

1
2 **DRUG AND ALCOHOL TESTING POLICY PROGRAM**
3 **GUIDELINES**

4 **City of Fond du Lac Transit Department**
5 **Updated 1.11.2019**
6

City of Fond du Lac,
Fond du Lac Area
Transit

7 **A. PURPOSE**
8

9 The City of Fond du Lac, Fond du Lac Area Transit provides
10 public transit and Paratransit services for the general public in
11 designated portions of the Fond du Lac Area. Part of our mission is
12 to ensure that this service is delivered safely, efficiently, and
13 effectively by establishing a drug and alcohol-free work environment,
14 and to ensure that the workplace remains free from the effects of
15 drugs and alcohol in order to promote the health and safety of
16 employees and the general public. In keeping with this mission, the
17 City of Fond du Lac declares that the unlawful manufacture,
18 distribution, dispense, possession, or use of controlled substances
19 or misuse of alcohol is prohibited for all employees.
20

21 Additionally, the purpose of this policy is to establish
22 guidelines to maintain a drug and alcohol-free workplace in
23 compliance with the Drug-Free Workplace Act of 1988, and the
24 Omnibus Transportation Employee Testing Act of 1991. This policy
25 is intended to comply with all applicable Federal regulations
26 governing workplace anti-drug and alcohol programs in the transit
27 industry. Specifically, the Federal Transit Administration (FTA) of the
28 U.S. Department of Transportation has published 49 CFR Part 655,
29 as amended, that mandate urine drug testing and breath alcohol
30 testing for safety-sensitive positions, and prohibit performance of
31 safety-sensitive functions when there is a positive test result. The U.
32 S. Department of Transportation (USDOT) has also published 49
33 CFR Part 40, as amended, that sets standards for the collection and
34 testing of urine and breath specimens.
35

36 Any provisions set forth in this policy that are included under
37 the sole authority of the City of Fond du Lac and are not provided
38 under the authority of the above named Federal regulations are
39 underlined.
40

41 **B. APPLICABILITY**
42

43 This Drug and Alcohol Testing Policy applies to all safety-
44 sensitive employees (full- or part-time) when performing any transit-
45 related business. A safety-sensitive function is any duty related to

**All Underlined
sections are employer
provisions and not
required by the FTA.**

46 the safe operation of mass transit service including the operation of
47 a revenue service vehicle (whether or not the vehicle is in revenue
48 service), maintenance of a revenue service vehicle or equipment
49 used in revenue service, security personnel who carry firearms,
50 dispatchers or person controlling the movement of revenue service
51 vehicles and any other transit employee who is required to hold a
52 Commercial Driver's License. Maintenance functions include the
53 repair, overhaul, and rebuild of engines, vehicles and/or equipment.
54 A list of safety-sensitive positions who perform one or more of the
55 above mentioned duties is provided in Attachment A. Supervisors
56 are only safety sensitive if they perform one of the above functions.

57
58
59

C. DEFINITIONS

60 *Accident* means an occurrence associated with the operation
61 of a revenue service vehicle even when not in revenue service or
62 which requires a Commercial Driver's License to operate, if as a
63 result--

64

- 65 (1) An individual dies;
- 66 (2) An individual suffers a bodily injury and immediately
67 receives medical treatment away from the scene of the
68 accident; or,
- 69 (3) One or more vehicles incur disabling damage as the
70 result of the occurrence and is transported away from
71 the scene by a tow truck or other vehicle. For purposes
72 of this definition, *disabling damage* means damage,
73 which precludes departure of any vehicle from the
74 scene of the occurrence in its usual manner in daylight
75 after simple repairs. Disabling damage includes
76 damage to vehicles that could have been operated but
77 would have been further damaged if so operated, but
78 does not include damage which can be remedied
79 temporarily at the scene of the occurrence without
80 special tools or parts, tire disablement without other
81 damage even if no spare tire is available, or damage to
82 headlights, taillights, turn signals, horn, mirrors or
83 windshield wipers that makes them inoperative.

84

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

89

90 *Alcohol* means the intoxicating agent in beverage alcohol,
91 ethyl alcohol, or other low molecular weight alcohols contained in any
92 beverage, mixture, mouthwash, candy, food, preparation or
93 medication.

94
95 *Alcohol Concentration* is expressed in terms of grams of
96 alcohol per 210 liters of breath as measured by an evidential breath-
97 testing device.

98
99 *Canceled Test* is a drug test that has been declared invalid by
100 a Medical Review Officer. A canceled test is neither positive nor
101 negative.

102
103 *Covered Employee* means an employee who performs a
104 safety-sensitive function including an applicant or transferee whom
105 will be hired to perform a safety-sensitive function (See Attachment
106 A for a list of covered employees).

107
108 *Designated Employer Representative (DER)* means an
109 employee authorized by the Employer to take immediate action(s)
110 to remove employees from safety sensitive duties and to make
111 required decision in the testing and evaluation procedures. The
112 DER also receives test results and other communication for the
113 employer consistent with the requirement of Part 40. Service
114 agents cannot act as a DER.

115
116 *Dilute specimen.* A specimen with creatinine and specific
117 gravity values that are lower than expected for human urine.

118
119 *Disabling damage* means damage, which precludes
120 departure of any vehicle from the scene of the occurrence in its
121 usual manner in daylight after simple repairs. Disabling damage
122 includes damage to vehicles that could have been operated but
123 would have been further damaged if so operated, but does not
124 include damage, which can be remedied temporarily at the scene of
125 the occurrence without special tools or parts, tire disablement
126 without other damage even if no spare tire is available, or damage
127 to headlights, taillights, turn signals, horn, mirrors or windshield
128 wipers that makes them inoperative.

129

130 *Medical Review Officer (MRO)* means a licensed physician
131 (medical doctor or doctor of osteopathy) responsible for receiving
132 laboratory results generated by the drug testing program who has
133 knowledge of substance abuse disorders, and has appropriate
134 medical training to interpret and evaluate an individual's confirmed
135 positive test result, together with his/her medical history, and any
136 other relevant bio-medical information.

137
138 *Negative test result* for a drug test means a verified
139 presence of the identified drug or its metabolite below the minimum
140 levels specified in 49 CFR Part 40, as amended. An alcohol
141 concentration of less than 0.02 BAC is a negative test result.

142
143 *Non-negative test result* is a test result found to be
144 adulterated, substitute, invalid, or positive for drug/drug
145 metabolites. Non-negative results are considered a positive test or
146 refusal to test if MRO cannot determine legitimate medical
147 explanation

148
149 *Performing (a safety-sensitive function)* means a covered
150 employee is considered to be performing a safety-sensitive function
151 and includes any period in which he or she is actually performing,
152 ready to perform, or immediately available to perform such
153 functions.

154
155 *Positive test result* for a drug test means a verified presence
156 of the identified drug or its metabolite at or above the minimum
157 levels specified in 49 CFR Part 40, as amended. A positive alcohol
158 test result means a confirmed alcohol concentration of 0.04 BAC or
159 greater.

160
161 *Prohibited drug* means marijuana, cocaine, opioids,
162 amphetamines, or phencyclidine at levels above the minimum
163 thresholds specified in 49 CFR Part 40, as amended.

164
165 *Revenue Service Vehicles* include all transit vehicles that are
166 used for passenger transportation service or that require a CDL to
167 operate.

168
169 *Safety-sensitive functions* include (a) the operation of a transit
170 revenue service vehicle even when the vehicle is not in revenue
171 service; (b) the operation of a non-revenue service vehicle by an
172 employee when the operation of such a vehicle requires the driver to
173 hold a Commercial Driver's License (CDL); (c) maintaining a revenue

174 service vehicle or equipment used in revenue service; (d)
175 dispatchers and (e) carrying a firearm for security purposes.
176

177 *Service Agents* means any person or entity who provides
178 services specified in Part 40 to employers in connection with DOT
179 testing requirements. A service agent cannot be used as the DER.
180

181 *Substance Abuse Professional (SAP)* means a licensed
182 physician (medical doctor or doctor of osteopathy) or licensed or
183 certified psychologist, social worker, licensed marriage or family
184 counselor, employee assistance professional, or addiction counselor
185 (certified by the National Association of Alcoholism and Drug Abuse
186 Counselors Certification Commission or by the International
187 Certification Reciprocity Consortium/Alcohol and other Drug Abuse)
188 with knowledge of and clinical experience in the diagnosis and
189 treatment of drug and alcohol related disorders.
190

191 *Substituted specimen.* A specimen with creatinine and
192 specific gravity values that are so diminished that they are not
193 consistent with human urine.
194

195 *Test Refusal* The following are considered a refusal to
196 test if the employee:

- 197 • Fails to appear for any test within a reasonable time, as
198 determined by the employer, after being directed to do so by
199 the employer. Pre-employment tests are excluded from this
200 refusal category.
- 201 • Fails to remain at the testing site until the testing process is
202 complete;
- 203 • Fails to provide a urine specimen or a breath specimen for
204 any drug test required by Part 40 or DOT agency regulations.
- 205 • In the case of a directly observed or monitored collection in a
206 drug test, fails to permit the observation or monitoring of the
207 provision of a specimen
- 208 • Fails to provide a sufficient amount of urine and/or failure to
209 provide a sufficient amount of breath when directed, and it
210 has been determined, through a required medical evaluation,
211 that there was no adequate medical explanation for the failure
- 212 • Fails or declines to take a second test the employer or
213 collector has directed the employee to take;
- 214 • Fails to undergo a medical examination or evaluation, as
215 directed by the MRO as part of the verification process, or as
216 directed by the DER as part of the "shy bladder" and/or "shy
217 lung" procedures
- 218 • Fails to cooperate with any part of the testing process (e.g.,

- 219 refuse to empty pockets when so directed by the collector,
220 behave in a confrontational way that disrupts the collection
221 process).
- 222 • if the MRO reports that there is verified adulterated or
223 substituted test result,
 - 224 • Failure to follow an observer's instructions to raise and lower
225 clothing and turn around during a directly-observed test also
226 constitutes a refusal.
 - 227 • Possess or wear a prosthetic or other device that could be
228 used to interfere with the collection process.
 - 229 • Admit to the collector or MRO that the employee adulterated
230 or substituted the specimen.
 - 231 • An employee is considered to have refused to take an alcohol
232 test if the employee fails to sign the certification at Step 2 of
233 the ATF.

234
235 *Verified negative test* means a drug test result reviewed by a
236 medical review officer and determined to have no evidence of
237 prohibited drug use above the minimum cutoff levels established by
238 the Department of Health and Human Services (DHHS).

239
240 *Verified positive test* means a drug test result reviewed by a
241 medical review officer and determined to have evidence of prohibited
242 drug use above the minimum cutoff levels specified in 49 CFR Part
243 40 as revised.

244
245 *Validity testing* is the evaluation of the specimen to
246 determine if it is consistent with normal human urine. The purpose
247 of validity testing is to determine whether certain adulterants or
248 foreign substances were added to the urine, if the urine was diluted,
249 or if the specimen was substituted.

250
251

252 D. EDUCATION AND TRAINING

253

254 Every covered employee will receive a copy of this policy and
255 will have ready access to the corresponding federal regulations
256 including 49 CFR Parts 655 and 40. In addition, all covered
257 employees will undergo a minimum of 60 minutes of training on the
258 signs and symptoms of drug use including the effects and
259 consequences of drug use on personal health, safety, and the work
260 environment. The training also includes manifestations and
261 behavioral cues that may indicate prohibited drug use.

262 All supervisory personnel or company officials who are in a
263 position to determine employee fitness for duty will receive 60

264 minutes of reasonable suspicion training on the physical, behavioral,
265 and performance indicators of probable drug use and 60 minutes of
266 additional reasonable suspicion training on the physical, behavioral,
267 speech, and performance indicators of probable alcohol misuse.

268
269 Information on the signs, symptoms, health effects, and
270 consequences of alcohol misuse is presented in Attachment B of this
271 policy.

272

273

274 E. PROHIBITED SUBSTANCES

275

276 Prohibited substances addressed by this policy include the
277 following.

278

279 (1) Illegally Used Controlled Substance or Drugs Under
280 the Drug-Free Workplace Act of 1988 any drug or any substance
281 identified in Schedule I through V of Section 202 of the Controlled
282 Substance Act (21 U.S.C. 812), and as further defined by 21 CFR
283 1300.11 through 1300.15 is prohibited at all times in the workplace
284 unless a legal prescription has been written for the substance. This
285 includes, but is not limited to: marijuana, amphetamines, opioids,
286 phencyclidine (PCP), and cocaine, as well as any drug not approved
287 for medical use by the U.S. Drug Enforcement Administration or the
288 U.S. Food and Drug Administration. Illegal use includes use of any
289 illegal drug, misuse of legally prescribed drugs, and use of illegally
290 obtained prescription drugs. Also, the medical use of marijuana, or
291 the use of hemp related products, which cause drug or drug
292 metabolites to be present in the body above the minimum thresholds
293 is a violation of this policy

294

295 Federal Transit Administration drug testing regulations (49
296 CFR Part 655) require that all covered employees be tested
297 for marijuana, cocaine, amphetamines, opioids, and
298 phencyclidine as described in Section H of this policy.
299 Illegal use of these five drugs is prohibited at all times and
300 thus, covered employees may be tested for these drugs
301 anytime that they are on duty.

302

303 (2) Legal Drugs: The appropriate use of legally prescribed
304 drugs and non-prescription medications is not prohibited.
305 However, the use of any substance which carries a warning
306 label that indicates that mental functioning, motor skills, or
307 judgment may be adversely affected must be reported to a
308 supervisor and the employee is required to provide a written

309 release from his/her doctor or pharmacist indicating that the
310 employee can perform his/her safety-sensitive functions.

311

312 (3) Alcohol: The use of beverages containing alcohol
313 (including any mouthwash, medication, food, candy) or any
314 other substances such that alcohol is present in the body
315 while performing safety-sensitive job functions is prohibited.
316 An alcohol test can be performed on a covered employee
317 under 49 CFR Part 655 just before, during, or just after the
318 performance of safety-sensitive job functions.

319

320 F. PROHIBITED CONDUCT

321

322 (1) All covered employees are prohibited from reporting for
323 duty or remaining on duty any time there is a
324 quantifiable presence of a prohibited drug in the body
325 above the minimum thresholds defined in 49 CFR
326 PART 40, as amended.

327 (2) Each covered employee is prohibited from consuming
328 alcohol while performing safety-sensitive job functions
329 or while on-call to perform safety-sensitive job
330 functions. If an on-call employee has consumed
331 alcohol, they must acknowledge the use of alcohol at
332 the time that they are called to report for duty. The
333 covered employee will subsequently be relieved of
334 his/her on-call responsibilities.

335 (3) The Transit Department shall not permit any covered
336 employee to perform or continue to perform safety-
337 sensitive functions if it has actual knowledge that the
338 employee is using alcohol.

339 (4) Each covered employee is prohibited from reporting
340 to work or remaining on duty requiring the performance
341 of safety-sensitive
342 functions while having an alcohol concentration of
343 0.04 or greater regardless of when the alcohol was
344 consumed.

345 (5) No covered employee shall consume alcohol for eight
346 (8) hours following involvement in an accident or until
347 he/she submits to the post-accident drug/alcohol test,
348 whichever occurs first.

349 (6) No covered employee shall consume alcohol within
350 four (4) hours prior to the performance of safety-
351 sensitive job functions.

352 (7) Consistent with the Drug-free Workplace Act of 1988,
353 all City of Fond du Lac Transit employees are

354 prohibited from engaging in the unlawful manufacture,
355 distribution, dispensing, possession, or use of
356 prohibited substances in the work place including
357 Transit Department premises, transit vehicles, while in
358 uniform or while on City of Fond du Lac business.
359

360 **G. DRUG STATUTE CONVICTION**
361

362 Consistent with the Drug Free Workplace Act of 1988, all
363 employees are required to notify the City of Fond du Lac Personnel
364 Department management (consisting of the City Attorney, Assistant
365 City Attorney and Associate Human Resources Manager) of any
366 criminal drug statute conviction for a violation occurring in the
367 workplace within five days after such conviction. Failure to comply
368 with this provision shall result in disciplinary action as defined in
369 Section Q.10 of this policy.
370

371 **H. TESTING REQUIREMENTS**
372

373 Analytical urine drug testing and breath testing for alcohol will
374 be conducted as required by 49 CFR part 40. All covered employees
375 shall be subject to testing prior to employment, for reasonable
376 suspicion, following an accident, and random as defined in Section
377 K, L, M, and N of this policy. All covered employees who have tested
378 positive for drugs or alcohol on a random, reasonable suspicion or
379 post-accident will be tested prior to returning to duty after completion
380 of the Substance Abuse Professional's recommended treatment
381 program and subsequent release to duty. Follow-up testing will also
382 be conducted following return-to-duty for a period of one to five
383 years, with at least six tests performed during the first year. The
384 duration and frequency of the follow-up testing above the minimum
385 requirements will be at the discretion of the Substance Abuse
386 Professional.
387

388 A drug test can be performed any time a covered employee is
389 on duty. An alcohol test can be performed just before, during, or after
390 the performance of a safety-sensitive job function.
391

392 All covered employees will be subject to urine drug testing and
393 breath alcohol testing as a condition of ongoing employment with the
394 City of Fond du Lac, Fond du Lac Area Transit. Any safety-sensitive
395 employee who refuses to comply with a request for testing shall be
396 removed from duty and subject to discipline as defined in Section
397 Q.3 of this policy. Refusal can also include an inability to provide a
398 sufficient urine specimen or breath sample without a valid medical

399 explanation, obstructive behavior, or physical absence resulting in
400 the inability to conduct the test within the specified time frame.

401

402 I. DRUG TESTING PROCEDURES

403

404 Testing shall be conducted in a manner to assure a high
405 degree of accuracy and reliability and using techniques, equipment,
406 and laboratory facilities which have been approved by the U.S.
407 Department of Health and Human Service (DHHS). All testing will
408 be conducted consistent with the procedures set forth in 49 CFR
409 Part 40, as amended. The procedures will be performed in a
410 private, confidential manner and every effort will be made to protect
411 the employee, the integrity of the drug testing procedure, and the
412 validity of the test result.

413

414 The drugs that will be tested for include marijuana, cocaine,
415 opioids, amphetamines, and phencyclidine. After the identity of the
416 donor is checked using picture identification, a urine specimen will
417 be collected using the split specimen collection method described
418 in 49 CFR Part 40, as amended. Each specimen will be
419 accompanied by a DOT Chain of Custody and Control Form and
420 identified using a unique identification number that attributes the
421 specimen to the correct individual. The specimen analysis will be
422 conducted at a DHHS certified laboratory. An initial drug screen
423 and validity test will be conducted on the primary urine specimen.
424 For those specimens that are not negative, a confirmatory Gas
425 Chromatography/Mass Spectrometry (GC/MS) test will be
426 performed. The test will be considered positive if the amounts of
427 the drug(s) and/or its metabolites identified by the GC/MS test are
428 above the minimum thresholds established in 49 CFR Part 40, as
429 amended.

430

431 The test results from the DHHS certified laboratory will be
432 reported to a Medical Review Officer. A Medical Review Officer
433 (MRO) is a licensed physician with detailed knowledge of
434 substance abuse disorders and drug testing. The MRO will review
435 the test results to ensure the scientific validity of the test and to
436 determine whether there is a legitimate medical explanation for a
437 confirmed positive, substitute, or adulterated test result. The MRO
438 will attempt to contact the employee to notify the employee of the
439 non-negative laboratory result, and provide the employee with an
440 opportunity to explain the confirmed laboratory test result. The
441 MRO will subsequently review the employee's medical
442 history/medical records as appropriate to determine whether there
443 is a legitimate medical explanation for a non-negative laboratory

444 result. If no legitimate medical explanation is found, the test will be
445 verified positive or refusal to test and reported to the City of Fond
446 du Lac Personnel Department Drug and Alcohol Program Manager
447 (DAPM) (This is the Associate HR Manager). If a legitimate
448 explanation is found, the MRO will report the test result as negative
449 to the DAPM and no further action will be taken.
450 If the test is invalid without a medical explanation, a retest will be
451 conducted under direct observation.

452 Any covered employee who questions the results of a
453 required drug test under paragraphs L through P of this policy may
454 request that the split sample be tested. The split sample test must
455 be conducted at a second DHHS-certified laboratory with no
456 affiliation with the laboratory that analyzed the primary specimen.
457 The test must be conducted on the split sample that was provided
458 by the employee at the same time as the primary sample. The
459 method of collecting, storing, and testing the split sample will be
460 consistent with the procedures set forth in 49 CFR Part 40, as
461 amended. The employee's request for a split sample test must be
462 made to the Medical Review Officer within 72 hours of notice of the
463 original sample verified test result. Requests after 72 hours will
464 only be accepted at the discretion of the MRO if the delay was due
465 to documentable facts that were beyond the control of the
466 employee. The City of Fond du Lac will ensure that the cost for the
467 split specimen are covered in order for a timely analysis of the
468 sample, however the City of Fond du Lac will seek reimbursement
469 for the split sample test from the employee.
470

471 If the analysis of the split specimen fails to confirm the
472 presence of the drug(s) detected in the primary specimen, if the
473 split specimen is not able to be analyzed, or if the results of the split
474 specimen are not scientifically adequate, the MRO will declare the
475 original test to be canceled and will direct the City of Fond du Lac
476 Personnel Department to retest the employee under direct
477 observation.
478

479 The split specimen will be stored at the initial laboratory until
480 the analysis of the primary specimen is completed. If the primary
481 specimen is negative, the split will be discarded. If the primary is
482 positive, the split will be retained for testing if so requested by the
483 employee through the Medical Review Officer. If the primary
484 specimen is positive, it will be retained in frozen storage for one
485 year and the split specimen will also be retained for one year.
486

487 Observed collections

488

489 Consistent with 49 CFR part 40, collection under direct observation
490 (by a person of the same gender) with no advance notice will occur
491 if:

492 (1) The laboratory reports to the MRO that a specimen is invalid,
493 and the MRO reports to the City of Fond du Lac Personnel
494 Department that there was not an adequate medical explanation for
495 the result; or

496 (2) The MRO reports to the City of Fond du Lac Personnel
497 Department that the original positive, adulterated, or substituted
498 test result had to be cancelled because the test of the split
499 specimen could not be performed.

500 (a) The City of Fond du Lac Personnel Department will direct a
501 collection under direct observation of an employee if the drug test is
502 a return-to-duty test or a follow-up test.

503 (b) The collector, must immediately conduct a collection under
504 direct observation if:

505 They are directed by the City of Fond du Lac Personnel
506 Department to do so; or

507 (3)The collector observes materials brought to the collection site
508 or the employee's conduct clearly indicates an attempt to tamper
509 with a specimen or

510 (4) The temperature on the original specimen was out of range

511 (5) The original specimen appeared to have been tampered with.

512

513

514 J. ALCOHOL TESTING PROCEDURES

515

516 Tests for breath alcohol concentration will be conducted
517 utilizing a National Highway Traffic Safety Administration (NHTSA)-
518 approved Evidential Breath Testing device (EBT) operated by a
519 trained Breath Alcohol Technician (BAT). Alcohol screening tests
520 may be performed using a non-evidential testing device, which is
521 also approved by NHSTA. If the initial test indicates an alcohol
522 concentration of 0.02 or greater, a second test will be performed to
523 confirm the results of the initial test. The confirmatory test must
524 occur on an EBT. The confirmatory test will be conducted at least
525 fifteen minutes after the completion of the initial test. The
526 confirmatory test will be performed using an NHTSA-approved EBT
527 operated by a trained BAT. The EBT will identify each test by a
528 unique sequential identification number. This number, time, and
529 unit identifier will be provided on each EBT printout. The EBT
530 printout, along with an approved alcohol testing form, will be used
531 to document the test, the subsequent results, and to attribute the

532 test to the correct employee. The test will be performed in a
533 private, confidential manner as required by 49 CFR Part 40, as
534 amended. The procedure will be followed as prescribed to protect
535 the employee and to maintain the integrity of the alcohol testing
536 procedures and validity of the test result.
537

538 An employee who has a confirmed alcohol concentration of
539 0.04 or greater will be considered a positive alcohol test and in
540 violation of this policy. The consequences of a positive alcohol test
541 are described in Section Q of this policy. Even though an
542 employee who has a confirmed alcohol concentration of 0.02 to
543 0.039 is not considered positive, the employee shall still be
544 removed from duty for at least eight hours and will be subject to the
545 consequences described in Section Q. of this policy. An alcohol
546 concentration of less than 0.02 will be considered a negative test.
547

548 The Transit Department affirms the need to protect individual
549 dignity, privacy, and confidentiality throughout the testing process.
550 If at any time the integrity of the testing procedures or the validity of
551 the test results is compromised, the test will be canceled. Minor
552 inconsistencies or procedural flaws that do not impact the test
553 result will not result in a cancelled test.
554

555 K. PRE-EMPLOYMENT TESTING

556

557 All applicants for covered transit positions shall undergo urine
558 drug testing and/or breath alcohol testing prior to hire or transfer into
559 a covered position that requires the performance of a safety-
560 sensitive function.

561 (1) All offers of employment for covered positions shall be
562 extended conditional upon the applicant passing a drug
563 test. An applicant shall not be hired into a covered
564 position unless the applicant takes a drug test with
565 verified negative results, and an alcohol concentration
566 of 0.02 or less.

567 (2) A non-covered employee shall not be placed,
568 transferred or promoted into a covered position until
569 the employee takes a drug test with verified negative
570 results.
571

572 (3) If an applicant fails a pre-employment drug or alcohol
573 test, the conditional offer of employment shall be
574 rescinded. Evidence of the absence of drug
575 dependency from a Substance Abuse Professional that
576 meets with 49 CFR part 40, as amended, and a

- 577 negative pre-employment drug test and an alcohol
578 concentration of 0.02 or less will be required prior to
579 further consideration for employment. The cost for the
580 assessment and any subsequent treatment will be the
581 sole responsibility of the applicant.
- 582 (4) When an employee being placed, transferred, or
583 promoted from a non-covered position to a covered
584 position submits a drug test with a verified positive
585 result, and an alcohol concentration of over 0.02 the
586 employee shall be subject to disciplinary action in
587 accordance with Section Q.
- 588 (5) If a pre-employment/pre-transfer test is canceled, the
589 City of Fond du Lac Personnel Department will require
590 the applicant to take and pass another pre-employment
591 drug test.
- 592 (6) When a covered employee or applicant has not
593 performed a safety-sensitive function for 90
594 consecutive calendar days regardless of the reason,
595 and the employee has not been in the employer's
596 random selection pool during that time, the employer
597 shall ensure that the employee takes a pre-
598 employment drug test with a verified negative result.
- 599 (7) An applicant with a dilute negative test result will be
600 required to retest.

601
602
603 L. REASONABLE SUSPICION TESTING
604

605 All City of Fond du Lac, Fond du Lac Area Transit covered
606 employees will be subject to a reasonable suspicion drug and/or
607 alcohol test when there are reasons to believe that drug or alcohol
608 use is impacting job performance and safety. Reasonable suspicion
609 shall mean that there is objective evidence, based upon specific,
610 contemporaneous, articulable observations of the employee's
611 appearance, behavior, speech or body odor that are consistent with
612 possible drug use and/or alcohol misuse. Reasonable suspicion
613 referrals must be made by one supervisor who is trained to detect
614 the signs and symptoms of drug and alcohol use, and who
615 reasonably concludes that an employee may be adversely affected
616 or impaired in his/her work performance due to possible prohibited
617 substance abuse or alcohol misuse. A reasonable suspicion alcohol
618 test can only be conducted just before, during, or just after the
619 performance of a safety-sensitive job function. However, under the
620 City of Fond du Lac's authority, a reasonable suspicion alcohol test
621 may be performed any time the covered employee is on duty. A

622 reasonable suspicion drug test can be performed any time the
623 covered employee is on duty.

624

625 The City of Fond du Lac shall be responsible for transporting
626 the employee to the testing site. An employee who refuses an
627 instruction to submit to a drug/alcohol test shall not be permitted to
628 finish his or her shift and shall immediately be placed on
629 administrative leave pending disciplinary action as specified in
630 Section Q.3 of this policy.

631

632 A written record of the observations which led to a
633 drug/alcohol test based on reasonable suspicion shall be prepared
634 and signed by the supervisor making the observation prior to the
635 release of the test results. This written record shall be submitted to
636 the City of Fond du Lac Personnel Department management and
637 shall be attached to the forms reporting the test results.

638

639

640 M. POST-ACCIDENT TESTING

641

642 All covered employees will be required to undergo urine and
643 breath testing if they are involved in an accident with a transit
644 revenue service vehicle, regardless of whether or not the vehicle is
645 in revenue service, that results in a fatality. This includes all surviving
646 covered employees that are operating the vehicle at the time of the
647 accident and any other whose performance cannot be completely
648 discounted as a contributing factor to the accident.

649

650 In addition, a post-accident test will be conducted if an
651 accident results in injuries requiring immediate transportation to a
652 medical treatment facility; or one or more vehicles incurs disabling
653 damage.

654

655

656 (1) As soon as practical following an accident, not
657 involving the loss of human life, in which a mass transit
658 vehicle is involved, the employer shall drug and alcohol
659 test each covered employee operating the mass transit
660 vehicle at the time of the accident unless the employer
661 determines, using the best information available at the
662 time of the decision, that the covered employee's
663 performance can be completely dis counted as a
664 contributing factor to the accident. The employer shall
665 also drug and alcohol test any other covered employee
666 whose performance could have contributed to the

- 667 accident, as determined by the employer using the
668 information available at the time of the decision.
- 669 (2) The appropriate transit supervisor shall ensure that an
670 employee, required to be tested under this section, is
671 tested as soon as practicable, but no longer than eight
672 (8) hours after the accident for alcohol, and within 32
673 hours for drugs. If an alcohol test is not performed
674 within two hours of the accident, the Supervisor will
675 document the reason(s) for the delay. If the alcohol
676 test is not conducted within (8) eight hours, or the drug
677 test within 32 hours, attempts to conduct the test must
678 cease and the reasons for the failure to test
679 documented.
- 680 (3) Any covered employee involved in an accident must
681 refrain from alcohol use for eight (8) hours following the
682 accident, or until he/she undergoes a post-accident
683 alcohol test.
- 684 (4) An employee who is subject to post-accident testing
685 who fails to remain readily available for such testing,
686 including notifying a supervisor of his or her location if
687 he or she leaves the scene of the accident prior to
688 submission to such test, may be deemed to have
689 refused to submit to testing.
- 690 (5) Nothing in this section shall be construed to require the
691 delay of necessary medical attention for the injured
692 following an accident, or to prohibit an employee from
693 leaving the scene of an accident for the period
694 necessary to obtain assistance in responding to the
695 accident, or to obtain necessary emergency medical
696 care.
- 697 (6) In the rare event that the City of Fond du Lac Personnel
698 Department is unable to have an FTA drug and alcohol
699 test performed (i.e., employee is unconscious,
700 employee is detained by law enforcement agency), the
701 City of Fond du Lac Personnel Department may use
702 drug and alcohol post-accident test results
703 administered by local law enforcement officials in lieu
704 of the FTA test. The local law enforcement officials
705 must have independent authority for the test and the
706 employer must obtain the results in conformance with
707 local law.

708
709 N. RANDOM TESTING
710

711 All covered employees will be subjected to random,
712 unannounced testing. The selection of employees shall be made by
713 a scientifically valid method of randomly generating an employee
714 identifier from the appropriate pool of safety-sensitive employees.

715 (1) The dates for administering unannounced testing of
716 randomly selected employees shall be spread
717 reasonably throughout the calendar year.

718 (2) The number of employees randomly selected for
719 drug/alcohol testing during the calendar year shall be
720 not less than the percentage rates established by
721 Federal regulations for those safety-sensitive
722 employees subject to random testing by Federal
723 regulations. The current random testing rate for drugs
724 established by FTA equals twenty-five (25%) percent
725 of the number of covered employees in the pool and
726 the random testing rate for alcohol established by FTA
727 equals ten (10%) percent of the number of covered
728 employees in the pool.

729 (3) Each covered employee shall be in a pool from which
730 the random selection is made. Each covered
731 employee in the pool shall have an equal chance of
732 selection each time the selections are made.
733 Employees will remain in the pool and subject to
734 selection, whether or not the employee has been
735 previously tested. There is no discretion on the part of
736 management in the selection and notification of the
737 individuals who are to be tested.

738 (4) Covered transit employees that fall under the Federal
739 Transit Administration regulations will be included in
740 one random pool maintained separately from the
741 testing pool of employees that are included solely
742 under the City of Fond du Lac's authority.

743 (5) Random tests can be conducted at any time during an
744 employee's shift for drug testing. Alcohol random tests
745 can be performed just before, during, or just after the
746 performance of a safety sensitive duty. Testing can
747 occur during the beginning, middle, or end of an
748 employee's shift.

749 (6) Employees are required to proceed immediately to the
750 collection site upon notification of their random
751 selection.

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753 O. RETURN-TO-DUTY TESTING

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All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test, a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test, a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety.

P. FOLLOW-UP TESTING

Covered employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

Q. RESULT OF DRUG/ALCOHOL TEST

Any covered employee that has a verified positive drug or alcohol test will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

A positive drug and/or alcohol test will also result in disciplinary action as specified herein.

- (1) As soon as practicable after receiving notice of a verified positive drug test result, a confirmed alcohol test result, or a test refusal, the City of Fond du Lac Personnel Department Drug and Alcohol Program

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Manager will contact the employee's supervisor to have the employee cease performing any safety-sensitive function.

- (2) The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.
- (3) Refusal to submit to a drug/alcohol test shall be considered a direct act of insubordination and may result in termination. A test refusal includes the following circumstances.
 - (a) A covered employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests.
 - (b) A covered employee who falsifies test results through tampering, contamination, adulteration, or substitution of a urine specimen.
 - (c) A covered employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation.
 - (d) A covered employee who failed to sign the certification at Step 2 of the ATF.
 - (e) A covered employee whose urine sample has been verified by the MRO as substitute or adulterated.
 - (f) A covered employee fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer
 - (g) A covered employee fails to remain at the testing site until the testing process is complete;
 - (h) A covered employee fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations;
 - (i) A covered employee fails to permit the observation or monitoring of a specimen collection
 - (j) A covered employee fails or declines to take a second test the employer or collector has directed you to take;
 - (k) A covered employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" or "shy lung" procedures

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- (l) A covered employee fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).
 - (m) Failure to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
 - (n) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
 - (o) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (4) For the first instance of a verified positive test from a sample submitted as the result of a random, post-accident or reasonable suspicion drug/alcohol test (\geq 0.04 BAC), disciplinary action against the employee shall include:
- (a) Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
 - (b) Failure to execute, or remain compliant with the last chance agreement shall result in termination from employment.
 - ◆ Compliance with the last chance agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgement of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy;
 - (c) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.
 - (d) A periodic unannounced follow-up drug/alcohol test, which results in a verified positive test, shall result in termination from employment.
- (5) The second instance of a verified positive drug or alcohol (\geq 0.04 BAC) test result from a sample

887 submitted under the random, reasonable suspicion,
888 return-to-duty, or follow-up drug/alcohol test provisions
889 herein shall result in termination from employment.

890 (6) An alcohol test result of ≥ 0.02 to ≤ 0.039 BAC shall
891 result in the removal of the employee from duty for
892 eight hours. The employee will not be allowed to return
893 to safety-sensitive duty for his/her next shift until
894 he/she submits to an alcohol test with a result of less
895 than 0.02 BAC.

896 (7) Failure of an employee to report within five days a
897 criminal drug statute conviction for a violation occurring
898 in the workplace shall result in termination.

899

900 R. GRIEVANCE AND APPEAL

901

902 The consequences specified by 49 CFR Part 655 for a
903 positive test or test refusal are not subject to arbitration.

904

905 S. INFORMATION DISCLOSURE

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907 Drug/alcohol testing records shall be maintained by the City
908 of Fond du Lac Personnel Department Drug and Alcohol Program
909 Manager and, except as provided below or by law, the results of any
910 drug/alcohol test shall not be disclosed without express written
911 consent of the tested employee.

912

913 (1) The employee, upon written request, is entitled to
914 obtain copies of any records pertaining to their use of
915 prohibited drugs or misuse of alcohol including any
916 drug or alcohol testing records. Covered employees
917 have the right to gain access to any pertinent records
918 such as equipment calibration records, and records of
919 laboratory certifications.

920 (2) Records of a verified positive drug/alcohol test result
921 shall be released to the City of Fond du Lac Personnel
922 Department Drug and Alcohol Program Manager and
923 Department Supervisor on a need to know basis.

924 (3) Records will be released to a subsequent employer
925 only upon receipt of a written request from the
926 employee (see Attachment D for example.)

927 (4) Records of an employee's drug/alcohol tests shall be
928 released to the adjudicator in a grievance, lawsuit, or
929 other proceeding initiated by or on behalf of the tested
930 individual arising from the results of the drug/alcohol
931 test.

- 932 (5) Records will be released to the National Transportation
933 Safety Board during an accident investigation.
- 934 (6) Records will be released to the DOT or any DOT
935 agency with regulatory authority over the employer or
936 any of its employees.
- 937 (7) Records will be released if requested by a Federal,
938 state or local safety agency with regulatory authority
939 over the City of Fond du Lac or the employee.
- 940 (8) If a party seeks a court order to release a specimen or
941 part of a specimen contrary to any provision of Part 40
942 necessary legal steps to contest the issuance of the
943 order will be taken.
- 944 (9) In cases of a contractor or sub-recipient of a state
945 department of transportation, records will be released
946 when requested by such agencies that must certify
947 compliance with the regulation to the FTA.
948

949 T. SYSTEM CONTACTS

950

951 Any questions regarding this policy or any other aspect of the
952 substance abuse policy should be directed to the following
953 individual(s).

954

955 City of Fond du Lac Personnel Department Drug and Alcohol
956 Program Manager:

957

958 Name: Jackie Braatz

959 Title: Associate Human Resources Manager

960 Address: City of Fond du Lac, 160 South Macy St., Fond du Lac WI
961 54936-0150

962 Telephone Number: 920-322-3624

963

964 Name: Deborah S.R. Hoffmann

965 Title: City Attorney/Human Resources Director

966 Address: City of Fond du Lac, 160 South Macy St., Fond du Lac WI
967 54936-0150

968 Telephone Number: 920-322-3423

969

970 Name: Alexandra Klimko

971 Title: Assistant City Attorney

972 Address: City of Fond du Lac, 160 South Macy St., Fond du Lac WI
973 54936-0150

974 Telephone Number: 920-322-3428

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978 Medical Review Officer

979

980 Name: Substance Abuse Management Inc.

981 Title: Medical Review Officer

982 Address: P.O. Box 511268 Milwaukee, WI 53203-0211

983 Telephone Number: 1-800-247-7264

984 1-414-977-7264

985

986 Substance Abuse Professional

987

988 Name: IntegNet EAP

989 Title: EAP Consultant

990 Address: 56 Camelot Drive, Fond du Lac, WI 54935

991 Telephone Number: 920-924-0614

992

993 DHHS Certified Laboratory Primary Specimen

994

995 Name: LAB Corp.

996 Address: 1904 Alexander Dr. RTP, NC 27709

997 Telephone Number: 1-800-833-3984

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999 DHHS Certified Laboratory Split Specimen

1000

1001 Name: Northwest Toxicology

1002 Address: 1141 East 3900 South, Salt Lake City, UT 84124

1003 Telephone Number: 1-800-322-3361

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CITY OF FOND DU LAC:


BY 

Joseph P. Moore
City Manager

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**This Policy was adopted by the City of Fond du Lac,
Wisconsin on January 14, 2019**

APPROVED AS TO FORM,

BY 

City Attorney

Attachment A

1027

1028

1029 The following positions/classifications are covered by this policy:

1030

1031 Title/Job Classification:

1032

1033 Transit Manager

1034 Transit Clerk

1035 Full Time Bus Drivers

1036 Part Time Bus Drivers

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Information Request Form

I, _____ hereby allow Fond du Lac Area Transit/City of Fond du Lac to contact my former DOT-regulated employer(s), from the past two years, to request the following information in accordance with 49CFR part 40.25:

- Alcohol test results of 0.04 or higher alcohol concentration. 49CFR part 40.25(b)(1)
- Verified positive drug tests 49CFR part 40.25(b)(2)
- Refusals to be tested (including verified adulterated or substituted drug test results.) 49CFR part 40.25(b)(3)
- Other violation of DOT agency drug and alcohol testing regulations. 49CFR part 40.25(b)(4)
- With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). 49CFR part 40.25(b)(5)

Please list former employer(s) with contact information:

In respect to DOT drug and alcohol testing regulation over the past two years.....

- Have you ever had an alcohol test result of 0.04 or higher?
- Have you ever had a verified positive drug test?
- Have you ever refused to be tested (including verified adulterated or substituted drug test results)?
- Have you violated any DOT agency drug and alcohol testing regulations?
- If you have violated a DOT drug and alcohol regulation, do you have documentation of successful completion of a DOT return-to-duty requirement (including follow-up testing?)

FAILURE TO PROVIDE WRITTEN CONSENT, INCLUDING FORMER EMPLOYER(S) INFORMATION, ANSWERS TO THE QUESTIONS AND SIGNATURE, WILL RESULT IN YOU BEING DISQUALIFIED FOR A SAFETY SENSITIVE POSITION WITH FOND DU LAC AREA TRANSIT/THE CITY OF FOND DU LAC AS PER 49CFR PART 40.25(a).

Applicant Signature _____

Date _____

Witness Signature _____

Date _____

*This form must be kept on file for 3-years from date of completion.

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EMPLOYEE ACKNOWLEDGMENT FORM

Detach and return this page to the Personnel Department.

I acknowledge that I have received, read and understand the Fond du Lac Transit Authority / City of Fond du Lac's Drug and Alcohol Testing Policy on the date indicated below and understand the provisions of this Policy. I understand that the terms described in this Policy may be altered, amended or changed by the City of Fond du Lac to comply with the Federal Omnibus Transportation Employee Testing Act of 1991 and its implementing regulations, Federal Transit Administration (FTA) of the U.S. Department of Transportation 49 CFR Part 655, The U. S. Department of Transportation (USDOT) 49 CFR Part 40, as amended, upon prior notice. I further understand that any violation of the City of Fond du Lac's Drug and Alcohol Testing Policy may subject me to discipline, up to and including termination.

EMPLOYEE NAME (print) _____

SIGNED _____

DATE _____

