



Policy Title	<b>Drug and Alcohol Testing (Non-DOT) for Employees in Testing Designated or Other Positions</b>
Effective Date	March 1, 2019
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Approval	 State Personnel Director
References	25 IAC 4-1-1 Executive Order 90-5

**PURPOSE**

To promote a healthy and safe work environment for employees and the public, the State will conduct drug and/or alcohol testing, in a manner consistent with employee's privacy rights.

**SCOPE**

This policy applies to all non-DOT employees subject to the executive authority of the Governor and State Personnel Department, except law enforcement officers carrying out authorized undercover operations. This policy also applies to prospective employees seeking positions in a testing designated position (TDP).

**POLICY STATEMENT**

1. The use of illegal drugs by employees, on or off duty, will not be tolerated.
2. No employee shall unlawfully:
  - a) manufacture,
  - b) distribute,
  - c) dispense,
  - d) possess,
  - e) usea controlled substance, or be under the influence of a controlled substance while in the course and scope of employment.
3. No employee shall use or be under the influence of alcohol while in the course and scope of employment.
4. No employee shall report for duty or remain on duty or operate a state vehicle while having any measurable amount of alcohol in his/her system (which for enforcement purposes is defined as .02 breath alcohol concentration) or while having any measurable trace of a controlled



substance in his/her system for which the employee does not have a prescription, legally valid in Indiana.

5. The State will conduct drug and alcohol testing in these situations:
  - a. Upon reasonable suspicion that any employee is under the influence of alcohol or illegally uses or is impaired by use of a controlled substance, while in the course and scope of employment.
  - b. Return-to-duty and follow-up testing may be conducted for any employee who has received a positive test result and is required to undergo a counseling or rehabilitation program for alcohol or illegal drug use.
  - c. Upon the occurrence of on-the-job accidents or unsafe on-duty or job-related activities that pose a danger to others or the overall operation of the agency, employees may be tested.
  - d. Pre-employment testing will be conducted for persons receiving contingent offers of employment in a TDP.
  - e. Random testing will be conducted for employees in TDPs.
6. No employee who is in a testing designated position shall refuse to submit to an alcohol or controlled substance test required in any of the abovementioned situations. No employee shall refuse to submit to an alcohol or controlled substance test in situations a, b, c, or e above.
7. Employees are encouraged to seek evaluation and treatment when concerned about their use of alcohol or drugs, including prescription drugs. Information about alcohol and drugs, including a list of Substance Abuse Professionals (SAP) throughout the state, may be found at <https://www.in.gov/spd/2414.htm>. Links for the State's Employee Assistance Program (EAP), and plan documents and summaries of state employee group health plans may be found at <https://www.in.gov/spd/2337.htm>. Time spent in treatment for substance abuse may qualify for coverage under family and medical leave (FML) for eligible employees.

## **DEFINITIONS**

**Accident or Unsafe Practice Testing** - Employees involved in on-the-job accidents or who engage in unsafe on-duty or job-related activities that pose a danger to others or the overall operation of the agency may be subject to testing. Based on the circumstances of the accident or unsafe act, the DER may initiate testing when there is:

- 1) Evidence of an unsafe practice.
- 2) Significant damage to property.
- 3) Careless operation of a vehicle.
- 4) Significant injury to persons.
- 5) Erratic incident(s).

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

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration – Alcohol in a volume of breath (shown as grams of alcohol/210 liters of breath) as indicated by an evidential breath test. For enforcement purposes an alcohol concentration of 0.02 or greater will be considered a positive test result.

Applicant – An individual who has received a contingent offer for a position that is a testing designated position (TDP).

Breath Alcohol Technician (BAT) – An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing (EBT) device.

Collector – A collector is an individual trained in protocols for collecting urine specimens to be tested for controlled substances.

Controlled Substance – The meaning assigned by 21 U.S.C. 802 and includes all substances listed on schedules I through V as they may be revised from time to time (21 CFR 1308 and 21 USC 812). In most circumstances, employees will be tested for the following controlled substances: Amphetamines, Cocaine, Marijuana, Opioids, and Phencyclidine (PCP).

Designated Employer Representative (DER) – A management designee who coordinates administration of the drug/alcohol testing program at the local level.

Donor – A donor is the individual providing a urine specimen for testing for controlled substances or providing breath for a breath alcohol test.

DOT – U. S. Department of Transportation; therefore, “non-DOT” regulated means a test that is not regulated by the U.S. Department of Transportation.

EAP – Employee Assistance Program.

Laboratory – A laboratory used in this program will be SAMHSA-certified (Substance Abuse and Mental Health Services Administration) and use DOT protocols for processing specimens.

Medical Review Officer (MRO) – A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the State’s controlled substance testing program. The MRO must have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual’s confirmed positive test, medical history and other relevant biomedical information.

On-call status – Employees are in scheduled on-call status when they have been assigned a time period outside regular work hours during which they are waiting to be engaged and required to



remain in work-ready status in anticipation of performing duties prior to the start of their next regularly-scheduled shift.

Split Specimen – A part of the urine specimen that was sent to the first laboratory and retained unopened, which is transported to a second laboratory in the event an employee requests that it be tested following a verified positive, adulterated or substituted test result of the primary specimen.

Substance Abuse Professional (SAP) – A licensed physician (Doctor of Medicine or Osteopathy); a licensed or certified social worker; a licensed or certified psychologist; a licensed or certified employee assistance professional; a state-licensed or certified marriage and family therapist; or a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc>.

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

TPA – Third Party Administrator of the State's drug and alcohol testing program.

Test, Cancelled – a drug or alcohol test that has an identified problem that cannot be or has not been corrected. A cancelled test is neither positive nor negative.

Test, Confirmation – *In alcohol testing:* a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

*In controlled substance testing:* a second test to identify the presence of a specific drug or metabolite. In order to ensure reliability and accuracy, this test is separate from and uses a different technique and chemical principle than that of the screening test.

Test, Verified – A drug test result or a validity testing result from a Department of Health and Human Services (HHS) certified laboratory that has undergone review and final determination by the MRO.

## **RESPONSIBILITIES**

Employees are responsible for:

- reporting for duty in a work-ready condition;
- remaining in a work-ready condition throughout the assigned shift;
- reporting to his/her supervisor the use of medically authorized drugs or other substances that may create a direct threat by impairing job performance including cognitive functions or driving motor vehicles and providing proper written medical authorization to work from a physician; and
- submitting to drug and/or alcohol testing in appropriate circumstances when required.

Meeting the responsibility to report for duty/remain in a work-ready condition requires the employee adhere to the following standards:



- The consumption of illegal drugs is prohibited at all times, and employees may be tested any time during the performance of their duty.
- Employees with a breath alcohol concentration 0.02 or greater are prohibited from reporting for duty or remaining on duty.
- The consumption of alcohol is prohibited for employees during their assigned on-call hours. See definition for “on-call status” in this policy.
- An employee who is not in on-call status but is called to report back to duty may acknowledge the use of alcohol and the inability to perform cognitive or driving functions without disciplinary action. All non-DOT employees are prohibited from consuming alcohol, including medications with alcoholic content, while on duty and for eight (8) hours following involvement in an accident or until he/she submits to the unsafe practices/accident drug/alcohol test, whichever occurs first.
- The appropriate use of legally prescribed drugs and non-prescription medication is not prohibited. It is, however, the employee’s responsibility to inform the physician of the employee’s job duties and determine from the physician, or other health care professional, whether or not the prescribed drug may impair their job performance or mental or motor function. Employees are required to report the use of medically authorized drugs or other substances that may create a direct threat by impairing job performance or safe operation of motor vehicles to his/her supervisor and provide proper written medical authorization to work from a physician. Failure to report the use of such drugs or failure to provide proper evidence of medical authorization may result in disciplinary action.

Submitting to drug and/or alcohol testing in appropriate circumstances when required includes not refusing. You have refused to take a test if you:

- Fail to provide a breath or urine sample,
- Provide an insufficient volume without valid medical explanation,
- Adulterate or substitute a specimen,
- Fail to appear within a reasonable time,
- Leave the scene of an accident without just cause prior to submitting to a test,
- Leave the collection facility prior to test completion,
- Fail to permit an observed or monitored collection when required,
- Fail to take a second test when required,
- Fail to undergo a medical examination when required,
- Fail to cooperate with any part of the testing process,
- Fail to sign Step 2 of alcohol test form,
- Once test is underway, fail to remain at site and provide a specimen, or
- MRO verifies that you provided an adulterated/substituted sample.

Refusal to test will be considered the same as a positive test for purposes of disciplinary action.

Supervisors are responsible for:

- promptly reporting only to the DER any information obtained from an employee about impairment of cognitive or driving function or request for voluntary counseling/rehabilitation and otherwise maintaining confidentiality of the information;



- taking training related to recognizing signs and symptoms of possible drug use and alcohol misuse,
- documenting observations indicating reasonable suspicion, and
- promptly reporting those suspicions to the Designated Employer Representative so the employee can be tested.

Agency Heads/Facility Heads are responsible for:

- determining which positions, if any, shall be Testing Designated Positions; and
- designating a Designated Employer Representative.

Designated Employer Representative (DER) is responsible for:

- maintaining the accuracy of random pools of employees eligible for random drug and/or alcohol testing;
- maintaining confidentiality of testing schedules and results;
- ensuring appropriate notices are issued to employees;
- ensuring chain of custody forms are properly completed and submitted;
- serving as a resource for employees and supervisors with questions about the testing program or drug and alcohol use; and
- recommending disciplinary actions or pre-deprivation proceedings when appropriate.

## **PROCEDURES**

### **A. Designating Positions for Testing**

#### **Determining Testing Designated Positions (TDP)**

Each Agency Head requiring pre-employment or random testing for employees must specify the criteria and procedures to be applied in designating positions for testing.

Among the factors to be considered are the extent to which the position:

- authorizes employees to carry firearms;
- requires regular contact with offenders;
- requires transportation of or decision-making with regard to the welfare of children or with regard to vulnerable adults who are committed to the care of the state;
- gives employees access to sensitive information related to homeland security or criminal justice activities;
- requires employees, as a condition of employment, to obtain a security clearance;
- requires employees to engage in homeland security or emergency response activities;
- requires employees to directly inspect products or services where the failure of such products or services may directly endanger the safety of the public;
- involves the prosecution of criminal cases; or
- includes access to a controlled substance.

If an employee in state civil service believes his/her position has been wrongly classified as a testing designated position (TDP), that employee may file a civil service complaint in accordance with IC 4-15-2.2-42, within thirty (30) days of the notification that his/her position has been designated a TDP. An employee not in state civil service who challenges the designation may



submit a written administrative appeal to the Agency Head, within thirty (30) days of the notification that his/her position has been designated a TDP.

### **Notices**

Notice shall be provided individually to those employees in TDPs. A sample format is provided in Appendix A:

Each notice will be signed by the employee and centrally collected for easy retrieval by the DER.

If the employee refuses to sign the acknowledgement, the employee's supervisor shall note on the acknowledgement form that the employee received the notice. This acknowledgement is advisory only. An employee's failure to sign the notice shall not preclude testing that employee or otherwise affect the implementation of testing.

### **B. Types of and Reasons for Testing**

Employees shall be tested for blood alcohol concentration of 0.02 or higher.

Employees shall be tested for the following controlled substances:

1. Amphetamines/Methamphetamines
2. Cocaine
3. Phencyclidine (PCP)
4. Opioids (codeine/morphine)
  - a. Heroin (6-AM)
  - b. Hydrocodone/Hydromorphone
  - c. Oxycodone/Oxymorphone
5. Marijuana (THC/Cannabinoids)

Any other substances that may be identified using the same method used to test for controlled substances will not be tested and, if found, will not be reported.

### **Prescription Drug Use / Notice of Impairment**

The appropriate use of legally prescribed drugs and non-prescription medication is not prohibited. It is, however, the employee's responsibility to inform the physician of the employee's job duties and determine from the physician, or other health care professional, whether or not the prescribed drug may impair their job performance or mental, cognitive, or motor functions.

An employee taking prescription(s) that carry a warning against operating a motor vehicle shall inform his/her supervisor or human resources/personnel office immediately upon receiving an assignment requiring the operation of a motor vehicle. Failure to provide that notice is a violation of this policy. If no other assignment is available, the employee may be sent home using available, accrued leave if the employee could not reasonably have anticipated an assignment involving operation of a motor vehicle during that shift; however, if operation of a motor vehicle was reasonably anticipated, unauthorized leave and discipline may be imposed for the absence.



Employees needing reasonable accommodation due to a disability, including the effects of medication taken for the disability, may notify the HR representative of such need so that interactive discussions may be conducted. However, if notification is not provided in advance of an assignment requiring the operation of a motor vehicle, or other assignment that may be adversely affected by the medication, an absence may still be subject to disciplinary action and then discussions may be conducted to address future situations.

### **Pre-employment Testing**

Offers of employment to positions that are TDPs shall be made contingent upon the applicant passing a controlled substance test. Any offer of employment with the State in a TDP is conditioned on the prospective employee testing negative for drugs. An applicant shall be rejected if the pre-employment controlled substance test result is not negative, unless he/she can provide a valid medical statement highlighting a health problem as the cause of the test result. A negative pre-employment drug test result is required before an employee can first perform duties in a TDP.

### **Random Testing**

Employees occupying TDPs are subject to random testing for alcohol and controlled substances. Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at rates set by each agency employing TDPs.

The State submits all eligible employees' names in each affected agency to a computer-generated random selection system which eliminates management discretion. The random selection system provides an equal chance for each employee to be selected each time random selection occurs.

- Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made. Random selection by its very nature may result in employees being selected in successive selections more than once per calendar year.
- Random selections will be reasonably spread throughout the year.
- Each employee selected for testing shall be tested during the selection period.
- A covered employee may be randomly tested for alcohol misuse or prohibited drug use anytime while on duty.
- Each covered employee who is notified of selection for random drug or random alcohol testing shall proceed to the test site immediately.

### **Accident or Unsafe Practice Testing**

Employees involved in on-the-job accidents or who engage in unsafe on-duty or job-related activities that pose a danger to self, others or the overall operation of the agency may be subject to testing. Based on the circumstances of the accident or unsafe act, the DER may initiate testing when there is:

- Evidence of an unsafe practice.
- Significant damage to property.
- Careless operation of a vehicle.
- Significant injury to persons.
- Erratic incident(s).



An alcohol test should take place within two (2) hours, but no more than eight (8) hours following an accident or unsafe practice. A controlled substance test must take place within thirty-two (32) hours after the accident or unsafe practice. Testing under this provision cannot be completed beyond the stated time frames.

Nothing herein shall be construed to require the delay of necessary medical attention for the injured or to prohibit an employee from leaving the accident scene for the time period required to obtain emergency assistance.

An employee shall follow instructions from his/her supervisor or management designee to complete required testing.

In the event federal, state, or local officials conduct breath, blood or urine tests for the use of alcohol and/or controlled substances following an accident, employees must comply with such requests. The State may request testing documentation from such agencies and may ask the employee to sign a release allowing the State to obtain the test results.

In the event an employee is so seriously injured that he/she cannot provide a sample of urine or breath at the time of the accident; the employee must provide the necessary authorization as soon as possible so the State may obtain hospital records or other documents that would indicate the presence of alcohol or controlled substances in the employee's system at the time of the accident.

Failure to release test results to the State may result in disciplinary action up to and including dismissal.

### **Reasonable Suspicion Testing**

Employees are required to take a drug and/or alcohol test(s) if there is reasonable suspicion that the employee is using or under the influence of alcohol and/or controlled substances. The determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. An admission by the employee that s/he has used drugs or alcohol shall be sufficient evidence on which to base disciplinary action without requiring the employee to submit to reasonable suspicion drug and/or alcohol testing.

Supervisors or management personnel who have reasonable suspicion, will take the following actions:

1. Keep the employee under direct observation until the situation is resolved;
2. The supervisor shall tell appropriate management personnel about his/her observations and discuss the circumstances and whether testing should be approved by the DER. If testing is approved, the employee will be immediately notified of the allegation and provided a brief explanation of the evidence giving rise to the allegation and an opportunity to respond prior to being required to submit a breath test and/or urinalysis. An admission



by the employee that s/he has used drugs or alcohol shall be sufficient evidence on which to base disciplinary action without requiring the employee to submit to drug and/or alcohol testing;

3. The DER shall ensure that appropriate chain of custody forms are completed and transmitted to the collection site.
4. Management personnel shall transport the employee to an appropriate collection site and thereafter will ensure that arrangements are made for the employee to be transported to the employee's residence or place of lodging. Under no circumstances shall an employee be permitted to drive a state vehicle or a personal vehicle to or from the collection site;
5. An employee will not be permitted to drive a state vehicle or return-to-duty unless and until a negative test result has been received. If the test results are negative, then the employee will be reimbursed for any lost wages due to the suspension; and
6. Disciplinary action shall be initiated for any employee with a verified positive test result.

### **Return-To-Duty Testing**

An employee who was not dismissed after a refusal to test or positive test result will be required to undergo a counseling or rehabilitation program for alcohol or controlled substance use. The employee may not return to duty until he/she tests negative for a controlled substance and/or tests below 0.02 breath alcohol concentration and an MRO or SAP and the State have determined that the employee is fit for duty. An employee is subject to a return-to-duty test and follow-up tests. Follow-up tests are in addition to any random tests to which the employee may be subject if s/he is in a TDP pool.

### **Follow-up Testing**

Employees required to undergo a counseling or rehabilitation program for alcohol or illegal drug use as a result of the drug testing program will be placed on a follow-up list where they will be subject to regular, unannounced alcohol and/or drug testing as directed by the SAP. The number and frequency of such follow-up testing shall be directed by the SAP. The employee will be subject to follow-up testing for a period of 1 to 5 years as determined by the SAP. Employees who complete an authorized drug treatment program and are returned to testing designated positions will, in addition to the follow-up testing, be returned to the random pools.

Employees are responsible for the cost of counseling or rehabilitation programs. Family-Medical Leave may be available for eligible employees needing leave to attend treatment sessions.

### **Voluntary Rehabilitation and Counseling**

This section will not apply to any employee who tests positive through the testing program. The employee must voluntarily seek treatment through this section prior to being notified of a pending drug and/or alcohol test or involved in a situation that requires an alcohol or drug test for reasonable suspicion or accident/unsafe practices.

The State offers employees the use of counseling and rehabilitative services pursuant to coverage limitations and in accordance with the terms of its benefit programs. Employees are personally responsible for seeking treatment for alcohol and/or controlled substance dependence. Any

voluntary request by an employee for assistance with his/her own alcohol and/or controlled substance dependency will remain as confidential as possible and shall not be used, in itself, as a basis for disciplinary action.

Employees are responsible for the cost of counseling or rehabilitation programs. Family-Medical Leave may be available for eligible employees needing leave to attend treatment sessions. Employees requesting FML for absences related to such treatment must comply with the notice and eligibility requirements of that policy.

The employee must be compliant with the treatment recommendations and abstain from using illegal drugs, and/or meet all responsibilities related to use of alcohol and prescription drugs and agree to submit to follow-up testing as required by the SAP before a return to work will be considered.

Prior to the employee's return to work after voluntary rehabilitation, a drug and/or alcohol test will be required through the State's TPA for drug/alcohol testing services and only non-DOT drug/alcohol testing forms will be utilized. Return to work testing by the State's TPA will be paid by the employing agency.

### **C. Testing Procedures**

#### **Generally**

All testing will be performed by person(s) designated by the State. Employees and applicants will provide their samples without observation except when there is reason to believe a particular individual may alter or substitute the specimen provided. Reasons to believe a person may alter or substitute the specimen include, but are not limited to:

- 1) the individual has previously been found to be an illegal drug user;
- 2) the individual has previously tampered with a sample or has the equipment or implements capable of tampering, altering, or substituting urine samples; or
- 3) the individual provides an unacceptable specimen (e.g., temperature is out of range, physical characteristics are not consistent with normal human urine) at the time of collection; or
- 4) the MRO has ordered the individual to be re-tested under direct observation.

All testing procedures and protocols related to non-DOT tests of state employees subject to the executive authority of the Governor and State Personnel Department will follow DOT procedures in 49 CFR Part 40 when not specifically addressed by the provisions of this policy.

The Agency employing the employee will pay the cost of drug and alcohol testing that it requires or requests employees submit to, including confirmation testing of positive results from an initial test. Any additional tests that the employee may request will be paid for by the employee; see also provision above for Voluntary Rehabilitation and Counseling concerns costs of testing during treatment and for consideration of returning to work after successful completion of a program.

Only a SAMHSA (Substance Abuse and Mental Health Services Administration) certified laboratory will be retained by the State to perform urinalysis for the detection of the presence of controlled substance(s). The laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance and scientific analytical methodologies.

Collection of urine samples must always be documented and sealed with a tamper proof sealing system in the presence of the employee who provided the sample to ensure that all tests can be correctly traced to the employee.

An MRO shall be designated to receive all laboratory results from every type of test and assure that an individual who has tested positive has been afforded an opportunity to justify the test result as discussed below.

#### **Positive Alcohol Testing Protocols**

An employee who receives a positive test result on an initial alcohol breath test is required to take a confirmation validity test (second breathalyzer) within 15-30 minutes. If an employee provides medical documentation highlighting a health problem that prevents him from providing an adequate breath sample for an alcohol test, the potential discipline may be mitigated.

#### **Positive Controlled Substance Testing Protocols**

Within seventy-two (72) hours after an employee is notified of a positive, adulterated or substituted test result for a controlled substance, he/she may request that the “split” portion of his/her specimen be tested at a different SAMHSA laboratory. If the employee makes a request within seventy-two (72) hours to the MRO for the split portion to be tested, the MRO shall immediately arrange with the laboratory for all procedures to be performed in accordance with split specimen testing procedures. The cost of a split specimen test will be the responsibility of the employee; however, the test of the split specimen shall not be conditioned upon up-front payment.

#### **Role of an MRO**

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the Procedures for Transportation Workplace Drug and Alcohol Testing Programs in 49 CFR Part 40. For example, the MRO may choose to conduct medical interviews, review medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication.

Evidence to justify a positive result may include, but is not limited to:

1. a prescription legally valid in Indiana.
2. an affidavit from the employee’s physician verifying a prescription legally valid in Indiana.

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.



If the MRO determines there is no legitimate explanation for the positive result, such result will then be considered a verified positive test result. Consistent with confidentiality requirements the MRO shall refer written determinations regarding all verified positive test results to the appropriate DER.

## Non-routine Collection Situations

### Dilute

A specimen will be identified as dilute if it has creatinine and specific gravity values that are lower than expected for human urine. This determination is made by the laboratory, not the collector.

- If the lab reports a dilute negative specimen, donor must be re-tested.
- The donor may have to travel to an approved collection site to submit the second sample. If an employee has to travel to an approved collection site, management will transport the employee.
- Dilute negative results with creatinine levels 2-5 mg/dl will require an immediate recollection under direct observation as noted below.
- If second test is also dilute, result will be reported as negative. MRO may note “second test after dilute” on results. A second test will be the result of record.
- If a positive test result is also identified by the MRO as dilute, that result is treated as a verified positive test which may result in dismissal from employment or a decision not to offer employment or to revoke a contingent offer of employment. The person shall not be directed to take a second test.

### Out-of-Temperature

A specimen will be determined to be out-of-temperature if the temperature is higher than 100 degrees or lower than 90 degrees Fahrenheit.

- Determined by collector
  - The collection container has a temperature strip adhered to the outside of the container. The collector reads the temperature strip to determine if the specimen is above 100 or below 90 degrees Fahrenheit. It is not graduated to identify the exact temperature.
  - Collector also considers color of specimen and any other physical characteristics that are apparent.
  - If a specimen temperature is out of range, a second collection is immediately required.
- Collector will require donor to provide a specimen under direct observation.
  - Clothing must be raised above the navel and lowered to mid-thigh; donor must turn around in a circle.
  - Collector will observe the donor providing the specimen.
- If donor cannot provide a sufficient specimen under direct observation, collector may institute shy bladder protocols; however, if original specimen was sufficient, but just out-of-temperature, it is unlikely MRO will find a medical reason constituting shy bladder.

### Shy Bladder



The term “shy bladder” is applied to situations where the donor does not produce a sufficient amount of urine for testing. The required amount of 45 ml must be produced in one void and cannot be aggregated.

- Determined by collector
- Donor is unable to produce 45 ml of urine all at once (cannot add smaller specimens together to aggregate one sufficient specimen).
- Time clock starts when donor produces an insufficient quantity of urine on their first attempt. Donors are required to make an attempt even if they say they can't provide a specimen.
- Time clock runs for a maximum of 3 hours.
  - Donor must remain at the collection site for the full 3 hour time frame unless released by the collector after providing a single specimen of at least 45 ml.
  - Donor should be allowed to consume up to 40 ounces of fluid during the 3-hour time period.
  - Second and subsequent attempts to provide a sufficient quantity of urine may occur during the 3-hour time period.
  - If donor leaves the collection site without being released by the collector or prior to the expiration of the 3-hour time period, that is reported as a refusal to test. A refusal to test may result in dismissal from employment or a decision not to offer employment or to revoke a contingent offer of employment.
- At the expiration of the 3-hour time period without providing a sufficient specimen, the donor will be directed to have a medical evaluation.
  - Donor may choose to consult a physician and submit medical documentation of a condition that would explain the inability to produce a sufficient amount of urine. The Donor has 5 weekdays (not including weekends or state holidays) to obtain that medical documentation. If donor is making a good faith effort, but submits documentation that an appointment cannot be scheduled within that time period, additional time may be allowed.
  - If donor states his intention at the time of collection not to seek medical documentation, that will be reported at that time as a refusal to test; there's no need for the MRO to wait 5 days before reporting that result. A refusal to test may result in dismissal from employment or a decision not to offer employment or to revoke a contingent offer of employment.
  - DER may contact MRO to ask if there is a delay in obtaining the medical documentation.
  - If this situation occurs during a random test, the employee may be returned to full duties until the final result is received from the MRO. In other testing situations, the applicant/employee cannot perform full duties until the final result is received from the MRO.
- Failure to submit medical documentation (or submission of insufficient documentation) will be reported as a refusal to test which may result in dismissal from employment or a decision not to offer employment or to revoke a contingent offer of employment.
  - A statement that the donor has “situational anxiety” related to urination will not be sufficient if the condition is not established beyond this one drug test.



- Direct observed collection will be performed immediately with no advanced warning when:
  - The collector identifies a donor's attempt to alter or tamper with their specimen;
  - A specimen test result is reported as invalid because there is no adequate medical explanation for the result;
  - When a positive, adulterated or substituted test result is reported as a cancelled test because testing on the split specimen could not be performed;
  - The temperature of the specimen falls outside the range of 90 - 100° F; or
  - The reason for testing is return-to-duty or follow-up.
- The collection site will immediately notify the agency employing or offering employment to the donor of the occurrence and perform a second collection by direct observation.
- Every observed collection will be conducted by a collector of the same sex as the donor.
- An observed collection will be performed immediately upon detection, and observed specimen collected will be sent for analysis.
- The reason to perform direct observation collection will be provided to the employee by the collector.

#### **D. Disciplinary Consequences**

Violations of this policy will result in disciplinary action up to and including dismissal from employment. Contingent offers of employment will be revoked for any applicant for a TDP in violation of this policy.

#### **E. Supervisor Training**

Training will be provided for supervisors to assist in identifying and addressing substance abuse by employees. Training may be accomplished through various means including contracting out to private organizations and in-house training courses.

#### **F. Additional Information and Forms**

##### **Records and Confidentiality**

While the State will make efforts to keep the specific medical information related to drug and alcohol tests confidential, test results may be used in administrative proceedings, arbitrations, police investigations and proceedings, and court cases arising as a result of the employee's drug testing. If the employee is to be referred to a treatment facility for evaluation, the employee's test results will also be made available to the employee's counselor. The employee will be asked for consent before specific medical information is released to anyone other than those already mentioned.

All discussions between employees and MROs concerning legitimate explanation of positive test results are confidential unless the employee poses a safety risk, which requires the MRO to discuss the situation with the State. If medically supportable reasons exist to explain the positive result, the MRO will report the test result to the State as negative.

##### **EAP Referral and Availability**



The State shall continue its sponsorship of an [EAP](#) which includes programs for referrals for substance abuse prevention and treatment and for the rehabilitation of employees with substance abuse problems.

#### Reference Materials

- [Contact Information for the State's third party administrator of drug/alcohol testing](#)
- [Informational material related to the health effects and workplace issues caused by alcohol and certain specified drugs](#)
- Appendix A – Sample Notice to TDP Employees

To:

From:

Date:

Subject: Notification of Drug & Alcohol Testing

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In accordance with the State's Drug and Alcohol Testing Policy effective, your position has been designated a Testing Designated Position (TDP), which means that you will be subject to random drug and alcohol testing based on the fact that your position meets one or more of the following criteria checked below:

- 1- Authorizes employees to carry firearms;
- 2- Requires regular contact with offenders;
- 3- Requires transportation of or decision-making with regard to the welfare of children or with regard to vulnerable adults who are committed to the care of the state;
- 4- Gives employees access to sensitive information related to homeland security or criminal justice activities;
- 5- Requires employees, as a condition of employment, to obtain a security clearance;
- 6- Requires employees to engage in homeland security or emergency response activities;
- 7 -Requires employees to directly inspect products or services where the failure of such products or services may directly endanger the safety of the public;
- 8- Involves the prosecution of criminal cases; and/or
- 9- Includes access to a controlled substance.

A random pool is established for TDPs in this agency. Employees who are selected from the pool will be tested for the following controlled substances:

- 1) Amphetamines/Methamphetamines
- 2) Cocaine
- 3) Phencyclidine (PCP)
- 4) Opioids (codeine/morphine)
  - a. Heroin (6-AM)
  - b. Hydrocodone/Hydromorphone
  - c. Oxycodone/Oxymorphone
- 5) Marijuana (THC/Cannabinoids)



If you refuse to be tested or the MRO reports your test results as positive for any of the above listed substances (after reviewing any relevant prescriptions), you will be subject to immediate dismissal.

While the State will make efforts to keep specific medical information related to results of drug and alcohol tests confidential, test results may be used in administrative proceedings, arbitrations and court cases arising as a result of an employee's drug testing.

You are responsible for reading and complying with the State's policy on Drug and Alcohol Testing (Non-DOT) for Employees in Testing Designated or Other Positions at <https://www.in.gov/spd/2396.htm>.

Please sign and date this document as an acknowledgement of receipt of this information and then forward it to your Human Resources office. A copy will be retained in your personnel file.

If you have any questions regarding the policy, implementation of this program, or the actual procedures, please contact \_\_\_\_\_ Designated Employer Representative, at XXX-XXX-XXXX or \_\_\_\_\_@\_\_\_\_\_.in.gov.

Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

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