



HUMAN RESOURCES DEPARTMENT

FORT BEND COUNTY, TEXAS

Kent M. Edwards, PHR
Director of Human Resources

To: Judge Robert Hebert
Commissioner Vincent Morales
Commissioner Grady Prestage
Commissioner Andy Meyers
Commissioner James Patterson

From: Kathy Novosad, PHR
Sr. Human Resources Generalist

Copy: Wyatt Scott, Director of Risk Management

Date: December 13, 2017

Subject: Revisions to Employee Information Manual:
Policy 301: Drug and Alcohol Detection and Deterrence

The Human Resources Department is submitting the attached revision to the Employee Information Manual. The attachment shows the tracked edits to the policy.

Policy 301: Drug and Alcohol Detection and Deterrence: This policy is being revised to document the inclusion of certain semi-synthetic opioids in the drug test panel as mandated by the Department of Transportation (DOT). The change will become effective on January 1, 2018. On November 13, 2017, the Department of Transportation published a final rule that, among other items, expands the Department's current drug testing panel to include certain semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone).

"The opioid crisis is a threat to public safety when it involves safety-sensitive employees involved in the operation of any kind of vehicle or transport," said Secretary Elaine L. Chao. "The ability to test for a broader range of opioids will advance transportation safety significantly and provide another deterrence to opioid abuse, which will better protect the public and ultimately save lives."

Human Resources and Risk Management recommend that we also include this additional screening in all non-DOT drug tests, for a variety of reasons. The County's Non-DOT drug testing program has always mirrored the DOT testing requirements to the fullest extent possible. Our employees perform duties that are highly safety sensitive, including law enforcement and emergency medical services. Many employees drive extensively on County business, deal with the public, and handle confidential and sensitive information. Adding these opioids to the panel helps us to achieve the stated purpose of Policy 301, Drug and Alcohol Detection and Deterrence: a commitment to "maintaining a safe, healthful and productive work environment for all employees, and ensuring the safe and efficient delivery of services to citizens of Fort Bend County," and "to facilitate the establishment of a work environment that is free from the effects of abuse or misuse of alcohol and any type of illegal or illicit drug..."



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We have consulted with a number of other Texas counties and cities regarding whether they will expand the testing to non-DOT drug tests. Those who will expand the testing include Harris County, City of Sugar Land, Brazoria County, City of Austin, Montgomery County and Tarrant County. A like number of comparators have chosen not to at this time, while still others are currently undecided.

The County's additional cost per drug test will be \$2.00. See the below chart for more details. Adding this test across the board will cost approximately \$2,000 additional per year between Risk and HR. At this time we are not seeking a budget increase as we will be able to handle the increase within our current budgets. Note that the lab that processes our results will be analyzing the impact of the increased testing over the first quarter and may seek a price increase later in the year.

| Type of Test | DOT Tests/year | Additional Cost | Non-DOT Tests/year | Additional Cost | Total Additional Cost |
|----------------|----------------|-----------------|--------------------|-----------------|-----------------------|
| Pre-Employment | 22 | \$44.00 | 516 | \$1,032.00 | \$1,076.00 |
| Random | 44 | \$88.00 | 100 | \$200.00 | \$288.00 |
| Post-Accident | 31 | \$62.00 | 281 | \$562.00 | \$624.00 |
| Total | 97 | \$194.00 | 897 | \$1,794.00 | \$1,988.00 |

If Commissioners Court approves of this revision to our drug testing policy, Human Resources is prepared to communicate this change to all employees immediately so that all are aware of the impending change on January 1, 2018. If you have any questions, please contact Kathy Novosad at 281-341-8624, or Kent Edwards at 281-341-8631.

301 - DRUG AND ALCOHOL DETECTION AND DETERRENCE

Section 301.01 Purpose

Fort Bend County is committed to maintaining a safe, healthful and productive work environment for all employees, and ensuring the safe and efficient delivery of services to citizens of Fort Bend County. The purpose of this policy is to facilitate the establishment of a work environment that is free from the effects of abuse or misuse of alcohol and any type of illegal or illicit drug and to establish a procedure for drug and alcohol testing.

This policy incorporates the requirements of the federal Drug Free and Alcohol Free Workplace Act, the Omnibus Transportation Employee Testing Act of 1991, and the Department of Transportation regulations 49CFR Part 40, 49CFR Part 382, and 49CFR Part 655. Copies of these regulations are available to employees upon request. Questions regarding this policy and Fort Bend County's drug and alcohol testing program can be addressed to the Director of Human Resources at 281-341-8631.

Section 301.02 Scope

The policies and procedures herein apply to all employees in positions which require the performance of safety sensitive duties as defined by the Department of Transportation. A list of these positions is available in appendix 301-A. *When drug or alcohol testing is required as provided in 49CFR Parts 382 and 655 for applicants or employees who perform DOT defined safety sensitive duties, testing will be conducted in accordance with 49 CFR Part 40. The applicant or employee shall be required to sign the Federal Drug Testing Custody and Control Form and/or the DOT Alcohol Testing form. Participation in the drug and alcohol testing program is a condition of employment for all employees in DOT defined safety sensitive positions. The DOT Federal Transportation Administration (FTA) requirements in this policy are presented in italicized print.*

Except where noted, the policies and procedures contained herein also apply to all Fort Bend County employees regardless of rank or position and include temporary and part-time employees, volunteers and appointed officials. Applicants or employees who are tested under the authority of Fort Bend County as provided in this policy will undergo non-DOT drug and alcohol testing. Participation in the drug and alcohol testing program is a condition of employment for all Fort Bend County employees.

Section 301.03 Prohibited Activities and Prohibited Substances

Employees are prohibited from any off-duty use or misuse of alcohol or any illegal or illicit substances that result in a positive DOT or non-DOT drug or alcohol test pursuant to these procedures. Employees are also prohibited from the manufacture, distribution, dispensation, possession, sale, attempted sale, use or having in their control any illegal drug, intoxicant and/or alcohol while in County vehicles whether on or off duty, on County premises whether on or off duty, or while acting in the course and scope of their employment at any geographic location, whether on or off County premises.

Employees are prohibited from performing DOT defined safety-sensitive duties while consuming or impaired by alcohol or other illegal or illicit substances or with alcohol or other illegal or illicit substances present in their systems. A urinalysis test will be given to detect the presence of

amphetamines (amphetamine, methamphetamine, MDMA, MDA), cocaine metabolites, ~~opiate~~ metabolites ~~opioids~~ (codeine, heroin, morphine, oxycodone, oxymorphone, hydrocodone, hydromorphone), phencyclidine, and marijuana metabolites ~~(see note)~~ and Methylenedioxymethamphetamine (MDMA) commonly known as Ecstasy. Fort Bend County reserves the right to perform a non-DOT test for the presence of other illegal or illicit substances if deemed appropriate.

For the purposes of this policy, illegal or illicit drugs are those drugs prohibited by 49CFR Part 40 at the minimum levels specified, except for those drugs taken in accordance with a valid medical prescription. For a complete list of substances and the specified minimum levels, please visit the DOT website or contact the Human Resources department.

Please note that Marijuana remains a drug listed on Schedule I of the Federal Controlled Substances Act (21 U.S.C § 801, et seq.) and it remains unacceptable for any Fort Bend County employee to test positive for marijuana. A DOT or non-DOT drug test result that is positive for marijuana is a positive test result even if the drug was obtained through a medical prescription outside of Texas or otherwise obtained and/or used in a manner considered legal outside of Texas.

The following activities are prohibited under DOT regulations, 49CFR Part 40, 382 and 655 for all employees who perform DOT defined safety sensitive duties:

1. Being on duty and/or operating a commercial motor vehicle (CMV) or Revenue Service Vehicle (RSV) while possessing or consuming alcohol.
2. Consuming alcohol during specified on-call hours. An employee will be given the opportunity to acknowledge the use of alcohol at the time they are called to duty and the inability to perform safety sensitive functions.
3. When required to take a post-accident alcohol test, using alcohol within (8) hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
4. Refusing to submit to any alcohol or controlled substance test required by this policy.
5. Reporting for duty or remaining on duty, if the employee tests positive for alcohol or controlled substances.
6. Being on duty and having consumed alcohol within the preceding four (4) hours.

Section 301.04 Notification

Employees selected for drug and/or alcohol testing for any reason shall be notified by the appropriate elected official or department head or designee to submit to the drug and/or alcohol test and immediately proceed to the testing site. Once an employee has been notified to take a drug and/or alcohol test, unless hospitalized, no sick or other leave may be authorized until the collection process is completed.

The employee shall be notified if the test is required under the regulations of the Department of Transportation, or by County policy.

Section 301.05 ~~Six-Panel~~ Drug Test Process

The use of illegal or illicit drugs is prohibited at all times and employees may be tested for drugs anytime while on duty, while operating a County vehicle on or off duty, or when operating any vehicle on County business.

When drug testing is required or authorized under the provisions of this policy and/or DOT regulations, all tests will be conducted as described in this section.

An employee has three (3) hours, and may drink up to forty (40) ounces of liquid, from the time of notification to complete all requirements of the drug test collection process. A notified employee may consult with anyone regarding the drug and/or alcohol test so long as the collection process is completed in a timely manner.

Following is a general description of the drug testing urine specimen collection process an applicant or employee can expect to encounter:

1. Picture identification must be presented.
2. The individual will be required to check his or her belongings and remove any unnecessary outer garments. The collector will request that the individual empty his or her pockets, display the items, and explain the need for them during the collection. The individual may retain his or her wallet. If any of the individual's items could be used as a potential adulterant, the collector may check it with the individual's other personal belongings.
3. The individual must rinse his or her hands with water and dry them.
4. A specimen of at least 45 milliliters (about 1 ½ ounces) is required. The donor must urinate into the provided collection cup.
5. The specimen will be sealed and labeled in the presence of the donor. It then will be sent to the laboratory and processed according to specific chain of custody procedures to account for the integrity of the specimen.

Section 301.06
~~Split~~ Specimen
Testing

Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine.

The initial drug testing shall be by enzyme immunoassay technique (EMIT) test which shall be administered at a laboratory approved by the Federal Department of Health and Human Services, at County expense. If an initial drug test yields a positive result, a second confirmatory test, at County expense, using a gas chromatography/mass spectrometry (GC/MS) test will be conducted on a portion of the same urine sample provided by the applicant or employee for use in the initial drug test.

If the second test also results in a positive, the MRO will notify the applicant or employee of the verified positive test result. The applicant or employee has 72 hours from this notification to request a split specimen test. The split specimen refers to the urine specimen collected during drug testing that is sent to the first laboratory and retained unopened. The split specimen is transported to and tested at a second laboratory at the applicant's or employee's request. The applicant or employee must submit the split specimen test fee to Fort Bend County, and the Human Resources Department will coordinate the payment of fees.

Section 301.07

~~*The minimum levels of positive test results are the levels authorized by the Department of Transportation. Employees may contact the Human Resources Department for information on the current minimum levels.*~~

**Minimum
Levels Negative
Dilute Results**

A negative dilute test result (creatinine level >2mg/dl but <5mg/dl) on a ~~DOT~~ controlled substances test shall require a retest under direct observation. If the retest is negative, the test shall be deemed negative. A positive dilute test result will be considered a positive result.

**Section 301.08
Alcohol Testing
Process**

When alcohol testing is required or authorized under the provisions of this policy and/or DOT regulations, all tests will be conducted as described in this section. *A DOT alcohol test may only be conducted just before, during and just after performing DOT safety sensitive functions.* A non-DOT alcohol test may be conducted at any time an employee is on duty, is operating a County vehicle while on or off duty, or when operating any vehicle on County business. A breath alcohol level of .04 or greater shall be considered a positive test, and the consequences of a positive test are discussed in Section 301.28.

Alcohol testing ~~using shall be conducted using an approved a National Highway Transportation Safety Administration certified~~ Evidential Breath Testing ~~(EBT) device device or Alcohol Screening Device as listed on the Office of Drug and Alcohol Policy and Compliance website, and shall be completed by a certified Breath Alcohol Technician (BAT).~~ A ~~breath alcohol level result~~ of .04 or greater will constitute a positive result. When an employee is testing for the first time and ~~his breath alcohol level~~ the result ranges from 0.02 to 0.039, a confirmation test will be performed. If the confirmation test result is in the range of 0.02 to 0.039, DOT regulations state that the employee will not be allowed to perform safety sensitive functions until the employee's next regularly scheduled duty period, but not less than eight hours following the administration of the test (FTA), or 24 hours following the administration of the test (FMCSA). However, it shall be the policy of Fort Bend County that an employee whose confirmation test indicates a ~~breath alcohol level result~~ of .02 to .039 will, at a minimum, be relieved from duty for three days without pay.

An employee who has had a confirmed positive test at any time in the past who has a subsequent test showing ~~a breath alcohol level~~ a result of 0.02 or greater, will be subject to discipline, up to and including termination of employment.

**Section 301.09
Third Party
Service Provider**

Fort Bend County will use a third party vendor to provide drug and alcohol testing services. For information concerning the current drug/alcohol testing service provider, please see Appendix 301-B, or contact the Human Resources Director.

**Section 301.10
Refusal To Test**

Any employee, who refuses to consent to a DOT or non-DOT drug and/or alcohol test after notification of the consequences of refusal, shall be immediately removed from performing safety-sensitive functions, referred to a substance abuse professional, indefinitely suspended without pay and is subject to termination of employment. Note that refusal to take a non-DOT test does not constitute refusal to take a DOT test.

Behavior that may constitute refusal to test includes but is not limited to:

- 1. Failure to appear at the collection site in a reasonable time*
- 2. Refusal to provide a specimen (either verbal refusal or physical absence)*
- 3. Failure to provide sufficient specimen with no medical explanation*

4. *Failure to remain at the testing site until the testing process is completed*
5. *Failure to have a medical evaluation if required by an MRO*
6. *Failure to cooperate with any part of the testing process*
7. *Failure to allow monitoring or direct observation if required by an SAP or because of a suspected adulterated sample*
8. *Failure to take a second test if directed to do so*
9. *MRO verification of a test as adulterated or substituted*
10. *Failure to sign Step 2 of the Alcohol Testing Form*
11. *Failure to remain available for testing following an accident*
12. *Failure to cooperate with any part of the observed collection process as specified in 49CFR Part 40*
13. *Possessing or wearing a prosthetic or other device interfering with the collection process*
14. *Admitting to the collector or Medical Review Officer that the specimen is adulterated or substituted.*

**Section 301.11
Observed
Collections**

Consistent with 49CFR Part 40, DOT drug test urine specimens will be collected under the direct observation of the specimen collector in the following situations:

1. *All DOT return to duty and follow up tests (see Section 301.46)*
2. *When the temperature of the original specimen is outside the acceptable range*
3. *When the test result is "negative dilute," meaning the creatinine level is less than 2mg/dl but greater than 5mg/dl*
4. *When the original specimen appears to have been tampered*
5. *When a collector has reason to believe, either from the employee's conduct or possession of certain materials, that there has been an attempt to tamper with the specimen*
6. *When the original specimen is reported by the laboratory as invalid and the MRO determines there is not an adequate medical explanation*
7. *When the original specimen test result is positive, adulterated or substituted, but a split specimen test can not be performed*

The process for direct observation shall be as specified in 49CFR Part 40. Refusal to cooperate with any step in the direct observation process shall be considered refusal to test and the consequences for refusal shall be consistent with Section 301.10 of this policy.

**Section 301.12
Categories of
Testing**

An employee, applicant, reserve deputy or volunteer of Fort Bend County may be required to submit to the following types of drug and/or alcohol testing:

1. *Pre-placement*
2. *Reasonable Suspicion*
3. *Post Accident*
4. *Random*
5. *Return to duty and follow-up*

**Section 301.13
Pre-placement
Testing**

Prior to beginning work as a County employee in a DOT regulated position, applicants must submit to a DOT drug test. Applicants for all other positions in the County must submit to a non-DOT drug test. Pre-placement drug tests will be administered after a conditional offer of employment has been made, and the Human Resources Department must receive a negative drug test result before the applicant may report for duty. Applicants are not required to undergo an alcohol test pre-placement.

A pre-placement drug test is good for thirty (30) calendar days. If an applicant does not begin working within thirty calendar days, another drug test will be required prior to placement. In addition, any Fort Bend County employee who takes a non-medical leave of absence for a period of more than 30 calendar days shall be subject to a non-DOT drug test prior to returning to work.

Any Fort Bend County employee who transfers or is promoted into a DOT safety sensitive position from a non-DOT safety sensitive position, or who has been removed from the DOT random pool for 90 days or longer for any reason, must undergo a pre-placement DOT drug test prior to performing safety sensitive functions.

**Section 301.14
Refusal to
Submit to Pre-
Placement Drug
Test**

Any applicant who refuses to consent to a DOT or non-DOT pre-placement drug test, who fails to appear at the designated collection site or who fails to provide his/her urine sample after reasonable opportunity shall have the hiring process terminated and the conditional offer of employment shall be withdrawn.

**Section 301.15
Consequences
Of A Positive
Result**

An applicant who has a confirmed positive test result shall have his/her hiring process terminated and the conditional offer of employment withdrawn. *An applicant for a DOT safety sensitive position who has a positive drug test shall be referred to a Substance Abuse Professional.*

**Section 301.16
Reasonable
Suspicion Drug
And/Or Alcohol
Testing**

Employees who perform safety sensitive duties as defined by the DOT shall be subject to drug and/or alcohol testing if reasonable suspicion exists, as explained in Sec 301.18, that the employee is under the influence of drugs and/or alcohol while on County property or while acting in the scope of their employment. In accordance with DOT regulations, a certified departmental supervisor may require a DOT alcohol test for reasonable suspicion only when the employee is performing, about to perform, or has just performed a DOT defined safety sensitive function. A DOT drug test may be required at any time a certified departmental supervisor determines that reasonable suspicion exists.

It shall be the policy of the County that a certified departmental supervisor may require a non-DOT drug and/or alcohol test if reasonable suspicion exists at any time an employee is performing in their capacity as a Fort Bend County employee.

**Section 301.17
Basis For
Reasonable
Suspicion**

If a certified departmental supervisor finds there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or a body odor of an employee, the supervisor may require the employee to undergo a drug and/or alcohol test. Circumstances which can constitute a basis for determining reasonable suspicion may include, but are not limited to:

- (a) A Pattern of Abnormal or Erratic Behavior - This includes, but is not limited to a single, unexplainable incident of serious abnormal behavior or a pattern of behavior which is radically different from what is normally displayed by the employee or grossly differing from acceptable behavior in the workplace.
- (b) Information provided by a Reliable and Credible Source – The first line supervisor or another supervisor/manager receives information from a reliable and credible source as determined by the Human Resources

Administrator that an employee is violating the County's Policy of Drug and/or Alcohol Detection and Deterrence.

- (c) Direct Observation of Drug and/or Alcohol Use - The first line or another supervisor/manager directly observes an employee using drug and/or alcohol while the employee is on duty. Under these circumstances, a request for drug and/or alcohol testing is MANDATORY.
- (d) Presence of Physical Symptoms of Drug and/or Alcohol Use - The supervisor observes physical symptoms that could include but are not limited to glassy or bloodshot eyes, slurred speech, poor motor coordination, or slow or poor reflex responses different from what is usually displayed by the employee or generally associated with common ailments, e.g., colds, sinus, hay fever, diabetes, etc.

**Section 301. 18
Certified
Departmental
Supervisors**

The County shall provide "Certified Departmental Supervisor" training for supervisors on the signs and symptoms of illegal drug use and alcohol misuse or abuse, and the procedure for determining if a reasonable suspicion drug and/or alcohol test is warranted. Certified Departmental Supervisors shall be required to document in writing the specific facts, symptoms, and observations which form the basis for such reasonable suspicion. The certified departmental supervisor will consult with the Human Resources Director or designee on the facts and circumstances of the situation. If a reasonable suspicion drug and/or alcohol test is warranted, the Human Resources department shall assist in securing the appropriate test. If the Human Resources Director or designee is not available, the certified departmental supervisor shall consult with at least one other certified departmental supervisor and contact the drug and alcohol testing service provider directly to arrange testing. Contact information is provided in Appendix 301-B.

An employee who is directed to undergo reasonable suspicion drug and/or alcohol testing should be accompanied to the testing site by the certified departmental supervisor, and should not be allowed to operate a county vehicle until a confirmed negative test result is received.

**Section 301.19
Post Accident
Testing**

In accordance with 49CFR, an employee in a DOT safety-sensitive position whose performance could have contributed to an accident involving a Commercial Motor Vehicle or Revenue Service Vehicle shall be required to submit to a DOT drug and alcohol test in the following circumstances:

For Employees Subject to FTA Regulations

| TYPE OF ACCIDENT | CITATION ISSUED TO DRIVER? | DOT DRUG AND ALCOHOL TEST? |
|--|----------------------------|----------------------------|
| Human Fatality | Yes or No | Yes |
| Injury to any person requiring immediate medical treatment away from the scene | Yes | Yes |
| | No | Yes |
| Disabling damage to any motor vehicle requiring tow | Yes | Yes |
| | No | Yes |

For Employees Subject to FMCSA Regulations*

| TYPE OF ACCIDENT | CITATION ISSUED TO DRIVER? | DOT DRUG AND ALCOHOL TEST? |
|------------------|----------------------------|----------------------------|
| Human Fatality | Yes or No | Yes |

| | | |
|--|-----|-----|
| Injury to any person requiring immediate medical treatment away from the scene | Yes | Yes |
| | No | No |
| Disabling damage to any motor vehicle requiring tow | Yes | Yes |
| | No | No |

*FMCSA = Federal Motor Carrier Safety Administration

A DOT drug or alcohol test will not be required for those employees whose performance can be completely discounted as a contributing factor to an accident. However, a non-DOT test may still be required.

Any employee who has been involved in any type of work related incident or accident involving injury to self or to another or which causes property damage or involves other unusual circumstances shall be required to take a mandatory non-DOT drug and alcohol test under county policy. If a DOT drug or alcohol test is required and administered, a non-DOT test shall not be required.

Workers compensation benefits are not payable in the event an employee is under the influence of drugs or alcohol at the time the injury/accident occurs. Post-accident testing will determine compensability of a claim resulting from such injury or accident.

**Section 301.20
Time
Requirements**

Nothing in this policy shall be construed to require the delay of necessary medical attention for the injured following an incident or accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident.

Employees who are involved in an incident or accident and are subject to post-accident testing must remain available for testing. Post accident alcohol tests should be administered within two hours of the accident, but may be administered within eight hours following the accident. Post accident drug tests must be administered within 32 hours following the accident. Lack of availability to test within a reasonable time will be considered a refusal to test. Employees must also refrain from consuming alcohol for eight hours following an accident, or until the post-accident alcohol testing is complete, whichever comes first. Failure to do so will be considered refusal to test and subject to the consequences explained in Section 301.10.

The Risk Management Department will coordinate Post Accident testing.

**Section 301.21
Random Testing:
DOT Positions**

All County employees in DOT regulated positions shall be subject to Random Drug and Alcohol Testing. The minimum number of tests to be conducted annually shall be as required by the FMCSA, or the FTA, whichever is higher. ~~Currently, a minimum of 50% of DOT regulated employees shall be tested annually for controlled substances. A minimum of 10% of DOT regulated employees shall be tested annually for alcohol just before, during, or just after performing safety sensitive functions.~~

**Section 301.22
Random Testing:
Safety Impact
Positions**

Elected officials and department heads who believe that a position has an impact upon the safety of that individual or others or for appropriate reasons should be subject to random testing, shall identify each such position and submit it to the Human Resources Director. Commissioners Court shall approve all County Safety Impact Positions for the random selection pool.

Employees in such positions shall be informed that they are in a safety impact position and are subject to random drug testing. A minimum of 100 such employees shall be tested annually for controlled substances.

**Section 301.23
Random
Computer
Selection**

A random computer selection process using a scientifically valid method shall be used to generate random test lists. There shall be two pools for random testing: DOT, and non-DOT Safety Impact employees.

All employees in the random pools will have an equal chance of being selected for testing and will remain in the pool, even after being tested. It is possible for some employees to be tested several times in one year, and other employees not to be tested for several years.

Random testing will be reasonably distributed throughout the year, and shall be immediate and unannounced. Random testing may be conducted during all hours and days when employees are on duty.

**Section 301.24
Randomly
Selected
Employees**

Employees selected for a random test shall be notified by the elected official or department head or designee, and must immediately comply with the testing requirements. *DOT employees selected for a random test who are on leave for any reason at the time of testing, must be tested upon returning to work.* If a non-DOT Safety Impact employee is selected for a random test but is absent or on urgent County business approved by the elected official or department head, another employee at that location may be selected.

**Section 301.25
Emergency
Personnel**

Emergency medical and law enforcement employees are expected to respond immediately to emergency calls or incidents. Random drug and/or alcohol testing may be postponed if the test is interrupted because of an emergency situation.

**Section 301.26
Employee
Assistance
Program**

All employees are encouraged to make use of the available resources for treatment of drug and/or alcohol misuse and abuse problems. The Employee Assistance Program (EAP) may provide free or reduced cost access to treatment programs.

Under certain circumstances an employee may be required to seek assistance for drug and/or alcohol misuse and abuse problems. Circumstances which may prompt a mandatory referral to the EAP include a positive test result, other violations of this policy or drug or alcohol use related behavior which negatively impacts an employee's job performance.

Disciplinary action based on a violation of the County's Drug and Alcohol Detection and Deterrence Policy is not suspended by an employee's participation in the Employee Assistance Program or a substance abuse program.

**Section 301.27
Rehabilitation
And Follow-Up
Testing**

Following a determination that an employee is in need of assistance in resolving problems associated with drug abuse and/or alcohol misuse, the employee may be subject to return-to-duty and unannounced follow-up drug and/or alcohol testing if directed by the Substance Abuse Professional (SAP). The employee is responsible for all costs of return to duty and follow up testing.

**Section 301.28
Positive Test
Results and**

Consistent with 49CFR Part 40, a DOT regulated employee with a confirmed positive result on a drug or alcohol test, or who refuses to submit to a DOT

Other Policy Violations

test, must be immediately removed from performing safety-sensitive duties and referred to a Substance Abuse Professional.

An employee who tests positive to a properly authorized and administered test or is found to have any illegal or illicit drug and/or alcohol in his/her possession shall be indefinitely suspended without pay and is subject to immediate termination of employment. Possession can include an employee's person or personal property if on County premises, a County motor vehicle or equipment under the employee's control, or County-provided property under an employee's control.

DOT regulations 49CFR Part 40, Part 382 and Part 655 allow for employees to return to duty following a positive DOT test result. Depending on the circumstances and at the discretion of the Elected Official/Department Head, this opportunity may be extended to Fort Bend County employees. The employee must first comply with a course of treatment as recommended by an SAP, and the employee must undergo one (1) return-to-duty test and at least six (6) follow-up controlled substance and/or alcohol tests in the following twelve (12) months, or more if required by the SAP.

At the discretion of the Elected Official/Department Head, employees who test positive on a non-DOT drug or alcohol test may also be allowed to return to duty under the same treatment and testing requirements as specified above. The cost of the treatment and testing, beyond what may be covered under the Employee Assistance Program (EAP) is the responsibility of the employee.

**Section 301.29
ADA Compliance**

Fort Bend County is aware that drug or alcohol addiction may constitute a disability as defined by the Americans with Disabilities Act. Fort Bend County does not discriminate on the basis of disability in admission, access, treatment, or employment in its programs or activities. However, the ADA does not preclude employers from enforcing the requirements of a drug and alcohol policy regardless of disability. *Applicants for DOT regulated positions may be subject to return to duty and follow up testing if a pre-employment background check reveals a previous positive DOT drug or alcohol test result. Such applicants must provide documentation of successful completion of a substance abuse program.*

**Section 301.30
Grant Or
Contract
Employees**

All employees engaged in the performance of a federal, state or local grant or federal, state or local contract valued at over \$25,000 shall be given a copy of the County's Policy on Drug and Alcohol Detection and Deterrence, and informed that they must comply with the policy as a condition of employment.

**Section 301.31
Drug Statute
Conviction**

Grant or contract employees shall notify the elected or appointed official or the department head of any criminal conviction for a drug statute violation occurring in the workplace no later than five (5) calendar days after the conviction. The elected or appointed official or the department head shall provide written notice to the grantor or contractor agency and the Human Resources Director of any criminal drug statute conviction occurring in the workplace within ten calendar days after receiving notice from the employee, or receiving actual notice of the conviction. The information provided by the appropriate official shall include the employee's position, title and the grant identification(s) for each grant on which the convicted employee was working.

Section 301.32

All records related to employee drug and alcohol tests are confidential, to the extent allowed by law. Any employee who violates this confidentiality

| | |
|---|--|
| Confidential Records | <i>provision shall be subject to disciplinary action up to and including termination of employment. Records related to employee and applicant drug and alcohol testing shall be kept in a confidential file separate from the employee's personnel file. Employees are entitled, upon written request, to obtain copies of any records pertaining to their drug and alcohol tests.</i> |
| Section 301.33 DOT Background Check Requirements | <i>DOT regulations require employers to confirm/verify the testing background of new hires and other employees beginning safety-sensitive work. Employers must have an employee's written consent (without which the employer may not hire the applicant) and send the signed consent to all other DOT regulated employers for whom the employee worked within the previous two (2) years. The employer may not allow the employee to perform safety-sensitive duties for more than 30 calendar days without first obtaining, or making and documenting a good faith effort to obtain, the required information from previous employers.</i> |
| Section 301.34 Disclosure Of Information | <i>An employer must release information if it receives specific, written consent from an employee or former employee authorizing the release of information about the employee's drug or alcohol tests to an identified person.</i> Employers may release test result information in certain legal proceedings. Written consent authorizing disclosure from an employee is not required when drug and/or alcohol testing becomes the subject of a complaint or other judicial or quasi-judicial proceeding. The employer must immediately notify the employee in writing of any information released for this purpose. |
| Section 301.35 County Reserves Right | The County reserves the right to interpret, change, suspend, cancel or dispute, with or without written notice, all or any part of this policy, or procedures or benefits discussed herein |
| Section 301.36 Policy Distribution | <i>A copy of the Fort Bend County Policy for Drug and Alcohol Detection and Deterrence shall be given to all employees. Employees will be required to acknowledge in writing that they have received a copy of this policy.</i> |
| Section 301.37 Employment-At-Will | Adherence to this policy is a condition of employment, however; nothing in this policy alters an employee's status and shall not constitute, nor be deemed a contract or promise of employment. Employees remain free to resign their employment at any time, for any or no reason, without notice, and the County retains the right to terminate any employee at any time, for any legal reason or no reason, without notice. |

Policy Approved and Adopted By:
Fort Bend County Commissioners Court
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