

## 301 – Drug and Alcohol Detection and Deterrence for All Fort Bend County Employees

<b>Section 301.01 Purpose</b>	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.
<b>Section 301.02 Drug-Free Workplace Act</b>	<p>Fort Bend County is subject to the Drug Free Workplace Act of 1988, which requires establishment of workplace policies and reporting of certain drug-related offenses for entities that are federal contractors or receive grant funds.</p> <p>In accordance with the Drug Free Workplace Act, the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify the Director of Human Resources no later than five days after such conviction.</p>
<b>Section 301.03 Covered Employees</b>	<p>This policy applies to all employees of Fort Bend County regardless of rank or position, and includes temporary and part-time employees, volunteers, and appointed officials. Adherence to this policy is a condition of employment.</p> <p>Some employees may also be subject to <i>Policy 302, Drug and Alcohol Testing for Employees Performing FMCSA Safety Sensitive Duties</i> (Federal Motor Carrier Safety Administration), or <i>Policy 303, Drug and Alcohol Testing for Employees Performing FTA Safety Sensitive Duties</i> (Federal Transit Authority), <b>in addition</b> to this policy. A list of positions subject to the provisions of Policies 302 and 303 is contained in Appendix 301A. Employees and supervisors should contact Human Resources if there is any doubt as to which policy(s) are applicable for any position.</p>
<b>Section 301.04 Prohibited Behavior</b>	<p>To the greatest extent possible, Fort Bend County drug and alcohol testing procedures shall mirror the provisions of 49CFR Part 40, which implements the drug and alcohol testing procedures for the Department of Transportation (DOT). However, only tests given under the authority of Policy 302 or 303 shall be designated as DOT tests. Any test given under the authority of this Policy 301, shall be designated a non-DOT test.</p> <p>Use of illegal drugs is prohibited at all times. All Fort Bend County employees are prohibited from operating a County vehicle (on or off-duty), operating any vehicle on County business, or reporting for work or remaining at work any time there is a quantifiable presence of a prohibited drug in the body, <del>at or above the minimum thresholds defined as specified in 49 CFR, Part 40.</del> Prohibited drugs include:</p> <ul style="list-style-type: none"><li>• Marijuana</li><li>• Cocaine</li><li>• Phencyclidine (PCP)</li><li>• <u>Opioids/Opioids</u></li></ul>

- Amphetamines

~~NOTE: Marijuana remains an illegal substance listed on Schedule I of the Federal Controlled Substance Act. At this time there is no valid excuse for the presence of marijuana on a work-related drug test, including use of cannabidiol products, or use of marijuana that may be considered legal under any state law.~~

All Fort Bend County employees are prohibited from reporting or remaining at work, operating a County vehicle (on or off duty), or operating any vehicle on County business with any quantifiable presence of delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) in the blood, urine, or oral fluid.

All Fort Bend County employees are prohibited from consuming substances or using products containing delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) while at work, or while on call. If an on-call employee has consumed a substance or used a product containing delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) they must notify a supervisor they have consumed a substance or used a product containing delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) and the approximate time that they consumed said substance or at the time that they are called in to work. An employee who notifies the supervisor that they have consumed a substance or used a product containing delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) will be prohibited from working for twelve hours from the time they ingested said substance.

All Fort Bend County employees are prohibited from consuming any substance or using any product containing delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) within twelve hours before reporting to work.

All Fort Bend County employees are prohibited from consuming any substance or using any product containing delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) for twelve hours following involvement in an accident that requires post-accident drug and alcohol testing, or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

All Fort Bend County employees are prohibited from reporting or remaining at work, operating a County vehicle (on or off duty), or operating any vehicle on County business with a blood alcohol concentration (BAC) of 0.02 or greater. A BAC of .04 or greater is considered a positive alcohol test.

All Fort Bend County employees are prohibited from consuming alcohol while at work, or while on call. If an on-call employee has consumed alcohol, they must notify a supervisor they have used alcohol at the time that they are called in to work, and will be prohibited from working if they have a BAC of .02 or greater.

All Fort Bend County employees are prohibited from consuming alcohol within four hours before reporting to work.

All Fort Bend County employees are prohibited from consuming alcohol for eight hours following involvement in an accident that requires post-accident drug and alcohol testing, or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

**301.05**  
**Refusal To Test**

Employees are required to submit to drug and alcohol testing in accordance with this policy. If an employee refuses to take a required test, the refusal will bear the same consequences as a positive result.

An employee refuses to test if he or she:

1. Fails to appear for any test within a reasonable time, as determined by Fort Bend County.
2. Fails to remain at the testing site until the testing process is complete.
3. Fails to attempt to provide a breath or urine specimen. In the case of a directly-observed or monitored urine drug collection, fails to permit direct observation or monitoring of the provision of the specimen.
4. Fails to provide a sufficient quantity of breath or urine without a valid medical explanation.
5. Fails or declines to take a second test as directed by the collector or Fort Bend County for drug testing.
6. Fails to undergo a medical evaluation as required by the Medical Review Officer (MRO) or Fort Bend County.
7. Fails to cooperate with any part of the testing process.
8. Fails to cooperate with any part of the collector's instructions for direct observation collection.

10.9. Possesses or wears a prosthetic or other device used to tamper with the collection process.

11.10. Admits to the collector or MRO that the specimen is adulterated or substituted.

12.11. Refuses to sign the certification at Step 2 of the Alcohol Testing Form (ATF).

13.12. Fails to remain readily available for post-accident testing.

If the Medical Review Officer (MRO) responsible for verifying Fort Bend County test results reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

#### **Section 301.06 Consequences for Violations of Policy**

An employee who has an alcohol test result greater than or equal to .02, must take a second confirmation alcohol test 15 minutes following the first. If the confirmation test result is greater than or equal to .02 but less than .04, the employee will be immediately suspended without pay for three days. Greater consequences, up to and including termination of employment, may apply if the employee has previously tested at or above .02, or at the discretion of the Department Head or Elected Official after careful consideration of the facts and circumstances. If the confirmation test result is .04 or greater, the test result is considered positive.

An employee who refuses to take a required drug or alcohol test, or tests positive on a drug or alcohol test (.04 BAC or greater), or engages in any of the behavior prohibited by Section 301.04, shall be immediately removed from duty, suspended without pay, and is subject to termination of employment.

In limited circumstances, at the discretion of an Elected Official or Department Head and in consultation with Human Resources, an employee may be permitted the opportunity to maintain employment after a positive result if the employee strictly complies with the requirements of a second chance program as detailed in Section 301.11.

#### **Section 301.07 Pre-employment Tests**

All candidates for employment with Fort Bend County who will be performing Federal Motor Carrier Safety (FMCSA) or Safety Impact Position (SIP) duties must submit to a pre-employment drug test as defined by this section. Fort Bend County does not conduct pre-employment alcohol tests. Prohibited drugs as specified in 49 CFR, Part 40, include:

- Marijuana
- Cocaine
- Phencyclidine (PCP)
- Opioids
- Amphetamines

Pre-employment tests will be coordinated by the Human Resources department after a conditional offer of employment has been made. A positive drug test result will terminate the hiring process and the candidate shall not be eligible for employment. A negative drug test result must be received prior to the applicant's start date. A pre-placement drug test is good for 30 calendar days, and a candidate will be required to retest if more than 30 days elapse between receipt of test results and start date.

Section 301.08 Reasonable  
Suspicion Tests

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Fort Bend County reserves the right to require a County employee, including but not limited to Safety Impact Positions (SIP), to undergo a drug and/or alcohol test if reasonable suspicion exists that the employee has used a prohibited drug and/or is working while under the influence of alcohol or delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana). 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 shall designate such position as a SIP. If a position is designated as a DOT safety sensitive position, that position shall not be designated as a SIP. Employees, including but not limited to SIP, may be subject to a reasonable suspicion drug and/or alcohol test just before, during, or immediately after engaging in any work for the County.

The County shall provide training to supervisors and other officials on recognizing the signs and symptoms of illegal drug use, ~~and~~ alcohol misuse or abuse, and delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) misuse or abuse, and determining if a reasonable suspicion drug and/or alcohol test is warranted. A reasonable suspicion referral for a drug or alcohol test will be made by a trained supervisor or official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. It is recommended that the trained supervisor use Form 301A to document the reason for referral for reasonable suspicion training.

If a trained supervisor determines that reasonable suspicion does exist, the employee should be removed from duty until the appropriate test can be conducted. Care should be taken to ensure the protection of the employee's privacy while ensuring the safety of the employee, co-workers and the public. An employee who is directed to undergo a reasonable suspicion test should be accompanied to the collection site by a supervisor and should not be permitted to drive or operate machinery or equipment until the employee's next shift.

In addition to the reasonable suspicion drug and alcohol testing required under this section, an employee who is reasonably suspected to be impaired shall submit to being evaluated by a Drug Recognition Expert (DRE) as soon as reasonably possible after the occurrence that causes the suspicion.

Human Resources will help coordinate reasonable suspicion tests. If Human Resources is not available, a trained supervisor may coordinate the tests by contacting the after-hours collection service.

**Section 301.09**  
**Post-Accident Tests**

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Fort Bend County maintains that impairment, of any kind, for employees operating a County vehicle (on or off-duty), employees operating any vehicle on County business, employees reporting for work, or employees remaining at work is strictly prohibited.

A Fort Bend County employee who is involved in a work related incident or accident that results in any property damage or physical injury to self or others, or involves unusual circumstances, will be required take a post accident drug and alcohol test. Employees must remain readily available until the tests are conducted, and must refrain from consuming alcohol for 8 hours following the accident or until an alcohol test is administered, whichever comes first. Employees must remain readily available until the tests are conducted, and must refrain from consuming or using products that contain delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) for 12 hours following the accident or until a drug test is administered, whichever comes first.

All efforts should be made to ensure post accident drug and alcohol tests are conducted promptly, however, nothing in this policy shall be construed to require the delay of emergency medical attention for the injured, or to prohibit an employee from leaving the scene of an accident if necessary to obtain assistance in responding to the accident. The Risk Management Department will coordinate post accident testing.

An employee must remain readily available for an alcohol test, cooperate with the testing process, and refrain from consuming alcohol, for 8 hours or until an alcohol test is conducted, whichever comes first. Failure to do so may be considered a refusal to test.

An employee must remain readily available to take a drug test until the test is conducted, ~~and~~-cooperate with the testing process, and must refrain from consuming or using products that contain delta-9-tetrahydrocannabinol (THC, one of the psychoactive substances in marijuana) for 12 hours. Failure to do so may be considered a refusal to test.

In addition to the post accident drug and alcohol testing required under this section, a Fort Bend County employee who is involved in a work related incident or accident that results in any property damage or physical injury to self or others, or involves unusual circumstances shall submit to being evaluated by a Drug Recognition Expert (DRE) as soon as reasonably possible following the incident in question.

The Department of Transportation defines certain circumstances under which a covered employee must undergo post-accident testing (see Policies 302 and 303). If a DOT test is required and performed, a non-DOT test will not be required.

Workers Compensation benefits are not payable in the event illicit drugs and/or alcohol are present in an employee's system at the time of the injury or accident.

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**Section 301.10  
Random Tests**

~~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 drug testing, shall designate such position as a Safety Impact Position (SIP). All employees in SIP positions shall be in one random testing pool. If a position is designated as a DOT safety sensitive position, that position shall not be designated as SIP.~~

~~Random testing shall be conducted any time that employees are on duty, and shall be immediate and unannounced. Employees are required to cooperate with the random testing process.~~

~~The list of safety impact positions shall be maintained by Human Resources, and Human Resources will coordinate the random testing process. A minimum of 100 SIP random tests will be conducted each calendar year.~~

~~The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. All employees in the random pool 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.~~

~~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 301.101  
Second Chance Program  
and Return to Duty and  
Follow-up Tests**

Any Fort Bend County employee who refuses to take a required drug or alcohol test, or tests positive on a drug or alcohol test shall bear the consequences as detailed in Section 301.06. In limited circumstances, at the discretion of an Elected Official or Department Head and in consultation with Human Resources, an employee may be granted the opportunity to maintain employment. The employee must strictly comply with all aspects of the second chance program and testing requirements. The decision to offer the employee the second chance will be made by the Department Head or Elected Official in consultation with Human Resources.

The second chance program will require the following:

1. Employee is immediately suspended without pay
2. Employee is mandatorily referred through the Employee Assistance Program for evaluation and treatment for substance abuse. The employee must comply with all the recommendations and requirements of the substance abuse referral.
3. The substance abuse professional or other treatment professional shall determine when the employee is able to return to work. The employee must undergo a Return to Duty drug and/or alcohol test, and negative results must be received before the employee can return to work.
4. The employee will then be subject to a number of unannounced Follow Up drug and/or alcohol tests. The type (drug or alcohol), number, frequency and duration of the tests shall be directed by the SAP or other treatment professional.
5. Any cost of the second chance program, including the cost of the Return to Duty and Follow Up drug and/or alcohol tests must be paid by the employee.

Any employee who refuses to test, or tests positive on a drug or alcohol test for a second time at any time in their employ with the County shall be subject to immediate termination of employment.

**Section 301.112**

Employees who may be experiencing problems with drug or alcohol abuse or misuse are encouraged to reach out for help. The Employee Assistance Program can provide free and confidential counseling, guidance, and other resources to address addiction or substance abuse. Contact information for the EAP can be found below in Section 301.134, or by contacting the Risk Management Department.

**Section 301.123  
Testing Procedures**

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment and laboratory facilities which have been approved by the U. S. Department of Health and Human Service (HHS). All drug and alcohol testing performed under the authority of this policy shall closely mirror the procedures specified in 49 CFR Part 40, but will not be conducted under the authority of the DOT. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

Fort Bend County may accept a negative dilute drug test result and no retest will be required, unless requested by the Medical Review Officer (MRO). ~~However, if in the event~~ the negative dilute result shows a creatinine concentration of greater than or equal to 2 mg/dL, but less than or equal to 5 mg/dL, an immediate recollection under direct observation requested by the Medical Review Officer (MRO) will be required.

In the event of a verified positive drug test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The split specimen testing will be conducted in a timely manner, but the employee requesting the test will be required to pay the cost of the test.

**Section 301.134  
Contact Information**

The Fort Bend County Drug and Alcohol testing program is administered by Human Resources.

For questions regarding policy and procedure:

**Drug and Alcohol Program Manager**  
Director of Human Resources or Designee  
301 Jackson Street, Suite 243  
Richmond TX 77469  
281-341-8631

To schedule tests:

**Designated Employee Representative** (except Post Accident)  
Human Resources Administrative Coordinator  
301 Jackson Street, Suite 243  
Richmond TX 77469  
281-238-3335

**Designated Employee Representative (Post Accident Only)**

Director of Risk Management or Designee  
301 Jackson Street, Suite 224  
Richmond TX 77469  
281-341-8630

To schedule After Hours Reasonable Suspicion Tests  
Houston Medical Testing Services, A DISA Company  
713-665-4687-Next Level Urgent Care, Maria Galvez  
281-799-0600

For assistance with drug or alcohol abuse or misuse:  
Deer Oaks Employee Assistance Program  
Helpline: 866-327-2400  
Website: [www.deeroakseap.com](http://www.deeroakseap.com) (Login & Password: fortbend)  
Email: [eap@deeroaks.com](mailto:eap@deeroaks.com)

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Policy Approved and Adopted By:  
Fort Bend County Commissioners Court  
March 5, 1996

Revised: February 10, 2004

Revised: October 3, 2006

Revised: April 28, 2009

Revised: August 11, 2009

Revised: October 26, 2010

Revised: April 9, 2013

Revised: February 4, 2014

Revised: December 19, 2017

Revised: May 14, 2019

Revised: November 26, 2019

Revised: July 25, 2023

Revised: September 26, 2023