unsafe job performance.

Applicants for jobs which meet the standards identified in Appendix A will undergo screening for the presence of illegal drugs as a condition for employment. Applicants will be required to submit to a urinalysis test at a laboratory of Clackamas County's choice.

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### Pre-employment Testing

Pre-employment drug testing is required for all positions which meet the standards listed in Appendix A. Applicants will be notified that drug testing is a requirement of the selection process.

A drug test result which is verified as positive for unauthorized use of controlled substances, or found to be substituted or adulterated, will disqualify the applicant for the offered position.

A negative dilute result is unsatisfactory on a pre-employment test. Applicants will be given one additional opportunity to provide a valid specimen. The result of the second test will determine whether the applicant is eligible for employment.

A person who receives any of the following results on the drug test is not eligible to be hired, and is disqualified from consideration from County employment for a period of twenty-four (24) months from the date of the test result:

- verified “positive,”
- second “negative dilute,”
- second sample outside the allowed temperature range,
- “cancelled—invalid result” where the donor’s explanation is not accepted by the MRO,
- verified “adulterated,”
- verified “substituted.”

### Medical Marijuana

Marijuana is a Class I controlled substance; its use is illegal under federal law. Although Oregon law (ORS 475.300 to 475.346) exempts from criminal prosecution in state court those individuals who obtain a “registry identification card” from the Oregon Department of Human Services, based on a statement from their attending physician that the individual has a “debilitating medical condition”, this is not an acceptable explanation for

a positive drug test under this Policy. The Medical Review Officer (MRO) will automatically verify such tests as positive.

### **Costs of Testing**

The County will pay for all pre-employment drug tests.

### **Drug Testing Procedures**

Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice, using chain of custody procedures as described by United States Department of Transportation (DOT) regulations (49 CFR Part 40) and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine.

If an applicant is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids within three hours. At the end of this period, if a sample of adequate volume has not been provided, the test will be cancelled. A retest will be allowed if the applicant provides a medical evaluation from a licensed physician, acceptable to the County, who has expertise in the medical issues raised by the applicant’s failure to provide a sufficient specimen

The collector will check the temperature of the specimen upon receiving it from the applicant. The acceptable temperature range is 90 – 100 degrees Fahrenheit. If the specimen is outside the acceptable range, the applicant will begin a second unobserved collection. If the second specimen is also outside the acceptable range, the applicant will be disqualified. If within range, the second specimen will be tested at the lab.

Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.

When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Drug Test Results Review”).

### **Drug Test Results Review**

Drug test results of an applicant which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the Medical Review Officer (MRO).

A POSITIVE drug test result is defined as the detection of any one or more of the substances listed in the table shown below.

<u>Substance or Class</u>	<u>Initial Screening Cut-off</u>	<u>Confirmation Cut-off</u>
Amphetamines	500 ng/mL	250 ng/mL
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Opiates		
Codeine/Morphine	2000ng/mL	2000ng/mL
6-Acetylmorphine	10ng/mL	10ng/mL
Hydrocodone	300ng/mL	300ng/mL
Oxycodone	300ng/mL	300ng/mL
Phencyclidine (PCP)	25 ng/mL	25 ng/mL

A confirmed positive test from a certified laboratory does not automatically identify an employee or applicant as being in violation of this policy. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the County.

### **Medical Review Officer Reporting Options**

- “Negative” – self explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the applicant shall be required to provide another specimen as soon as possible.
- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” A canceled drug test is neither positive nor negative and no consequences are attached to it. The applicant will be given the opportunity to take a second test.
- “Cancelled – Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will notify the County and a retest will be allowed. If the MRO has not accepted the donor’s explanation, the MRO will notify the County and the applicant will be disqualified.
- “Positive or Positive Dilute” – Applicant is disqualified.
- “Adulterated” – Applicant is disqualified.
- “Substituted” – Applicant is disqualified.

### **MRO Verification Without Notifying the Employee**

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive adulterated, or substituted specimen without interviewing the applicant under the following circumstances:

- The applicant expressly declines the opportunity to discuss the test with the MRO;
- The County has successfully made and documented a contact with the applicant, and has asked the applicant to contact the MRO, and more than 72 hours have passed since the time the County contacted the applicant.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

### **Communication of Results**

The MRO or his/her designated representative will report test results ONLY to the Designated Employer Representative (DER). Confidentiality will be strictly maintained.

If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance.

Applicants may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

### **Record Keeping Procedures**

The County's DER will maintain pre-employment drug testing records in a secure filing system with information available only on a "need to know" basis for a period of two years.

### **Definition of Terms**

For the purposes of this Policy, the following definitions apply.

**Adulterated Specimen:** A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**CFR:** United States Code of Federal Regulations

**Chain of Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

**Collection Site:** A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Collector:** A person who instructs and assists applicants and employees through the urine specimen collection process.

**Confirmation Test:** A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the only authorized confirmation method for DOT mandated drug testing.

**Controlled Substances:** Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

**County:** Clackamas County

**Designated Employer Representative (DER):** An employee authorized by the employer to manage and make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer and communicates test results to individual departments

**Dilute Specimen:** A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**DOT:** United States Department of Transportation

**FHWA:** Federal Highway Administration

**FMCSA:** Federal Motor Carrier Safety Administration

**Initial or Screening Test:** An immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Medical Review Officer (MRO):** A licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the Designated Employer Representative.

**Negative Drug Test:** A test in which initial or confirmation testing did not show evidence of a prohibited drug in an applicant’s system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

**Positive Drug Test:** A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels.

**Confirmed Positive Drug Test:** A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

**Verified Positive Drug Test:** A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

**Prohibited Drugs:** Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

**Refusal to Submit:** Refusal by an individual to provide a urine specimen.

**SAMHSA:** Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

**Screening or Initial Test:** Immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Substituted Specimen:** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

## Appendix A

### Positions to be Tested

The following standards are applied in evaluating whether a job title and/or classification can be approved for pre-employment, post-offer drug testing. Additions or deletions to the list of job titles and/or classifications eligible for pre-employment drug testing can be made by request from the affected Department Director or designee to the Director of Employee Services.

To be included on the list, the applicant's typical daily activities must include duties such as:

- 1) **Criminal Law Enforcement** – Employees of departments who are responsible for the apprehension, prosecution, or disposition of offenders under criminal law, or for the disposition of juveniles who have committed an act which would be a crime if committed by an adult.
- 2) **Safety Sensitive/Public Safety** – Employees who are responsible for the care and safety of the public, involved in high risk safety tasks, high risk safety tasks that pose great danger to the public and those visiting *hard hat* required sites. For example, 911 Operator, Lifeguard, operating or working around equipment that can pose a danger to the public.
- 3) **Employees covered by United States Department of Transportation regulations**
- 4) **Employees who deal with vulnerable clients** – Employees with responsibility for/access to vulnerable clients and/or children. For example, the mentally ill, developmentally disabled, residents of Veteran homes, and prisoners, or any employee providing direct patient care.
- 5) **A position in a department with a demonstrated history of past work related drug use problems** – this means an actual, provable, documented history of on-the-job drug problems, not one which is suspected or where there is a belief that there is a problem. If this standard is to be used, you must provide DES with evidence of such a history.
- 6) **Positions which have access to and/or handle controlled substances**
- 7) **Compliance with the federal Drug Free Work Place Act** – Employees who work in a program that receives federal pass-through money.

A master list of the job titles and /or classifications will be kept in the Department of Employee Services. As new classifications are created they shall be subject to the same standards and added to the master list as necessary.