CITY OF ALBUQUERQUE

Substance Abuse Policy

Personnel Rules and Regulations

Section 1100

Part 4

Effective: February 1, 2012

Human Resources Department

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TITLE HUMAN RESOURCES DEPARTMENT
CHAPTER Substance Abuse Policy
PART 4 Employee Assistance Program

1. ISSUING AGENCY: The Human Resources Department and the Division of Risk Management, of the Department of Finance and Administrative Services.

2. SCOPE: These rules have general applicability to all prospective and current employees, classified and unclassified, including but not limited to interns, volunteers, and seasonal employees.

3. STATUTORY AUTHORITY: ROA, 1994, § 2-15-1, et seq.; Council Resolutions 65-1995 and 78-1995; 49 C.F.R. § 40

4. DURATION: Until revoked.

5. EFFECTIVE DATE: February 1, 2012, unless a later date is specified at the end of a section.

6. PURPOSE: The City Council has instructed the Chief Administrative Officer to "create a confidential program allowing and encouraging employees to seek help for substance abuse related problems through the Employee Assistance Program, Substance Abuse Program." The purpose of this part of the Substance Abuse Policy is to implement that instruction in a manner which provides for a safer environment for all employees and the public.

7. DEFINITIONS: Reserved.

8. VOLUNTARY ASSISTANCE (SELF REFERRAL)

A. The City encourages employees who believe or suspect they may be abusing a substance to voluntarily refer themselves to the Employee Assistance Program, Substance Abuse Program for assistance. The staff is prepared to confidentially assist employees requesting their services. Employees may self refer at any time except within twenty-four (24) hours after an accident as defined in this policy or after being notified that they must submit to a random, reasonable suspicion, transfer or promotion drug and alcohol test under Parts 1, 2 or 3 of this Substance Abuse Policy. Except as otherwise provided in this policy, employee contacts and services provided to employees shall be kept confidential.

B. Employees who voluntarily seek assistance for substance abuse may receive, without charge, brief counseling or a treatment assessment with the goal of developing a City recommended treatment program. All of the City's group health insurance plans provide limited benefits to help defray the cost of treatment. Employees should either refer to their schedule of benefits or consult with SAP staff to determine the exact benefits available.

C. Employees who self refer shall be placed on the appropriate leave status until they are, in the opinion of the City Substance Abuse Professional (SAP), ready and able to return to their assigned job duties without endangering the safety of themselves or others.

D. All employees who self refer must consent to and submit to a baseline alcohol and drug test within 24 hours of self referral and shall be compliant with the City recommended treatment program no later than 90 calendar days after self referral. Compliance with the City recommended treatment program shall mean that the employee has submitted to a return-to-duty drug and alcohol test; the result of that test is negative; the employee is cooperating with his City recommended treatment program; the employee has provided the City with a written return-to-work agreement; and, the SAP has determined that the employee can return to work.

E. The return-to-work agreement shall require that the employee remain compliant with his treatment program and state that non-compliance is grounds for discipline. In addition, the return-to-work agreement shall include an agreement to submit to periodic and unannounced follow-up testing as determined and required by the SAP.

F. During treatment the employee's leave status shall be as follows. First, accrued leave shall be exhausted and, if insufficient, the employee shall be placed on leave without pay in accordance with the Personnel Rules and Regulations. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

G. Employees who are not compliant with the City recommended treatment program within 90 calendar days from the date of self referral shall be terminated.

H. Employees who refuse to submit to a periodic, unannounced follow-up test administered pursuant to a return to work agreement shall be terminated. Refusal to test as defined in Parts 1, 2 and 3 of this policy shall be considered both a positive test result and a direct act of insubordination and shall result in termination.

I. The first time an employee has a positive test result during the follow-up testing period, he will be removed from duty for a minimum of thirty (30) calendar days and placed in appropriate leave status. Employees may only again return to work upon the order of the SAP. Any employee not returned to work by the SAP within 90 calendar days shall be terminated.

J. The second time an employee has a positive test result during the follow-up testing period, the employee shall be terminated.

K. Follow-up testing is separate and in addition to any other testing required by other provisions of this policy and appropriate discipline shall be imposed for positive tests under those provisions without regard to an employee's participation in the self referral program.

9. GRIEVANCE AND APPEAL

A. The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination subject to appeal under the Personnel Rules and Regulations.

B. An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance.

C. Any employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 C.F.R. § 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost of the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

10. RECORDS RELEASE

A. Drug and alcohol testing records shall be maintained by the Substance Abuse Program Manager and, except as provided below or by law, the results of any drug and alcohol test shall not be disclosed without express consent of the tested employee.

B. Records of positive tests or refusal to test in the follow-up period shall be released to the employee's department director or designee and the Substance Abuse Program Manager.

C. Records of an employee's drug and alcohol tests shall be released to the adjudicator in a grievance, lawsuit or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug or alcohol test.

D. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Employees have the right to gain access to any pertinent records such as equipment calibration records and records of laboratory certifications. Employees may not have access to follow-up testing plans.

11. ENFORCEABILITY: The invalidity or unenforceability of any provision of this rule shall not affect any other provision hereof, and the rule shall be construed in all respects as if such invalid of unenforceable provision was omitted. If this policy in its entirety or a material portion of it is invalidated, then, and in that event only, the City's Substance Abuse Policy shall be as described in Administrative Instruction 7-1-2 as amended February 17, 2011.

History:
This Policy was adopted by the City of Albuquerque Chief Administrative Officer pursuant to City Council Bill R-237 on April 17, 1995.
The City enacted a Substance Abuse Policy in 1999; revised February 6, 2006 (retroactive to January 1, 2006); the Second Judicial District Court invalidated the discipline portions of the 2006 policy in New Mexico Transportation Union v. City of Albuquerque, No. CV-2005-0129; Administrative 7-1-2) effective November 3, 2009 (2-8-11, 2-17-11).