

# NEW CASTLE COUNTY

## PERSONNEL POLICY

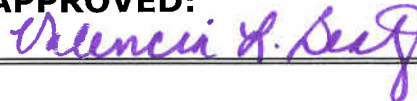
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**DATE** 02/08/12

**SUBJECT:** DRUG AND ALCOHOL TESTING

**APPROVED:**



**Objectives:** To establish a policy that governs reasonable suspicion, random and post accident testing for New Castle County's covered individuals which is consistent with the County's commitment to public safety and the protection of its employees.

**Statement:** Employees are New Castle County's most valuable resource; their health and safety is, therefore, of utmost concern. Each employee has the right to work in an alcohol and drug-free environment, and to work with persons free from the effects of alcohol and drugs. This policy addresses these concerns and rights, while assuring the maximum productivity of employees and safeguarding County assets and personnel, and those of the public, from the dangers of drivers operating under the influence of drugs or alcohol. Early recognition of alcohol or drug abuse is important for successful rehabilitation, for the affected employee's productivity, and for reduced personal, family, and social disruption. Whenever feasible, the County will assist employees in overcoming drug or alcohol abuse. However, the decision to seek diagnosis and accept treatment for alcohol or drug abuse is primarily the individual's responsibility and must be handled under the guidelines of the employee's health care provider.

**Coverage:** This policy covers all classified employees holding a job title represented by a union local which has negotiated drug testing for its membership; all non-union employees holding a job title in the classified or unclassified service; as well as contractors and volunteers. This policy does not cover those employees in positions that fall under the Commercial Driver's License (CDL) drug testing policy. Additionally, this policy is intended to supplement existing policies within the Department of Public Safety and in no way replaces them. Finally, this policy also supplements any terms outlined in agreements governing contractors and volunteers.

### I. Definitions:

1. Accident means an incident where the covered individual is involved in a motor vehicle or equipment collision with persons or property in the course of his or her employment.

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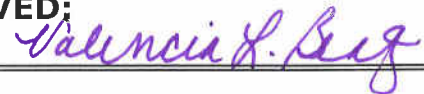
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2. Alcohol means the intoxicating agent in beverage alcohol, or ethyl alcohol or other low molecular weight alcohol, including methyl and isopropyl alcohol. This also includes medications, either prescription or non-prescription, which contain alcohol.
3. Alcohol use means the consumption of any beverage, mixture, preparation, or medication containing alcohol.
4. Controlled substances means marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene; and consisting of, but not limited to cannabis, depressants, hallucinogens, narcotics, and stimulants, as identified in the laws and regulations of the State of Delaware pursuant to Title 16, Delaware Code, Chapter 47, Subchapter II and the United States pursuant to Title 21, United States Code, Section 812.
5. "Covered individuals" includes full-time, part-time, temporary or seasonal employees; contract workers or volunteers.
6. Immediately means without delay.
7. Medical Review Officer (MRO) means a duly certified and licensed physician (M.D. or D.O.) responsible for receiving laboratory results generated by New Castle County's drug and alcohol testing program. The MRO shall have knowledge of substance abuse disorders and have appropriate medical training and certification to interpret and evaluate an individual's confirmed test results together with his/her medical history and any other relevant biomedical information.
8. "Driver" or "operator" means any covered individual who operates a vehicle, or other motorized equipment.
9. Positive Test means an analysis which reveals the presence of drugs and/or alcohol as listed in Section II, paragraphs 1 and/or 2, or refusal to submit to testing for the presence of such.
10. Random means an unannounced selection of a pre-determined number of

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covered individuals to be selected for the purpose of drug and alcohol testing throughout the calendar year.

11. Reasonable Suspicion means belief by a supervisor, confirmed by the CHRO or duly trained designee, that the covered individual has or may be violating the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulated observations concerning appearance, behavior, speech, or body odors, both observed and reported by others, with sufficient verification of the validity of same.
12. Refusal to submit (to an alcohol or controlled substance test) means a covered individual who, after he/she has received notice of the requirement for breath testing or controlled substances testing: (1) fails to provide adequate breath for testing without prior medically certifiable explanation, (2) fails to provide adequate urine and/or blood for controlled substances testing without a prior medically certifiable explanation, (3) engages in conduct that clearly obstructs the testing process, or (4) refuses to submit to the required test.
13. Substance Abuse Professional (SAP) means a licensed medical doctor or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or with sufficient training and knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.
14. Test Collection Site means that facility or facilities selected by the County to perform alcohol and/or controlled substances tests in full compliance with the Omnibus Transportation Employee Testing Act (OTETA) of 1991.
15. Test Coordinator is the person(s) assigned by the Chief Human Resources Officer (CHRO) to coordinate the testing program and to maintain related records.
16. Vehicle means any vehicle titled to New Castle County, or any vehicle in use in the service of the County.

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**II. Prohibitions:**

1. Controlled substance use: No covered individual shall report for duty or remain on duty when the covered individual uses any controlled substance, except when the use is pursuant to a prescription by a medical provider, and in accordance with a certification by the medical provider that the covered individual's ability to perform his or her duties will not be substantially impaired by such use, which prescription and certification have been provided in advance to the County. Notwithstanding, should an individual have a prescription for usage of medical marijuana, the positive result shall only be verified, and discipline administered, if the individual is determined to be "impaired" in accordance with State law.
2. Alcohol concentration: No covered individual shall report for duty or remain on duty while having an alcohol concentration of 0.04 or greater and in no case in violation of Delaware Law, Title 21, Section 4177.
3. Alcohol possession: No covered individual shall be on duty or operate a vehicle while in possession of alcohol.
4. Refusal to submit to tests: No covered individual shall refuse to submit to an alcohol or controlled substance test.
5. Penalty for refusal: Refusal shall be considered the same as a positive test result and will constitute a violation of this policy; appropriate discipline shall be issued.

**III. Post-Accident Testing for Drivers or Operators**

1. Covered individuals must undergo Post-Accident Testing for alcohol and controlled substances immediately following an accident. The supervisor, manager, or his or her designee, shall ensure IMMEDIATE transport of the driver or operator to the test collection site. The driver or operator may

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not drive himself or herself to the test collection site.

2. Following an accident which occurred while operating a vehicle, the driver is required to remain at the scene; ask for the local police to respond to the scene, and ask for his or her supervisor to respond to the scene. (If the supervisor cannot be reached, the general manager or his or her representative shall be asked to respond to the scene.)
3. The CHRO shall retain documentation of the reasoning for post-accident testing.
4. Nothing in this section shall preclude an ill or injured driver from receiving essential medical attention. In such cases of illness or injury, the supervisor or manager shall apprise the medical personnel in attendance of this policy and request the appropriate testing without delay, if feasible.
5. Nothing in this section shall preclude examination, breath or blood alcohol testing, or controlled substances testing of the driver by on-site police or public safety officials under separate authority, if required by law. Results of such test may be used in lieu of testing under this policy, provided such testing complies with procedures required by the local jurisdiction.
6. If a post-accident controlled substances test is not administered within eight (8) hours, the employer shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the controlled substances test was not administered promptly.
7. No driver or operator will be permitted to operate a vehicle or other motorized equipment unless the alcohol test results and the controlled substances test results are zero and negative.



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### **IV. Random Alcohol and Controlled Substance Testing:**

1. The Office of Human Resources (OHR) shall code covered positions in its computer information system and electronically provide such information to the Test Collection Site on a periodic basis. The Test Collection Site shall be responsible for the random selection of covered individuals to be tested and will notify the OHR as to who has been selected so such office can notify the individuals.
2. The number of random controlled substance and alcohol tests that will be conducted over the calendar year period shall consist of up to 25% of those individuals covered under this policy.
3. The Test Collection Site will make a random selection from the current list of individuals covered by this policy. On the test day, the Test Coordinator shall contact the department general manager, or designee, of the randomly selected individual. In the event an individual who is selected for a random controlled substance test and/or alcohol test is on vacation, on a medical absence, or not scheduled for work on that day, the Test Coordinator can select another individual for testing from the selection list, and the absent individual will be put back in the pool of individuals for possible random selection in the future.
4. Supervision shall arrange for the individual to proceed to the test site IMMEDIATELY upon notification of the selected individual. The selected individual is permitted to drive to the test site **only** when randomly selected. When a covered individual does not have transportation, supervision shall contact Human Resources (HR) immediately; HR will arrange for transport.
5. The individual must go to the test collection site immediately, unless the individual is involved in an emergency situation as determined by the department general manager/row officer or designee, in which case the individual shall proceed to the site as soon as possible after ceasing to perform the function. In any case, if the selected individual is unable to report to the test collection site immediately, he or she must report as soon as practicable upon completion of said individual's involvement in

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the emergency or at the end of the workday, whichever occurs first.

5. Covered individuals shall be paid for the time expended in a random test, with no charge against sick or vacation time, even if they are not already being paid. Time expended begins when the individual leaves for the site and ends when the individual leaves the test site or, if working, returns to work that day.
6. If an individual refuses to be tested, such refusal shall be considered the same as a positive test and appropriate discipline shall be issued.

**V. Reasonable Suspicion Testing:**

1. An individual shall be subject to alcohol or controlled substances testing when there is reasonable suspicion that the individual has violated the prohibitions in Section II of this policy.
2. Where a reasonable suspicion has been established, the General Manager (GM) or designee will arrange for transport of the individual.
3. If a reasonable suspicion alcohol or controlled substance test is not administered within two (2) hours following the observations, the Department shall prepare a record stating the reasons the alcohol or controlled substances test was not administered promptly, and forward to HR. In addition, if not administered within eight (8) hours, the County shall cease attempts to administer the test and shall prepare and maintain the record listed above.
4. If an individual refuses to be tested, such refusal shall be considered the same as a positive test.

**VI. Test Process and Results:**

1. All controlled substances testing will be conducted under split-sample collection procedures. The MRO shall direct, in writing, the laboratory to

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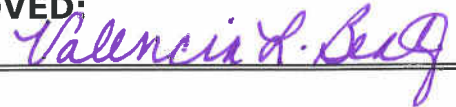
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provide the split specimen to another approved laboratory for analysis of all positive tests. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall void the test and report cancellation and the reasons for it to the employer and the individual.

2. The individual is not authorized to request a reanalysis.
- 3 It is the individual's responsibility to obtain information from his or her physician regarding the effect of prescribed drugs and his or her ability to perform job duties and tasks while properly using those drugs.
4. Should an individual test positive for alcohol a second test will be administered to confirm the results of the original test. In the event the second test fails to verify the positive test the original test will be voided.

**VII. Notification:**

1. Prior to verifying a "positive" result, the MRO shall make every reasonable effort to contact the individual (confidentially) and afford him or her the opportunity to discuss the test result. If after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact the CHRO or designee, who shall direct the individual to contact the MRO as soon as possible (within 24 hours). If the individual cannot be contacted within twenty-four (24) hours, or does not contact the MRO as directed, the MRO shall verify the positive result.
2. While the primary sample is tested at specific thresholds for each controlled substance, the secondary (split) sample is analyzed only for the presence of controlled substances identified in the primary sample results. If a negative result is reached on the secondary test, the original test results are disregarded.



