



ADMINISTRATIVE REGULATION

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Administrative Regulation: 1-32

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Supersedes: May 20, 2021

Approved By: William H. Ashton II

Subject: Substance Abuse Policy

I. Purpose

This regulation delineates the town's policy with regard to alcohol and substance abuse in the workplace and the use of substances that affect employee performance during work hours. The policies and procedures pursuant to this regulation are designed to ensure a drug-free workplace, to provide for employee rehabilitation and to deter irresponsible and illegal drug and alcohol use by employees.

II. Policy

The Town of Herndon is a drug-free workplace.

It is the policy of the Town of Herndon to maintain a safe work environment conducive to effective town government operations. All personnel, equipment, and operating practices are required to be consistent with the highest standards of health and safety.

The presence of drugs and alcohol in the workplace, and the influence of these substances on employees is inconsistent with effective government. The Town of Herndon prohibits employees from reporting to work with a measurable quantity of alcohol, narcotic drugs, controlled substances, marijuana, and THC/Tetrahydrocannabinol in the body.

The town has an obligation to protect the public by ensuring that its' employees are free from substance abuse and dependency and ensure that each employee's fitness for employment is not impaired by substance abuse.

The Town of Herndon requires all employees to report for work and remain in a condition to perform their duties free from the effects of alcohol or drugs.

The Town of Herndon prohibits the following for all employees prior to or during work time, which may cause impairment or observable signs of use while working:

1. Use, sale, purchase, or possession of alcohol or illegal and prohibited drugs and/or illegally obtained prescription drugs.
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2. Abuse of legal prescriptions or over-the-counter medications.
3. Unauthorized sale, purchase, transfer, or manufacture of prescription drugs.
4. Presence at work under the influence of any drugs or alcohol.

The town recognizes substance abuse can be successfully treated. In addition to, or in lieu of disciplinary action, town employees may be given the opportunity to successfully complete counseling or a rehabilitation program to overcome addiction to drugs or alcohol.

Confidentiality, consistent with legal, safety and security considerations, is fundamental to this regulation. Therefore, the town will take necessary steps to safeguard the dignity and self-esteem of those being tested and will ensure adherence to all procedures pertaining to the implementation of this policy. The town will adhere strictly to all standards of confidentiality and assure all employees that testing records and results will be released only to those authorized to receive such information or where otherwise required by law.

The use of alcohol at town meetings is prohibited. No alcohol shall be consumed during breaks, lunch, etc. during the workday. No storage of alcohol or drugs will be permitted in any town building or in/on town property.

III. Definitions

Unless otherwise specifically provided, or unless otherwise clearly required by the context in which such words or phrases are used, the words and phrases defined below shall have the meaning indicated when used throughout this administrative regulation:

- A. Alcohol Test – An assessment for the presence of alcohol in the body as determined through the use of a breath alcohol test, evidential breathalyzer test, or blood screening.
- B. Conviction – A finding of guilt or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug or alcohol statutes.
- C. Drug Test or Drug Screening – An assessment, including providing the necessary sample by the employee to be tested, for the detectable presence of any drugs that may be determined to reduce work safety or work efficiency.
- D. Illegal/Prohibited Drugs - Any controlled substance as defined by 21 U.S.C. Section 802; includes all substances listed on Schedules I through V as they may be revised from time to time by 21 C.F.R Section 1308. In addition to the substances listed on Schedule I through V, the Town of Herndon prohibits the use of marijuana and

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- THC/Tetrahydrocannabinol. The term “illegal drugs” does not include the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- E. On-Duty or On-the-Job – When an employee is at the workplace, in a town vehicle, in a personal vehicle on the job, at on duty meals or other authorized breaks, or otherwise performing duties associated with his or her position with the town.
- F. Positive – With respect to the results of a drug test, positive means a laboratory finding of the presence of a drug or a drug metabolite in the urine or blood of an employee at the levels identified by the town. With respect to the results of an alcohol test, positive means the presence of alcohol in an employee’s system at the 0.02 level or greater.
- G. Negative – With respect to the results of a drug test, negative means a test result that does not show presence of drugs at a level specified to be a positive test. With respect to the results of an alcohol test, negative means a test that indicates a breath alcohol concentration of less than 0.02 grams per 210 liters of breath.
- H. Pass a Drug Test – The result of the drug test is negative. The test either:
1. showed no evidence or insufficient evidence of a prohibited drug or drug metabolite; or
 2. showed evidence of a prohibited drug or drug metabolite, but there was a legitimate medical explanation for the result as determined by a doctor.
- I. Pass an Alcohol Test – A negative alcohol test. The test showed no evidence or insufficient evidence of a prohibited level of alcohol.
- J. Reasonable Suspicion - A belief, based upon specific objective facts and rational inferences drawn from those facts that an employee has consumed or is under the influence of alcohol or illegal drugs. Circumstances that constitute a basis for determining reasonable suspicion may include but are not limited to any of the following:
1. presence of the physical symptoms of drug or alcohol use (for example, glassy or bloodshot eyes, smell of alcohol or marijuana, slurred speech, poor coordination, or reflexes);
 2. a pattern of unusual or erratic behavior (for example, confusion, disorientation, lack of coordination, marked personality changes, irrational behavior, physical altercation, oral altercation);
 3. an accident resulting in damage to property or personal injury or death;
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4. direct observation of drug or alcohol use;
5. possession of drugs or alcohol;
6. verifiable information obtained from other employees based upon their observations; or
7. arrests, citations, and deferred prosecutions associated with drugs or alcohol.

Substance Abuse - The use of any illegal and/or prohibited drug, unprescribed medication or the misuse of prescription medication. For the purposes of this policy, use of an illegal and/or prohibited drug is evidenced by a measurable quantity of an illegal and/or prohibited drug in the employee's specimen at or above laboratory cutoff levels.

IV. Screening

Designated employees will be screened for substance abuse under the following conditions:

- A. Pre-employment Screening - Applicants for employment in law enforcement and safety-sensitive positions, and other positions where drug or alcohol use could have an adverse impact on the public, are subject to post employment offer substance abuse screening. A positive test result or a refusal to consent to or to take a required test shall be grounds for revocation of an offer of employment.
- B. Reasonable Suspicion Screening - All employees are subject to reasonable suspicion substance abuse screening. If a supervisor reasonably suspects that an employee may be misusing drugs or alcohol, he/she may request that the employee be tested. Refusal to consent to a test or to be tested upon request may result in disciplinary action, up to and including dismissal.
- C. Confirmation Test – For alcohol, a confirmation test means a second test, following a screening test with the result of 0.02 grams per 210 liters of breath or greater, which provides quantitative data of alcohol concentration. Confirmation test for controlled substances means a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screen test and that uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.
- D. Return to Duty – An employee who has a positive breath alcohol test of 0.02 grams per 210 liters of breath or greater will not be allowed to return to duty until he or she has been evaluated by a substance abuse professional and until he/she tests negative, less than 0.02 grams per 210 liters of breath, on a return-to-duty alcohol test.

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- E. Follow-up – Once allowed to return to duty, an employee who has been determined by the evaluating substance abuse professional to need assistance in resolving problems associated with misuse of drugs or alcohol must submit to a minimum of six unannounced follow-up tests within the first 12 months following rehabilitation. Follow-up testing may be extended for up to 60 months following return to duty as prescribed by the evaluating substance abuse professional.

Alcohol and controlled substances follow-up testing shall be performed immediately before, during, or immediately after an employee's scheduled shift.

V. Procedures

- A. If a supervisor suspects an employee of being under the influence of alcohol or drugs, he/she should first observe the employee closely, noting unusual behavior. It is important for the supervisor not to come to any set conclusions, because often prescribed drugs, alcohol abuse, or certain illnesses may have the same effect.
- B. When observing the employee, the supervisor should simply note abnormal behavior and the inability to perform job duties. The supervisor should not attempt to diagnose the employee. Whenever possible, another supervisor should be called in as a witness to confirm findings, before the employee is confronted.
- C. After observing the employee and making notes of unusual behavior, the supervisor or other designee of the department shall confront the employee. The supervisor shall not accuse the employee of using illegal drugs or misusing alcohol. The supervisor should inform the employee of what has been observed, and then seek an explanation from the employee for actions. At this point, the supervisor also may request a "reasonable suspicion" substance abuse screen.
- D. A reasonable suspicion substance abuse screen is conducted to screen employees for alcohol/illegal drug content at the town's expense. The employee does have the right to refuse the screening, but may be subject to discipline, up to and including dismissal, for failure to take a reasonable suspicion screen. The supervisor shall complete the "Reasonable Suspicion Testing Determination Form". A copy of the form should be sent to the Department of Human Resources. The supervisor or designee is responsible for accompanying the employee to the site where the examination will take place. The impaired employee shall not operate a motor vehicle. If the supervisor is unable to drive the employee home after the exam, the supervisor should try to contact a family member, co-worker, or make other transportation arrangements.
- E. All testing will be in accordance with established State and Federal guidelines. The screening must take place at a town designated testing facility.
- F. If the employee undergoes screening, the employee shall be placed on administrative leave as soon as the test samples have been taken and the employee is on the way
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home. The employee cannot return to work until the tests results are returned. If the test results are negative, the time will be charged to paid administrative leave and expenses incurred for testing, including taxi fare, will be paid by the Town. If the test results are confirmed positive, the time will be charged to leave without pay and other expenses incurred for testing, including taxi fare, may be charged to the employee.

If an employee refuses to undergo substance abuse screening, that person is subject to disciplinary action, up to and including dismissal.

- G. No disciplinary action shall be taken until the results of the tests are in. The results will be sent directly to the Director of Human Resources or his or her designee, who will then contact the department head and together determine the appropriate course of action. The action will depend upon the severity of the offense and the employee's work and performance history.
- H. If an employee tests positive on the initial screening, a confirmation test will be performed. Upon notification of confirmed positive results, the employee has the right to request within 24 hours the re-testing of the original sample at his/her expense by a fully qualified medical examiner specified by the employee. The Department of Human Resources will coordinate the process. If the confirmation test (or retest, if applicable) is positive, the following disciplinary actions will apply:
1. First Offense: in an effort to encourage the employee to take responsibility for his/her problem, the first violation may result in a formal referral to the Employee Assistance Program, and appropriate disciplinary action. If the employee accepts the referral and satisfactorily completes the course of action prescribed by the Employee Assistance Program, no further disciplinary action will be taken regarding the results of the testing. The Town reserves the right to determine when and under what conditions the employee returns to work. An employee shall have a fitness for duty report before he/she returns to work. If the employee refuses the referral or fails to satisfactorily complete the program the employee may be disciplined or terminated.
 2. Subsequent Offenses: management will evaluate the circumstances, length of time since the first offense, severity of the incident and other appropriate factors and make a decision, with the approval of the town manager, when required, on the disciplinary action that will be taken in accordance with the personnel regulations.
- I. If an employee voluntarily admits to having a drug or alcohol problem, he/she will be encouraged to seek professional help, which may include contacting the employee assistance service provided for Town of Herndon employees. The admittance of such a problem to a supervisor or department head will be kept confidential and the employee's job security and/or promotional opportunities will not be jeopardized because of a request for help. In order for an employee's admission of a substance abuse problem to be considered voluntary, the employee must make this admission
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prior to a request to submit to substance abuse testing, which subsequently results in a confirmed positive test result or a refusal to be tested.

- J. Town vehicle operators are required to notify the Director of Human Resources, or his or her designee immediately of any charges of violation of criminal drug statutes or driving under the influence of drugs or alcohol. All employees convicted of violation of any criminal drug statutes must notify the Director of Human Resources or his or her designee not later than five calendar days after the conviction.

VI. Exemption for Prescribed Medical Treatment

The use of legally controlled substances as part of a prescribed medical treatment by a licensed physician will not subject an employee to disciplinary action or denial of employment if treatment will not/does not adversely affect job performance. Prescribed use must be substantiated by a physician's report or statement. If the use of prescribed drugs adversely affects an employee's job performance or is detrimental to the public trust or safety of other employees or citizens, it is in the best interest of the employee and the town for the employee to be placed on sick leave during the period that the employee's performance is affected by the substance.

VII. Compliance with Law

Information regarding the testing and referral of employees and applicants under this policy will be treated as confidential in accordance with the requirements of law governing the privacy of employee records.

Searches and seizures will be conducted in a legal manner. The town reserves the right to conduct searches or inspections of property assigned to an employee whenever the Director of Human Resources or his or her designee determines that the search is reasonable under all the circumstances.

VIII. Supervisor Responsibility

Every supervisor shall:

- A. Consistently apply this policy to all employees under his/her supervision. A supervisor who fails to apply this policy when he or she believes, or reasonably should believe, that an employee under his or her supervision has committed a violation will be subject to appropriate discipline.
- B. Initiate the process for having a drug or alcohol test conducted on an employee if there is reasonable suspicion that the employee under his/her supervision, when such employee is on duty, has an illegal or prohibited drug or alcohol in his/her system or is using any legal drug in a manner other than it was intended.

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- C. Ensure that the employees that he/she supervises are aware of the requirements and consequences of this policy.
- D. Follow the procedure established by the department head for assuring that an employee who is to be tested for alcohol or other drugs is transported to the designated test site, and that those employees for whom there is reasonable suspicion of substance abuse or who have had a breath alcohol test result of 0.02 grams per 210 liters of breath or greater are transported home, either by personal family, friends, or by arranged transportation.

IX. Employee Responsibility

Each employee shall have the responsibility to:

- A. Abide by this policy as a condition of employment.
- B. Comply with all applicable laws regulating the manufacture, distribution, dispensation, use or possession of illegal drugs, alcohol, or prescription drugs.
- C. Assure that his/her ability to perform his/her job duties is not negatively affected due to use of drug or alcohol when scheduled to report to work or when "on call" status. Should any employee be requested to report to work for a safety-sensitive job earlier than his/her normal or previously assigned time, it is the employee's responsibility to advise his/her supervisor of an inability to perform his/her job duties because he/she has consumed measurable amounts of alcohol or illegal drugs prior to reporting for duty. If the employee had received notice that he/she might be called back into work, the employee shall be considered absent without leave if he/she is unable to report to duty for these reasons. An employee may be subject to other disciplinary action, up to and including termination, due to such inability to report for duty.
- D. Submit immediately to a drug or alcohol test when requested by his/her supervisor. An employee who refuses to submit to testing when reasonable suspicion of drugs or alcohol use has been identified and documented may be subject to disciplinary action, up to and including dismissal. In addition, an employee requesting a delay of a test scheduled under the provisions of this policy or failing to appear for a test will be considered to have refused to submit to the test.

Violation of this policy or regulations and laws may result in disciplinary action, up to and including dismissal at the town's discretion.



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