

**CITY OF FOND DU LAC**  
**POLICE DEPARTMENT DRUG AND ALCOHOL TESTING POLICY**

**I. STATEMENT OF POLICY**

The City of Fond du Lac recognizes that the misuse and/or abuse of alcohol or controlled substances by employees could presents a serious threat to the safety and health of the employee and the general public. It is the policy of the City of Fond du Lac that its employees should be free of illegal drugs and alcohol. In order to further the City's goal of obtaining a drug-free and alcohol-free workplace, the City of Fond du Lac has implemented a drug and alcohol testing program which is designed to help reduce and avoid accidents and injuries to the City's employees and the public, to discourage substance and alcohol abuse, and to reduce absenteeism, accidents, health care costs, and other drug and alcohol-related problems.

The workplace should be free from the hazards posed by the misuse of alcohol and controlled substances in order to protect the safety of employees and the public.

**II. PURPOSE**

The purpose of this Policy, then, is to establish an alcohol and controlled substances testing program to help prevent accidents and injuries resulting from the misuse of these substances by employees. Consequently, the City of Fond du Lac has established the following alcohol misuse prevention program and anti-drug program as well as the subsequent enforcement of violations for its employees. Employees should also refer to the City's "Drug Free Workplace Policy" which addresses the strict enforcement of workplace controlled substance and alcohol usage.

**III. COVERAGE**

For purposes of this Policy, the City of Fond du Lac strictly prohibits the misuse of alcohol and/or controlled substances by its employees who are performing or ready to perform the following job functions:

1. Police law enforcement functions.
2. Directly supervising employees who perform these job functions.

#### **IV. PROHIBITED CONDUCT**

City policy prohibits employees from engaging in the following conduct, unless such conduct is authorized by Department policy:

1. Using or possessing alcohol while on duty. Therefore, employees will not be assigned to police law enforcement job functions while using or possessing prescription or non-prescription medication if such medication contains any measurable amount of alcohol. It is the responsibility of the employee to notify his/her supervisor of such medication;
2. Using alcohol within eight (8) hours following an accident, if the employee was required to be tested, unless a test was given earlier;
3. Reporting for duty or remaining on duty while having an alcohol concentration of 0.04 or greater;
4. Using controlled substances while on duty; unless the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a motor vehicle;
5. Reporting for duty or remaining on duty if the employee tests positive for controlled substances without a qualified prescription; or

6. Refusing to submit to any alcohol or drug testing required by this Policy.  
In addition, City of Fond du Lac Policies prohibit employees from engaging in the following conduct:

1. Dispensing, distributing or receiving alcohol and controlled substances while on duty; other than during normal police related duties.
2. Possession of controlled substances while on duty; unless the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a motor vehicle;
3. Reporting for duty or remaining on duty while under the influence of alcohol or a controlled substance;
4. Deliberately misusing this Policy in regard to subordinates; and
5. Providing false information in connection with a test, or falsifying test results through tampering, contamination, adulteration, or substitution.

#### **V. REQUIRED TESTS**

Refusal to take a required test will result in removal of that employee from his/her assignment(s) which, in turn, may result in discipline up to and including discharge.

Testing must be conducted in the following situations:

**1. Pre-employment Testing** - Any individual not currently employed by the City of Fond du Lac who is applying for any police position shall be required to undergo drug and alcohol testing after a conditional offer of employment has been made.

**2. Reasonable Suspicion Testing** - Reasonable suspicion means suspicion based on a specific, contemporaneous, articulable observation by a trained supervisor or other trained City of Fond du Lac representative concerning the appearance, behavior, speech or body odors of an employee, including indications of the chronic and withdrawal effects of controlled substances. Reasonable suspicion drug or alcohol testing will only occur under these rules if the supervisor's observations are made during or just before the employee is performing work in a police position.

(a) In a situation where the supervisor has reasonable suspicion to believe the employee is using or is under the influence of alcohol or drugs, the supervisor may order the employee to undergo a drug or alcohol test. The supervisor may, but need not, seek a corroborating opinion from another supervisor prior to immediately removing the employee from the job and sending the employee for drug or alcohol testing.

(b) Once the employee has been removed from the job, the supervisor is to contact the Personnel Department. If contact cannot be made at that time, the supervisor is to proceed through the next step of this procedure and make contact with the Personnel Department as soon thereafter as possible.

(c) The supervisor is to then take the employee to the collection site for drug and/or alcohol testing immediately, but no later than eight (8) hours for an alcohol test or twenty-four (24) hours for a drug test, of having determined that there is reasonable suspicion to believe that the employee is using or is under the influence of alcohol or drugs. If the alcohol test is conducted more than two (2) hours, but less than eight (8) hours, after the supervisor makes such reasonable suspicion determination, the supervisor will complete a report explaining the reason for the delay in conducting the drug or alcohol test. The supervisor is to wait at the clinic with the employee until the breath test has been completed or the urine sample has been taken. If the alcohol test is not conducted within eight (8) hours after the supervisor makes such reasonable suspicion determination, or if the drug test is not conducted within twenty-four (24) hours after such determination, the supervisor will complete a report explaining the reasons why the test was not conducted. During all times involved in this section, the employee shall remain on duty and receive the employee's appropriate rate of pay.

(d) Once the drug testing has been completed and a positive confirmation test result has been received (0.04 percent or above), the employee will not be permitted to drive his/her own vehicle

home at that time. The Employer must make alternative transportation arrangements in order for the employee to get home.

(e) If a blood alcohol or urine test (hair, if available) has been administered, the City of Fond du Lac will contact the employee once the test results are known and a decision has been made as to the employee's status. The employee will also be advised of the test results.

(f) The results of the drug testing will be sent directly to the Medical Review Officer (MRO) for review and the results of the alcohol testing will be sent directly to the Human Resources Director. When the results are obtained and they confirm a positive test, the employee's supervisor and department head will meet with the Human Resources Director to determine the appropriate course of action to be taken. This is a confidential process. Test results will be held strictly confidential and are not to be discussed or shared with anyone unless authorized by this policy.

(g) Once the test has been completed and the employee has been sent home, the supervisor must submit a written report to the Human Resources Director outlining, in detail, the event and the behavior observed that led the supervisor to believe the employee was under the influence of alcohol and/or drugs. This report must be done within 24 hours of the testing.

**3. Random Testing** - Random alcohol and drug testing will be conducted during an employee's performance of police duties. The employee will be randomly selected for testing from a "pool" of all sworn department employees. The testing dates and times are unannounced and will occur quarterly throughout the year.

The annual percentage rate for random alcohol testing shall be 10 percent and the annual percentage rate for random drug testing shall be 10 percent (rounded up to the next whole number) of the average number of employees in bargaining unit positions.

The selection of employees for random testing shall be made by Substance Abuse Management Inc. (SAMI) using a scientifically valid method. This method will be a Random number table of a computer-based random number generator that is matched with employee's social security numbers or payroll identification numbers. Under this selection process, each employee will have an equal chance of being tested each time selections are made. As a result, some employees may be tested more than once each year, while other employees may not be tested at all.

**4. Post-Accident Testing** - As soon as practicable following an accident involving a City motor vehicle, the City of Fond du Lac shall test an employee driver for alcohol and controlled substances in the following situations:

- a. the accident involved the loss of human life; or

- b. an individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or
- c. there is property damage to a City vehicle, other vehicle or personal property that is considered to be reportable under State of Wisconsin D.M.V. requirements.

The alcohol breath test must be administered as soon as possible, but no later than eight (8) hours following the accident, and the drug test must be administered within sixteen (16) hours of the accident. If the alcohol test is not administered within two (2) hours of the accident, the supervisor will complete a report explaining the reasons for the delay in conducting the test. If the alcohol test is not administered within eight (8) hours of the accident or if the drug test is not administered within sixteen (16) hours of the accident, the supervisor will complete a report explaining why the test was not conducted. The employee shall remain on duty and in paid status from the time of the accident until after the appropriate test is given.

An employee who is subject to post-accident testing shall remain readily available for such testing. A covered employee who leaves the scene of the accident may continue to be considered as "readily available" for testing if (1) the employee notifies his/her supervisor or, if unavailable, another supervisor of his/her location; (2) the employee left the scene to obtain necessary medical care (for himself/herself, or others); or (3) the employee left the scene to obtain assistance in responding to the accident.

**5. Return-to-Duty/Follow-Up Testing** - The City of Fond du Lac will ensure that before an employee returns to duty requiring the performance of a police function after engaging in prohibited conduct, the police officer shall undergo a return-to-duty alcohol and/or controlled substance test with a result indicating an alcohol concentration of less than 0.02 and a verified negative result for controlled substance use. In any event, an employee will not be allowed to return to duty without first having been evaluated by the City of Fond du Lac EAP provider in order to determine the employee's fitness-for-duty. Such evaluation shall be during paid on duty time.

Following a determination that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the City of Fond du Lac will ensure that the employee is subject to unannounced follow-up alcohol and/or controlled substances testing in consultation with a substance abuse professional. Consequently, the employee will be given four (4) random tests during the 12-month period after returning to duty.

## **VI. TESTING PROCEDURES**

The City of Fond du Lac has entered into an alcohol and drug testing agreement with Substance Abuse Management Inc. Testing may be done on both urine and breath (blood alcohol may be required). All drug and alcohol testing will be conducted in conformance with the procedures and rules established by the Federal Omnibus Transportation Employee Testing Act of 1991 and its implementing regulations. Consultants Laboratory Inc. will handle taking the sample and will be responsible for seeing that the samples are sent to a certified laboratory and assisting in the interpretation of the results. Specimen collection is not to be done anywhere but at Consultants Laboratory Inc.

### **A. ALCOHOL TESTING**

Employees will be required to submit to breath testing using an approved Evidential Breath Testing (EBT) device. A certified Breath Alcohol Technician (BAT) will administer an initial screening test. If the employee tests positive for alcohol, then the BAT will conduct a confirmation test. The City of Fond du Lac will take action based only upon the positive results of the confirmation test, 0.04 or greater. All procedures and steps used in conducting both the initial and confirmation tests will be performed in conformance with the Federal law and Federal Regulations.

#### **1. Preparation for Breath Alcohol Testing**

The following procedures summarize the procedures established by the Federal Highway Administration regulations implementing drug and alcohol testing at the time this policy was adopted.

- a. When the employee enters the collection site, the BAT will require him/her to provide positive identification (i.e. photo I.D. or Employer identification).
- b. The BAT will explain the test procedure.
- c. Employees will be required to complete and sign forms used to document the testing process. Refusal to sign the test forms will be regarded as a refusal to take the test.
- d. Employees will be instructed to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.
- e. If an employee tests positive during the screening test, the employee shall not eat, drink, put any object or substance in his or her mouth, and (to the extent possible) not belch during the 20-minute waiting period before the confirmation test is conducted.
- f. Refusal by an employee to complete and sign the test form, to provide breath, or other failure to cooperate with the testing process in a way that prevents the completion of the test will subject the employee to discipline, up to and including termination.

In the event of conflicting results between the initial test and the confirmation test, the

confirmation test results will determine the outcome of the test.

## **2. Blood Alcohol Testing**

Blood alcohol testing is authorized only in the following circumstances:

- a. When this Policy requires a post-accident or reasonable suspicion test, and an EBT is not readily available for either a screening or confirmation test, or if there is an EBT available only for a screening test.
- b. When an employee attempts and fails to provide an adequate amount of breath, blood alcohol testing shall be used for both screening and confirmation test purposes.

Upon the notification of a conclusive finding of a positive (0.04 or greater) blood alcohol test result, the employee has 72 hours in which to request a test of the split specimen. (For explanation of "split specimen", refer to the TESTING FOR CONTROLLED SUBSTANCES section below.) An employee, who fails to notify the Medical Review Officer (MRO) within 72 hours of receiving the results of the positive test of the employee's desire to have the split specimen tested, shall be deemed to have waived the employee's right to seek testing of the split specimen.

Pending receipt of the result of the analysis of the split specimen, the employee shall not perform law enforcement duties, unless the employee has met conditions set forth in this Policy for a return to police functions following test result of 0.04 or greater.

All blood alcohol testing will be conducted in conformance with the procedures established by the Federal Regulations.

## **3. Results of Positive Test**

If a confirmation alcohol test measures 0.04 or greater, the City of Fond du Lac is required to:

- a. Remove the employee from the law enforcement duties;
- b. Before returning the employee to employment, take the following steps:
  - i. Refer the employee to the City of Fond du Lac's EAP for assessment and a determination of whether participation in a treatment program is necessary;
  - ii. Obtain a verification from a substance abuse professional that the employee has complied with any required rehabilitation or treatment program; and
  - iii. Re-test to verify the employee's alcohol concentration is below 0.02;
- c. The employee will subsequently be given at four (4) random tests during the next 12 months.

If the confirmation test level is between 0.02 and 0.039, the employee will be removed from the law enforcement duties.

In the event that an employee is required to comply with breath testing as a result of a law enforcement investigation conducted by an agency other than the Fond du Lac P.D., the employee must submit to the examination. The test will be considered enforceable for purposes of this Policy if the testing officer is a qualified BAT and the EBT that was used for the test has been certified by the State of Wisconsin or a local law enforcement agency.

#### **B. TESTING FOR CONTROLLED SUBSTANCES**

The City of Fond du Lac has established its anti-drug program through its Drug Free Workplace Policy which strictly prohibits the unlawful manufacture, distribution, dispensing, possession or unauthorized use of a controlled substance in the workplace. Furthermore, any abnormal conduct that may create a reasonable suspicion that an employee is under the influence of a controlled substance is addressed in the "Reasonable Suspicion Testing" section described previously in this Policy.

For purposes of this Policy, the City of Fond du Lac will utilize a 5-panel drug screen consisting of the following drugs:

1. Tetrahydrocannabinol (Marijuana drug)
2. Cocaine
3. Amphetamines
4. Opiates (including heroin)
5. Phencyclidine (PCP)

In instances where there is reason suspicion to believe an employee is abusing a substance other than the five drugs listed above, the City reserves the right to test for additional drugs under the City's own authority using standard laboratory testing protocols.

Drug testing is conducted by analyzing an employee's urine specimen (through a certified testing lab). This procedure will include use of a split specimen testing procedure. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Both bottles will be sent to a certified lab. Only the "primary" specimen is opened and used for the urinalysis. The split specimen bottle will remain sealed and stored at the lab. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee has 72 hours from the time of notification, to request the split specimen be re-tested at the same lab or be sent to another certified laboratory for analysis at the employee's expense. An employee who fails to notify the Medical



Review Officer (MRO) within 72 hours of receiving the results of the positive test of the employee's desire to have the split specimen tested shall be deemed to have waived the employee's right to seek testing of the split specimen.

In some cases the employee may be unable to provide a urine specimen. After a reasonable waiting period not to exceed one (1) hour, the collection site person may terminate the testing procedure for urine. The City of Fond du Lac will then proceed with laboratory testing based upon blood specimen.

### **1. Preparation For Drug Testing**

The following procedures summarize the procedures established by the Federal Highway Administration regulations implementing drug testing at the time this policy was adopted.

- a. When the employee enters the collection site, the employee will be required to provide positive identification (i.e., photo I.D. or employer identification).
- b. The employee will be instructed to provide at least 45 ml of urine under the split sample method of collection. This will be done in a specifically designated "donor" bathroom.
- c. The urine sample shall be divided into a primary specimen (30 ml) and a split specimen (15 ml).
- d. If the test result of the primary specimen is positive, the employee may request, within 72 hours of receiving notification of the positive test result, that the Medical Review Officer (MRO) direct that the split specimen be tested in the same or a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen.
- e. An employee will be removed from the safety-sensitive position pending the result of the test of the split specimen.
- f. If the result of the test of the split specimen fails to confirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the Medical Review Officer (MRO) shall cancel the test.
- g. Employees will be required to complete and sign forms used to document the testing and chain of custody process. Refusal to sign the test form(s) will be regarded as a refusal to take the test.
- h. Refusal by an employee to complete and sign the test and chain of custody forms, to provide urine, to provide an adequate amount of urine (to be decided on a case-by-case basis), or other failure to cooperate with the testing process in a way that prevents the completion of the test will be considered grounds for termination.

In the event of conflicting results between the initial test and the confirmation test, the

confirmation test results will determine the outcome of the test.

## **2. Results of Positive Test**

As with an alcohol misuse violation, the City of Fond du Lac is required to act upon a positive drug test result in the following manner:

- a. Remove the employee from the law enforcement duties. This removal will only take place after the employee has been allowed to meet or speak with a Medical Review Officer (MRO) to determine that the positive drug test did not result from the authorized use of a controlled substance;
- b. Refer the employee to the City of Fond du Lac's EAP for assessment and subsequent compliance with recommended rehabilitation after a determination of a drug problem has been made;
- c. Employee must be evaluated by a substance abuse professional or Medical Review Officer (MRO) and determined to be fit to return to work prior to their release of the employee; and
- d. Employee must have a negative result on a return-to-duty drug test. Follow-up testing to monitor the employee's continued abstinence from drug use will be required if the employee is determined as needing rehabilitation.

## **VII. PRESCRIPTION AND NON-PRESCRIPTION DRUGS**

Before performing work-related duties, employees must notify their supervisor if they are taking any legally prescribed medication, therapeutic drug, or any non-prescription drug which contains any measurable amount of alcohol and which carries a warning label that indicates the employee's mental functioning, motor skills, or judgment may be adversely affected by the use of this medication. A written report of this notification is to be filed by the supervisor, using the Department form, with the Personnel Department. It is the responsibility of the employee to inform his/her physician of the type of police function that the employee performs in order that the physician may determine if the prescribed substance could interfere with the safe and effective performance of the employee's duties or operation of City equipment.

A legally prescribed drug is one where the employee has a prescription or other written approval from a physician for the use of the drug in the course of medical treatment. The prescription must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing City business is prohibited by City Policy.

## **VIII. CONFIDENTIALITY OF RECORDS**

The City of Fond du Lac respects the confidentiality and privacy rights of all of its employees. Accordingly, the results of any test administered under this Policy and the identity of any employee participating in the City of Fond du Lac's EAP or other assessment or treatment program will not be revealed by the City of Fond du Lac to anyone except as required by law. The City of Fond du Lac will release an employee's records as directed by the express written consent of the employee authorizing release to an identified person. In addition, the City of Fond du Lac will ensure that any lab or agency used to conduct testing under this Policy will maintain the confidentiality of employee test records. However, the lab or testing agency will disclose information related to a positive drug or alcohol test of an individual to the Human Resources Director. The Human Resources Director will disclose this information to the employee and may discuss this information to the decision maker in a lawsuit, grievance, or other proceeding by or on behalf of said employee which arises from any action taken in response to a positive drug or alcohol test; or as required by law, including court orders or subpoenas.

The Medical Review Officer (MRO) will not reveal individual test results to anyone except the Human Resources Director, unless the MRO has been presented with a written authorization from the tested employee. The MRO may reveal to the Human Resources Director relevant information as to whether the employee is qualified to perform police functions or whether the employee has tested positive for alcohol or a controlled substance. The Human Resources Director will disclose this information to the employee may disclose this information to the decision maker in a lawsuit, grievance or other proceeding on behalf of said employee which arises from any action taken in response to a positive drug or alcohol test; or as required by law, including court orders or subpoenas; or upon the tested employee's written authorization and consent.

All records related to drug and alcohol tests of individual employees will be maintained in individual files separate from the employee's personnel file. These records will be stored in a locked cabinet and access will only be allowed to the Human Resources Director who must have a legitimate need to review the records of a particular employee.

## **IX. COSTS**

The employer shall pay all costs associated with the administration of alcohol and controlled substance testing except those costs for a "split specimen" test requested by an employee. The employee shall pay for the split specimen test. If the result of said test is negative, the City shall

reimburse the employee for said test.

#### **X. PAY STATUS**

All time spent undergoing required alcohol or controlled substance testing, including travel time and waiting periods, shall be paid in accordance with applicable provisions of a Collective Bargaining Agreement or pay policy of the City.

#### **XI. DISCIPLINE**

Consistent with this policy, the employer may take disciplinary action based on non-compliance with this policy by an employee and specifically for actions as follows:

- A. If a Medical Review Officer (MRO) reports that a urine drug test is positive, the employee shall be subject to disciplinary actions up to and including discharge. Discharge shall be held in abeyance if the employee enters into a last chance agreement and successfully completes a Substance Abuse Treatment Program.
- B. If a BAT reports that a breath test is equal to or exceeds 0.04, that employee shall be subject to disciplinary action, up to and including discharge. Discharge shall be held in abeyance if the employee enters into a last chance agreement and successfully completes a Substance Abuse Treatment Program.
- C. If a BAT reports a breath test is recorded between 0.02 and 0.04, the employee shall be subject to discipline pursuant to "just cause".
- D. Any employee who refuses to submit to a urine drug and/or breath alcohol test shall be subject to disciplinary action, up to and including discharge.

**Questions:** Any employee having questions with respect to the scope of this policy and its contents, may contact the Human Resources Director at 929-3331.

### **GLOSSARY OF TERMS**

<b>BAT</b>	Breath Alcohol Technician
<b>CDL</b>	Commercial Drivers License

<b>DHHS</b>	Department of Health & Human Services
<b>DOT</b>	Department of Transportation
<b>EAP</b>	Employee Assistance Program
<b>EBT</b>	Evidential Breath Testing
<b>FHWA</b>	Federal Highway Administration
<b>MRO</b>	Medical Review Officer
<b>SAMI</b>	Substance Abuse Management Incorporated
<b>EMPLOYEE</b>	Any member of Police Department including probationary officers.

**EMPLOYEE ACKNOWLEDGMENT FORM**

Detach and return this page to the Personnel Department after you have read and understood this Policy.

I acknowledge that I have received, read and understand the City of Fond du Lac's Drug and Alcohol Testing Policy on the date indicated below and understand the provisions of this Policy. I further understand that violation of the City of Fond du Lac's Drug and Alcohol Testing Policy may subject me to discipline, up to and including termination.

**SIGNED** \_\_\_\_\_

**NAME (please print)** \_\_\_\_\_

**DATE** \_\_\_\_\_

**City of Fond du Lac**  
**Police Department**  
**Drug & Alcohol Policy**