

County of Lassen
PERSONNEL SERVICES

HS-1



☐ PERSONNEL

☐ RISK MANAGEMENT

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Date: February 28, 2017

To: Aaron Albaugh
Lassen County Board of Supervisors

From: Richard Egan
County Administrative Officer

Subject: Drug Free Workplace Policy change

Background: A request to change the Pre-employment drug testing process in the Drug Free Workplace policy for those classifications considered "safety-sensitive" only, no other classifications will be included in the Pre-employment drug testing.

Fiscal Impact: There is no fiscal impact for this this change.

Action requested: Approve the changes in the Drug Free Workplace Policy for Pre-employment drug testing for "safety sensitive" employees only.

BOARD OF SUPERVISORS
LASSEN COUNTY CALIFORNIA

AGENDA REQUEST FORM

TODAY'S DATE: 2/14/17

Board Date: 2/28/2017	Agenda Item: Update Drug Free Workplace Policy
Dept.: Administration	Division or Title: Personnel
Contact Person: Cheryl Douglas	Phone: 251-8320
☒ Regular Agenda	☐ Consent Agenda
☐ Time Certain:	Estimate Time (minutes):
☐ Public Hearing/Time:	☐ Publication/Posting Requirements
☐ Special Directions to Clerk (Below)	

SUBJECT: We are updating the pre-employment drug testing portion of our Drug Free Workplace policy to drug test only those that have applied for a position that is considered a "safety sensitive" position.

FISCAL IMPACT: There is no fiscal impact.

ACTION REQUESTED: For the Board of Supervisors to adopt the updated Drug Free Workplace Policy.

COMMENTS:

SPECIAL INSTRUCTIONS TO CLERK:

NAME: Drug Free Workplace Policy
POLICY NUMBER: 03-P01
BOARD APPROVAL DATE: 2/11/2003
REVISION NUMBER & DATE: Revision #1 Revises Resolution 93-59
Updated 4/27/09, Revised February 2017

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TITLE 1: PURPOSE OF THIS POLICY/INTRODUCTION

It is the purpose of this policy to ensure that the County of Lassen maintains a drug-free workplace as part of its program to ensure the safety of its employees and that of the general public. This policy is intended to prevent illegal drug and alcohol misuse in the workplace and to follow the requirements and guidelines set forth in the Federal Drug Free Workplace Act of 1988 & 1999, (41 USCS §701 et. seq.; 49 USCS §5330 et. Seq.) 49 CFR Part 40, 382 and 655; the California Drug Free Workplace Act of 1990, (California Government Code §8350 et. seq.), California Vehicle Code §34520, California Penal Code §1210 and Labor Code §6300 et. seq.

Nothing in this Policy shall be construed to impair unlawfully the rights of an employee under the laws of the State of California and of the United States. Questions regarding the Policy shall be directed to the Personnel Department.

The County of Lassen has established the following policy for testing of safety-sensitive job classifications for prospective employees and prohibiting, in part, the use, possession, and sale of drugs or alcohol, or being under the influence of drugs or alcohol during compensable work time or while in any County workplace as defined in Title 2 of this policy.

TITLE 2: DEFINITIONS

- 2.1 "Alcohol" means any intoxicating agent or alcoholic beverage, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol or any beverage defined in California Business and Professions Code Sections 23003 and 23004.
- 2.2 "Appointing Authority" means an individual in the County service who is empowered to appoint to County service and to exercise the power to discipline or discharge.
- 2.3 "Controlled Substance" means any drug, narcotic or derivative, or substance specified or referenced in any provision of the California Uniform Controlled Substance Act (Division 10 of the California Health and Safety Code, as it may be amended), or other applicable law, which may subject an individual to criminal penalties, including but not limited to marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP).
- 2.4 "County Property" includes all County-owned or leased property, temporary or permanent work sites, parking lots, vehicles, including property assigned to or used by employees, such as desks, lockers, furniture and storage bins.
- 2.5 "Illegal Drug" means any controlled substance, as defined herein, including those which have been obtained or are being used by an individual for whom the substance was not prescribed, or is not being used in the manner, combination, or quantity for which it was manufactured, prescribed, or intended.
- 2.6 "Impairment" means that the quality or quantity of an employee's performance on the job is less than should be expected or accepted, or less than usual, standard, or average compared to the past job performance of the particular employee; or the employee cannot perform the job without creating a potential risk of injury to himself or others.
- 2.7 "Last Chance Agreement" means a formal agreement signed between the employee and the county which defines the conditions under which an employee may return to work after being found in violation of this policy. Last chance agreements typically include provisions for unannounced drug and/or alcohol testing, and may include other conditions of employment. If the employee does not honor the conditions of the agreement, the employee is terminated.

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- 2.8 "Legal Drug" means any controlled substance, as defined above, to include an "over-the-counter drug" or "prescription drug" which has been legally obtained and is being used in the manner, combination, and quantity for which it was manufactured, prescribed, or intended.
- 2.9 "Medical Review Officer" (MRO) shall be a licensed physician with knowledge of substance abuse disorders. The role of the MRO is to review and interpret all confirmed positive test results obtained through the County testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test may have resulted from legally prescribed medication. The County shall contract with an MRO for the controlled substances testing program in accordance with the requirements of the Code of Federal Regulations, Parts 40.33 and 382.
- 2.10 "On-Duty" for the County means when an employee is on compensable work time and/or any time in which the employee is acting within the scope of employment for the County.
- 2.11 "Over-the-Counter-Drug" means any legal substance or drug that can be purchased without a prescription.
- 2.12 "Positive Alcohol Test" A positive alcohol test shall be a BAC reading of .02% or above except that once an employee has had a positive test and has either entered into a Substance Abuse Program or a Last Chance Agreement, a positive test shall mean any presence of alcohol (a BAC reading of .001% or above).
- 2.13 "Prescription Drug" means any legal drug or substance prescribed for the individual by a licensed medical practitioner.
- 2.14 "Reasonable Suspicion," as it relates to this policy, means a reasonable belief, based on articulable facts and reasonable inferences drawn from those facts, that an employee may be impaired by the suspected use of drugs and/or alcohol or have violated the applicable directives in this policy. Reasonable suspicion may be based upon, among other things:
- 2.14.1 Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of drugs or alcohol. The factors listed below may demonstrate physical symptoms of being under the influence of drugs or alcohol. The following list is not intended to be an exhaustive list.
- Equilibrium - Does the person stagger, sway side-to-side, or backward and forward when standing? Does the person stagger when walking?
 - Speech - Is the person's manner of speech slurred, rapid, or slow when compared to the person's normal manner of speech?
 - Mental Reaction - During conversations with the person or by observing the person in conversations with others, are the person's statements responsive or consistent with the topic or the sequence of the conversation? Does the person's attention appear to wander?
 - Odor - (of alcohol or controlled substance on breath, body or clothing) - Is there any suspicious odor?
 - Eyes - Are the person's eyes normal? Are the pupils constricted or dilated? Are the eyes extremely red or red rimmed? Does the person have difficulty focusing his or her eyes?
 - Physical Actions - Is a normally calm person hyperactive or nervous? Does he or she appear

to act nervous or in a nervous way? Is a normally energetic, active, gregarious person lethargic, inattentive, or withdrawn?

- Mood - Is the person abnormally hostile, angry or short with others, or abnormally sad, or given to uncontrolled crying or depression when compared to the person's normal mood?
- A pattern of abnormal conduct or erratic behavior

2.14.2 Conviction for a drug-related or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or distribution, while on compensable work time.

2.14.3 Information provided either by reliable and credible sources or independently corroborated by other sources, to include self-admission of drug/alcohol use.

2.14.4 Newly discovered evidence that the employee tampered with a previous drug test.

Mere hunches are not sufficient to constitute reasonable suspicion for purposes of this policy. Additionally, no disciplinary action may be taken against an employee solely because the employee was arrested if the arrest did not lead to a conviction.

2.15 "Safety sensitive position" Sensitive positions include, but are not limited to:

Classifications that involve the operation, repair or inspection of trucks, buses, heavy equipment, and professional driving, and that directly supervise employees in these occupations. These positions have potential for catastrophic consequences to the health and safety of the public and/or other employees if the abilities of an employee are impaired. These consequences include death, disability, damage to property and risk of financial liability in large amounts.

Classifications as defined and covered in Title 6 herein, which require the possession of a commercial vehicle license, and require the employee to drive commercial vehicles as defined in Title 6.

Classifications also include those in the Sheriff's Office, Probation Department, and District Attorney's Office as listed in Title 6.

2.16 "Substance Abuse Professional" means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychiatrist, psychologist, social worker, employee assistance professional, or addiction counselor (certified by an appropriate state or federal agency such as the National Association of Alcoholism) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance - related disorders. Substance abuse professionals, as defined herein, may be, but are not required to be, County employees. Substance abuse professionals provide information to employees regarding the effects of alcohol/controlled substances use; signs and symptoms of such problems; methods of intervening when a problem is suspected; and information regarding counseling and treatment programs available for controlled substances and alcohol.

2.17 "Substance Abuse Program" is a voluntary, confidential program to assist any County employee who desires to seek help for alcohol and drug problems or other personal problems affecting job performance. For assistance, contact the County Personnel Department (530) 251-8320.

2.18 "Under the Influence" means that an employee has any detectable amount of unauthorized drug, or alcohol at .02% BAC or higher within their bodily system while on compensable work time. This includes the presence of any drug or alcohol in any degree that may affect the employee's ability to perform their job safely.

TITLE 3: GENERAL POLICY OVERVIEW

3.1 DIRECTIVES

- 3.1.1 No employee shall consume alcohol or be under the influence of alcohol or drugs during the employee's compensable work time or while at any workplace. The term workplace includes all County property, including vehicles and parking areas, or any place or any time in which an employee is within the scope of employment for the County.
- 3.1.2 No employee shall manufacture, sell, distribute, dispense, possess, consume, use or be under the influence of illegal drugs or controlled substances at any workplace or while on compensable work time.
- 3.1.3 Any employee who violates the above directives is subject to discipline, up to and including termination of employment, even for a first violation. Any employee who is convicted of driving under the influence of alcohol (as defined by state law) or illegal drugs/controlled substances while acting within the scope of employment or while at any work place is subject to discipline, up to and including termination of employment, even for a first violation.

3.2 TESTING POLICY

- 3.2.1 The County shall have a drug and alcohol testing program that includes post-offer pre-employment screening for all safety sensitive classifications, , testing upon reasonable suspicion for all employees, and random and post-accident testing for safety sensitive classifications. (See Title 6).

3.3 APPLICATION

- 3.3.1 This Policy applies to County officers, and County employees (hereinafter collectively referred to as "employee(s)"). The Sheriffs Department may, in some cases, apply higher standards and stricter testing procedures to peace officer personnel and employment applicants than the standards and procedures set forth in this policy so long as such procedures are consistent with law.
- 3.3.2 This policy does not apply when specific job duties require special handling of controlled substances and/or alcohol in the routine performance of an employee's assigned duties. Examples of such normal assigned duties include, but are not limited to: A physician or nurse administering a controlled substance or rubbing alcohol; a peace officer who collects, transports, or stores illegal drugs or open containers of alcohol; or a supervisor who handles evidence (illegal drugs or open containers of alcohol) in the course of their assigned duties.
- 3.3.3 This policy does not apply to off-duty employees participating in officially sponsored events that take place on county property, such as the Lassen County Fair, events at the Veterans Memorial Building and Board of Supervisor sponsored events, to the extent that no behavior results in the employee being under the influence upon return to work. Nor does it apply to employees who in the performance of their duties might be handling, transporting and storing closed containers of alcohol to be used in such sponsored events.

3.4 INSPECTIONS

- 3.4.1 An employee shall not be physically searched nor shall an employee's private property (purse, briefcase, personal car, etc.) be searched by a supervisor. However, if the supervisor has a reasonable suspicion that an employee possesses an illegal drug, the supervisor may ask the employee for consent to search the employee's private property, and if the employee refuses, the supervisor shall notify the appropriate law enforcement agency if there is reasonable suspicion to believe there has been a violation of this policy.

3.5 EMPLOYEE RESPONSIBILITIES

3.5.1 All employees shall:

3.5.1.1 Comply with and enforce the provisions of this policy.

3.5.1.2 Notify an appropriate supervisor before reporting to duty for the County, or to any work place before using or operating County equipment, and before or immediately upon entering County property or performing any duty within the scope of employment if the employee is taking any medication or drug, either prescription or non-prescription, which might impair the effectiveness or safe job performance; provided, however, that in the event such medication or drug is a legal drug, as defined herein, the employee must have known or had reason to know that such medication or drug could impair the effectiveness or safety of job performance.

3.5.1.3 Consider volunteering to participate in the County's Substance Abuse Program or other self-help programs if the employee feels that his/her alcohol or drug use might impair the effectiveness or safe job performance.

3.5.1.4 Complete a drug or alcohol testing process when directed by the Appointing Authority or designee, consistent with applicable law and County policies and procedures. An employee, who refuses to test or delays, hinders or attempts to obstruct the collection or testing process will be in violation of this policy and will be subject to discipline, up to and including termination of employment, for insubordination or other appropriate cause.

3.5.1.5 Acknowledge in writing that he or she has received a copy of this policy.

3.5.2 A refusal consists of:

- Conduct that obstructs the testing process, including but not limited to, diluting, substituting or adulterating specimens to be used in the drug or alcohol testing process;
- Failure to provide sufficient urine or breathe samples to be used for testing if there is no valid medical reason for such inability (as determined by a medical evaluation);
- Failure to remain readily available for Post-Accident Testing, following an accident. However, the requirement to remain readily available should not delay necessary medical attention for injured people or for seeking assistance following an accident.

3.5.3 Understand that employees are on notice that:

- Involvement in illegal activity pertaining to the illegal manufacture, distribution, dispensing, consumption, use, sale, purchase, offer or possession of a controlled substance while on compensable work time or at any workplace may result in termination of employment and possible notification to local law enforcement.
- Participation in a rehabilitation program or Substance Abuse Program may, or may not, be determined to be a mitigating factor in any County determination of job performance or level of disciplinary action. For example, participation in such program is not a substitute for addressing unsatisfactory job performance or misconduct related to drugs or alcohol.
- The County may require additional drug or alcohol testing, when it believes that a test sample has been diluted or reported as abnormal by the testing lab. Alternative testing may include hair, fingernail, urine, blood or other medically approved County option testing option.

SUPERVISOR RESPONSIBILITIES

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In addition to the employee responsibilities, supervisors shall have the following responsibilities:

- 3.5.4 Attend all required County-sponsored training on drug and alcohol awareness.
- 3.5.5 Ensure that each employee is made aware of and has been provided a copy of this policy and ensure that this policy is explained to each employee they supervise.
- 3.5.6 If reasonable suspicion exists that an employee is under the influence of an illegal drug or alcohol, the supervisor shall immediately advise the Appointing Authority and/or designee and the Personnel Director of such reasonable suspicion and follow the procedures set forth in this policy.
- 3.5.7 Comply with the procedures set forth in this policy and maintain the confidentiality, on a need-to-know basis, of any recommendation received from the Appointing Authority and any Substance Abuse Program activity resulting from such recommendation.
- 3.5.8 Cooperate with the rehabilitation efforts of the SAP and sample collection personnel.

3.6 APPOINTING AUTHORITY RESPONSIBILITIES

The Appointing Authority or designee shall also be responsible to:

- 3.6.1 Be available to be contacted as soon as possible by a supervisor who recommends that an employee be ordered to undergo an alcohol or drug analysis testing process.
- 3.6.2 Direct employees to complete a drug or alcohol analysis testing process when appropriate under this policy. Notify the Personnel Department as soon as possible of this action, (prior to the action if possible).
- 3.6.3 Recommend participation in a Substance Abuse Program or other self-referral program and cooperate with the rehabilitation efforts of the program.
- 3.6.4 Maintain the confidentiality, on a need-to-know basis, of any information received from an employee or supervisor; or any Substance Abuse Program activity resulting from such advice.
- 3.6.5 Take all actions necessary to ensure that the County and its representatives do not unlawfully retaliate against or intimidate any employee who complies with or enforces the provisions of this policy.

3.7 DRUG AND ALCOHOL AWARENESS TRAINING

- 3.7.1 The County shall review and explain this policy at all new employee orientation meetings and hand out a written explanation of this policy to every new employee entering County service.
- 3.7.2 The County shall conduct drug and alcohol awareness training on a **periodic** basis and shall maintain a record of the employees who have successfully completed this training. The County shall require each employee to certify in writing that they have received an explanation of this policy. The certification shall be maintained in the employee's official personnel file in the Personnel Department.
- 3.7.3 Supervisory personnel responsible for those Safety-sensitive employees covered under this policy will receive training under the controlled substance and alcohol policy. The training shall include at least one 60 minute period of training on drug/alcohol misuse and at least an additional 60 minutes of training on controlled substances use. The training shall cover the specific, contemporaneous, physical, behavioral, and performance indicators of probable controlled substance use and alcohol use, respectively. This training will be for supervisors and Appointing Authorities or their designees who may determine whether a Safety-sensitive employee must be tested for reasonable suspicion.
- 3.7.4 All supervisory personnel must be trained before making a recommendation for testing for reasonable

suspicion.

3.8 VIOLATION OF POLICY

It is the County's intention to have zero tolerance to violations of this drug and alcohol testing policy. No applicant shall be employed who tests positive on a pre-employment controlled substances test. Any current employee who tests positive for alcohol or drugs or who refuses to test when directed to because of reasonable suspicion or random testing will be subject to:

- 3.8.1 Immediate removal from duty and;
- 3.8.2 Disciplinary action, up to and including termination of employment.
- 3.8.3 A recommendation to participate in, make satisfactory progress in, and/or comply with the recommendations of the substance abuse professional (SAP) or other self-referral program; and/or
- 3.8.4 Direction to participate in and complete a drug or alcohol testing process.

TITLE 4: DRUG AND ALCOHOL TESTING

4.1 PRE-EMPLOYMENT DRUG TESTING

- 4.1.1 A "prospective safety sensitive employee", as defined below, shall be required to "successfully" complete a controlled substance and/or alcohol analysis testing process prior to reporting for duty in a county position. Successful results mean verified negative results from a laboratory or certification by the County MRO of an acceptable positive. (See laboratory procedures below.)

The term "Prospective safety sensitive employee" shall include:

- Any non-County employee applicant who is being offered employment for a safety sensitive position with the county for the first time
- A former County employee applicant seeking re-entry into County employment after six months for a safety sensitive position.
- A County employee reassigned, through transfer or promotion, from a non-sensitive to a safety sensitive classification as defined in this policy.

- 4.1.2 Failure or inability to successfully complete the drug or alcohol testing process constitutes medical disqualification for employment. The County has no obligation to provide information to or to provide or pay for rehabilitation for applicants who either refuse to take or fail a pre-employment test.
- 4.1.3 Prospective safety sensitive employees who have previously failed a drug test with the county: In no event shall a prospective safety sensitive employee who has failed a pre-employment test or a former county employee who has failed a drug or alcohol test be permitted to re-test at a later date in order to gain employment as a safety sensitive employee, unless that applicant has first completed a SIX MONTH drug and/or alcohol rehabilitation program and been cleared by the County's SAP to return to duty and the applicant signs a Last Chance Agreement (LCA) produced by the County.

COUNTY OF LASSEN**4.2 REASONABLE SUSPICION TESTING OF EMPLOYEES**

All employees are required to submit to an alcohol and/or drug test when a supervisor has reasonable cause or suspicion to believe that an employee may be working under the influence of alcohol or drugs. The reasonable suspicion should be based on at least one trained (see training Title 3 above) observer's observation of the employee that demonstrates symptoms as described in the definition of Reasonable Suspicion in Title 2 of this policy.

If reasonably possible under the circumstances, the supervisor should have another supervisor or employee observe and note the suspicious behavioral factors. (If the supervisor is not trained, a trained observer must also observe.) If both parties agree that reasonable suspicion is supported, the employee's supervisor shall proceed with the following procedures;

4.2.1 Procedures:

- 4.2.1.1 Immediately have a conference with the employee to allow the employee an opportunity to explain the facts concerning the employee's behavior or conduct. If the employee requests the presence of a representative, the supervisor shall have the conference if a representative is available immediately. If no representative is available immediately, the supervisor shall not have the conference, and the supervisor shall proceed to paragraph three (3) below. The supervisor has the right to have future discussions with the employee and representative regarding this matter.
- 4.2.1.2 If, after the employee has had the opportunity to explain the facts, the supervisor still feels that there is reasonable suspicion that the employee is under the influence of alcohol or illegal drugs, the supervisor shall immediately contact the Appointing Authority or designee to recommend that the employee be directed to complete a drug or alcohol analysis testing procedure. If the Appointing Authority or designee agrees with the supervisor's recommendation, and after consulting with the Personnel Department (if they are available) the supervisor shall direct the employee to complete a drug or alcohol analysis testing procedure.
- 4.2.1.3 Employees will only be tested for alcohol based upon a reasonable suspicion within 2 hours of the observation. If an alcohol test is not conducted within two (2) hours of a determination that reasonable suspicion exists, the County shall prepare and maintain a record explaining why no test was administered within the two hour period. No attempts to conduct alcohol tests shall be made after eight (8) hours following the determination of reasonable suspicion regarding alcohol, or after thirty-two (32) hours in the case of drugs.
- 4.2.1.4 The employee shall complete the Consent form to release information. The employee must be escorted to have the test conducted. Once the test has been completed, the employee should be placed on paid "administrative leave" until the results of the test have been reported to the Personnel Department. The employee should be asked not to drive and be offered the opportunity to arrange for his/her safe transportation home; otherwise, the employee shall be driven home by the accompanying supervisor. In no event shall a supervisor permit an employee to continue working when there is "reasonable suspicion" that the employee may be working under the influence of drugs or alcohol.
- 4.2.1.5 The employee may choose to refuse to be tested. However, the supervisor shall inform the employee that if he or she refuses to be tested, such action will constitute insubordination, and the employee may be subject to discipline up to and including termination of employment. The supervisor shall make arrangements to transport the employee home. If the employee is unconscious, or does not demonstrate the physical or mental capacity to consent or refuse, the supervisor shall contact the appropriate medical and/or law enforcement officials.
- 4.2.1.6 A written report concerning the above activities shall be forwarded to the Appointing Authority and

the Personnel Director no later than 24 hours after the incident. The report shall contain the names of the persons involved, time/date, location, and what the supervisor observed and shall be signed by the supervisor and any other observing supervisor or employee.

4.2.2 Return to Work: The County will also require that an employee submit to drug or alcohol testing when the employee seeks to return to work after being absent for treatment or rehabilitation for alcohol or drug dependency. Safety-sensitive employees have additional testing requirements upon return to work from a leave (see Title 6)

4.3 RANDOM TESTING: The County shall perform random testing on safety-sensitive employees only (see Title 6).

4.4 LABORATORY PROCEDURES

All drug testing conducted under this policy shall be completed using laboratories that are certified by the Department of Health & Human Services (DHHS) and the Substance Abuse & Mental Health Services Administration (SAMHSA). All alcohol testing will be administered by certified Breath Alcohol Technicians, qualified to administer such tests.

For non-safety-sensitive positions, standard testing will be conducted using a "Single Sample" method. The lab will screen the sample for the major drugs of abuse and all suspect positives will be confirmed via GC/MS. "Dilute" or "Unsuitable for Testing" specimens for prospective employees will be considered unsuccessful. "Dilute" or "Unsuitable for Testing" specimens in other testing situations may require re-testing via an alternative testing method, at the County's option (see Privacy below).

Employees subject to DOT, Federal or State regulation will have their samples collected and tested according to the Department of Transportation regulation, Title 49 CFR Part 40. "Split" urine samples will be collected and processed through a certified laboratory and results will be reported through an MRO, and then reported to the County of Lassen

4.4.1 Privacy: Procedures for collecting urine specimens shall allow for individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided because: (1) the specimen falls outside the normal temperature range; (2) the specific gravity of the last urine specimen provided by the employee was determined to have too low a specific gravity and creatinine concentration; (3) the collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample; (4) the employee is participating in follow up testing upon or after return to service following a previous determination that the employee used a controlled substance without medical authorization. In such cases, and upon the determination of the collection site supervisor or a designated employer representative, the specimen will be obtained under the direct observation.

4.4.2 Medical Review Officer: All confirmed positives will be reviewed by the County's certified Medical Review Officer (MRO). The Medical Review Officer shall contact any employee or prospective employee whose test for controlled substances is confirmed by the laboratory as "Confirmed Positive". The MRO will conduct a telephone interview with the individual to determine if there is an alternative explanation for the test result. The MRO will investigate the claim, and then report a final determination to the County.

4.4.3 Retest for safety-sensitive: Any DOT regulated (safety-sensitive) employee desiring to retest their split sample may submit their written request to the MRO no later than 72 hours from the time the employee was notified by the MRO of his/her lab result. Otherwise, the DOT regulated employee will lose his/her right for retest consideration. The retest shall be at the employee's

expense, payable to the drug testing agency prior to testing of the split sample. Non-DOT regulated employees are not given the "Split Sample" option.

4.5 DISCLOSURE.

Laboratory reports or test results shall not appear in an employee's general personnel folder. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Personnel Director. The reports of test results may be disclosed to County management on a strictly need-to-know basis.

Notwithstanding any other provision of this policy, for the protection of public health and safety, disclosure of a drug or alcohol analysis test result without employee consent may occur, consistent with applicable law, when:

- 4.5.1 The information is compelled by law or by judicial or administrative process
- 4.5.2 The information has been placed at issue in a formal dispute between the employer and employee
- 4.5.3 The information is to be used in administering an employee benefit plan
- 4.5.4 The information is needed by medical personnel for the diagnosis or treatment of the employee who is unable to authorize disclosure.

TITLE 5: SUBSTANCE ABUSE PROGRAM

The County has established an Employee Assistance Program (EAP) to assist all County employees who wish to seek help for alcohol and drug problems or other personal problems affecting job performance. Visits are voluntary and records relating to evaluation and treatment are confidential. The purpose of EAP is to create a confidential, non-punitive environment that permits early intervention in problem resolution for troubled employees.

The Employee Assistance Program may or may not fulfill the requirements of a complete Substance Abuse Program. Once a violation of this policy occurs, subsequent use of the EAP or another Substance Abuse Program will not necessarily lessen or replace disciplinary action. The employee is responsible for understanding the difference between a Substance Abuse Program and County rules and disciplinary procedures. The Substance Abuse Program should be considered as a supplement to appropriate disciplinary action. Whether an employee's willingness to participate in a Substance Abuse Program will affect the recommendation for disciplinary action will depend on the circumstances.

Any charges incurred by an employee using or accessing any Substance Abuse Program services are the sole responsibility of the employee. If EAP providers are available from the current active list maintained by the County program, a limited number of those visits may be paid for by the county (up to six). However, if providers are not available from the list, the employer will not be responsible for any payment to any professional service provider. The employee should refer to their health insurance package for possible assistance.

5.1 SELF REFERRAL: It is the responsibility of each employee to seek assistance through EAP or another substance abuse program. Employees may contact their supervisors, the Personnel Department, or EAP, for additional information. The following shall be applicable to all self-referral (voluntary participation) appointments including, but not limited to, EAP:

- All self-referral appointments shall be kept confidential unless the employee requests in a specific written release, that the County or any other party be notified. The self-referred employee's compliance with

recommendations or advice from the EAP or other program is voluntary. The self-referred employee's job security and/or promotional opportunities shall not be jeopardized by reason of the employee's participation. However, use of the program shall not shield the employee from, or replace normal procedures applicable to unsatisfactory job performance, or disciplinary action.

5.2 INFORMAL REFERRAL: Referral of a troubled employee by a supervisor, or referral to participate in a program by the Appointing Authority, is intended to be for a rehabilitative purpose or corrective action. It is not a disciplinary action. Therefore, since no employee may be forced to participate in a Substance Abuse Program, an employee recommended in accordance with this policy to participate in such a program may decline the referral. However, an employee's denial of such referral may be considered, along with the other facts and circumstances, in determining appropriate discipline. The Substance Abuse Program may or may not be affiliated with the County Employee Assistance Program.

5.3 FORMAL REFERRAL, TERMINATION AND LAST CHANCE AGREEMENT: A County employee who tests positive on a substance abuse test or who provides a .02% BAC or higher result on an alcohol test may be formally referred to a Substance Abuse Program. Any cost of the program shall be the responsibility of the employee. In the case of intent to terminate an employee, the employee may request a "last chance" opportunity to conform to the County's policies concerning drugs and alcohol and the drug-free workplace. That request must be made during the five day response period after the employee has received his/her Notice of Intent to Terminate. The Appointing Authority may consider the severity of the violation of this policy and the individual circumstances surrounding the violation, but it shall be the Appointing Authority's sole discretion to grant a Last Chance Agreement. If the County chooses to offer a formal referral to a program, the employee may return to work only after any disciplinary time off, and upon recommendation of the Substance Abuse Professional and having a negative Return to Duty test. The employee must complete all the following contingencies in order to no longer be governed by the Last Chance Agreement:

- 5.3.1 Complete a County sponsored Last Chance Agreement, and complies with its terms;
- 5.3.2 Report and complete an "Initial Evaluation" with the County's Substance Abuse Professional (SAP) and return the evaluation to the County within seven working days;
- 5.3.3 Follow all the required SAP recommendations, to include counseling and testing, if required by the SAP or the County's Last Chance Agreement;
- 5.3.4 Report to the County sample collection facility for the SAP required Return to Duty Test with negative results (no presence of alcohol or drugs);
- 5.3.5 Complete a minimum of six (6) follow-up tests with negative results in the first 12 month period following the Return to Duty test. For follow-up testing, any presence of alcohol or drugs shall be considered a positive test. The SAP may require follow-up drug and/or alcohol testing for up to 5 years and additional counseling, if needed.
- 5.3.6 Report and complete a "Final Assessment" with the SAP and return all SAP documents to the County's Controlled Substance and Alcohol Program Coordinator with three (3) days of completion.

TITLE 6: COMMERCIAL VEHICLE SAFETY-SENSITIVE EMPLOYEES**6.1 INTRODUCTION**

"Safety-sensitive employees" as described below are subject to the rules in Title 1 through 5 of this policy in addition to those rules in this Title, at all times when the Safety-sensitive employee is performing a safety sensitive function as defined below. Safety-sensitive employees who operate a commercial motor vehicle on a highway and who are subject to maintain a commercial Safety-sensitive employee's license (CDL) issued by the State of California, and whose duties require the performance of any safety sensitive functions as defined below in this section are required by The Federal Omnibus Transportation Employee Testing Act of 1991 to be subject to this drug and alcohol testing program. The County may amend the rules in this Title to maintain conformity with and fulfill the requirements of applicable state and federal laws; and regulations, as such are amended from time to time.

These Safety-sensitive employees include but may not be limited to, the following positions:

(By job classification)

ROAD DEPARTMENT

Road Field Supervisor
Heavy Equipment Mechanic
Senior Heavy Equipment Mechanic
Heavy Equipment Mechanic Supervisor
Road Maintenance Supervisor
Road Equipment Operator
Senior Road Equipment Operator
Traffic Sign Technician
Communications Technician

PUBLIC WORKS DEPARTMENT

Any employee in a safety sensitive position as defined in 6.2.7

SOLID WASTE DEPARTMENT

Landfill Foreman
Senior Landfill Equipment Operator
Landfill Equipment Operator

SHERIFF'S DEPARTMENT *

Undersheriff
Captain
Sergeant
Lieutenant

All Policies are subject to revision at any time

Deputy Sheriff Coroner I/II

Deputy Sheriff Recruit

Correctional Corporal

Correctional Deputy I/II

Sheriff Security Officer

DISTRICT ATTORNEY *

Senior District Attorney Investigator

District Attorney Investigator

PROBATION DEPARTMENT *

Chief Probation Officer

Deputy Chief Probation Officer

Senior Deputy Probation officer

Deputy Probation Officer I/II

Juvenile Hall Superintendent

Supervising Juvenile Hall Counselor

Juvenile Hall Counselor I/II

* Post offer pre-employment, and reasonable suspicion testing only

.2 DEFINITIONS

For the Purpose of this Title, the following definitions apply, in addition to those definitions found in Title 2 of this Policy. Where inconsistent, the definitions in this Title 6 apply to Safety-sensitive employees.

6.2.1 **Accident:** An occurrence involving a commercial motor vehicle operating on a public road which results in:

- Fatality;
- Bodily injury to a person who immediately receives medical treatment away from the scene of the accident as a result of the injury;
- One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

6.2.2 **Commercial Safety-sensitive employee's License (CDL):** A license issued by a State or other jurisdiction in accordance with the standards contained in the Federal regulations, 49 CFR Part 383, to an individual which authorizes the individual to operate a class of commercial vehicle.

6.2.3 **Commercial Motor Vehicle:** A motor vehicle or combination of motor vehicles used to transport

passengers or property if the motor vehicle:

- Has a gross combination weight rating 26,001 or more pounds, or the vehicle together with the towed unit with a gross vehicle weight of more than 10,000 pounds equals or exceeds 26,001 pounds; or
- Is designed to transport 16 or more passengers, including the Safety-sensitive employee; or
- Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act.

6.2.4 **Disabling damage:** Damage which precludes departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven but would have been further damaged if so driven, and excluding damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire damage without other damage, even if no spare tire is available, headlight or taillight damage, damage to turn signals, horn or windshield wipers which make them inoperative.

6.2.5 **Safety-sensitive employee:** Any person whose position requires that the individual operate a commercial motor vehicle, including but not limited to: full time, regularly employed Safety-sensitive employees, casual, intermittent or occasional Safety-sensitive employees, leased Safety-sensitive employees and most independent owner-operated contractors.

6.2.6 **Highway:** Any road, street or way open to public travel whether on private or public property.

6.2.7 **Safety Sensitive Function:** Safety-sensitive employees (As defined in Title 6), are deemed to be performing safety sensitive functions when a Safety-sensitive employee begins work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include, but are not limited to:

- All time on County or other public property, or highways waiting to be dispatched unless relieved from duty by the employer;
- All time inspecting equipment or servicing or conditioning any commercial motor vehicle at any time;
- All driving time which is time spent at the driving controls of a commercial motor vehicle in operation;
- All time other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
- All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
- All time repairing, obtaining assistance, or attending a disabled vehicle.
- All time spent providing a breath or urine sample including travel time to and from the collection sight in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by the employer;

6.3 NOTIFICATION TO SAFETY-SENSITIVE EMPLOYEE

In addition to any requirements regarding training contained in Title 3 of this policy, prior to performing a controlled substances or alcohol test under this policy:

- 6.3.1. The County will notify existing and new Safety-sensitive employee(s) that the alcohol or controlled substances test is required.
- 6.3.2. The County will post this policy in a prominent location that is readily accessible to all covered Safety-sensitive employees.
- 6.3.3 All covered Safety-sensitive employees will be provided with a complete copy of this policy. Each Safety-sensitive employee may obtain, upon request, an additional copy of this policy for review by contacting the Personnel Department.
- 6.3.4 Each Safety-sensitive employee is required to sign a certificate or receipt certifying that he/she has received a copy of this policy. The County will keep the original receipt on file.
- 6.3.5 The County will provide Safety-sensitive employees with information on how to comply with post-accident procedures prior to operating a commercial motor vehicle.
- 6.3.6 This policy is not intended to interfere with an employee's attempt to seek assistance in addressing alcohol or substance abuse programs that may be available under County's health insurance plans. However, such assistance does not exempt any employee from the requirements or consequences of this policy.

6.4 DIRECTIVES AND PROHIBITED CONDUCT UNDER TITLE 6

Any Safety-sensitive employee who violates the directives provided in this Section shall be subject to disciplinary action up to and including termination of employment, in addition to any other requirements provided for in this Title. No supervisor with actual knowledge of the violation of any of these directives shall permit any Safety-sensitive employee to report for or remain on duty requiring the performance of safety sensitive functions.

- 6.4.1 No Safety-sensitive employee shall report for duty requiring the performance of safety sensitive functions within four (4) hours after using alcohol.
- 6.4.2 No Safety-sensitive employee shall report for duty, remain on duty or drive a commercial vehicle on duty requiring the performance of safety sensitive functions while having an alcohol concentration of .02 or greater.
- 6.4.3 No Safety-sensitive employee shall use alcohol while on duty requiring the performance of safety sensitive functions.
- 6.4.4 No Safety-sensitive employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- 6.4.5 No Safety-sensitive employee shall refuse to submit to a post-accident alcohol or controlled substances test, a random alcohol or controlled substances test, or a follow-up alcohol or controlled substances test.
- 6.4.6 No Safety-sensitive employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the Safety-sensitive employee has used any controlled substance except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the Safety-sensitive employee that the substance will not adversely affect the Safety-sensitive employee's ability to safely operate a commercial motor vehicle.
- 6.4.7 All Safety-sensitive employees must inform their immediate supervisor of any therapeutic drug use which may impair the Safety-sensitive employee's ability to safely operate a commercial vehicle.

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- 6.4.8 No Safety-sensitive employee shall report for duty, remain on duty or perform a safety-sensitive function if the Safety-sensitive employee has used or tests positive for controlled substances.
- 6.4.9 Any Safety-sensitive employee who has violated the foregoing directives and is returned to duty must comply with the requirements of the rehabilitation program prescribed by the substance abuse professional, submit to return to duty testing, and any and all follow up testing required. The County assumes no liability for the costs of any rehabilitation program.

6.5. WHEN SAFETY SENSITIVE EMPLOYEES WILL BE TESTED

- 6.5.1 **Reasonable Suspicion:** Safety-sensitive employees are subject to reasonable suspicion testing under Title 2 of this policy and when there is reasonable suspicion that a Safety-sensitive employee has violated the prohibitions set forth in Section IV herein.
- 6.5.2 **Random Testing:** Safety-sensitive employees as defined in Title 2 within this policy will be subject to random drug and/or alcohol testing, as set forth below in accordance with federal law. All alcohol testing shall be done immediately before, during or immediately after the workday.

Tests shall be performed on a random basis at unannounced times and dates spread reasonably throughout the year as required by state and federal law.

- The minimum annual percentage rate for random alcohol testing shall be 10% of the average number of safety-sensitive positions. The minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of safety-sensitive positions, or as adjusted from year to year by the Motor Carrier Safety Administration (MCSA). The minimum annual testing rate for random alcohol testing will be adjusted annually starting January 1 of the calendar year following publication in the Federal Register of the current percentage rate by the MCSA.
 - The selection of Safety-sensitive employees for random alcohol and controlled substances testing shall be made by any scientifically valid method so that each Safety-sensitive employee shall have an equal chance of being selected each time selections are being made.
- 6.5.3 **Post-Accident:** As soon as practicable following an accident, as defined in this policy, each surviving Safety-sensitive employee shall be tested for alcohol and controlled substances. A Safety-sensitive employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the County to have refused to submit to testing. However, the Safety-sensitive employee should not delay necessary medical attention for injured people following an accident or leave the scene of an accident for a reasonable period of time necessary to obtain assistance in response to the accident.
- 6.5.4 **Return To Duty Testing:**
- Any Safety-sensitive employee returning from a leave of absence for more than 30 days due to illness, layoff, injury etc., who has not participated in the random controlled substances and alcohol-testing program during the thirty-day period, shall be tested before returning to duty.
 - If any Safety-sensitive employee violates the directives found in this Title concerning alcohol or controlled substances, and the County does not instigate proceedings to terminate the Safety-sensitive employee's employment, the Safety-sensitive employee shall undergo a return-to-duty alcohol test, and shall not be returned to duty unless the test result indicates a negative (0.00) alcohol concentration, and/or a controlled substances test, and shall not be returned to duty until such test produces a verified negative. The Substance Abuse Professional will determine if both a drug and alcohol testing are required prior to returning to duty. The Safety-sensitive employee shall be on

leave without pay pending a verified negative result if it is determined that the Safety-sensitive employee shall be returned to duty.

- 6.5.5 Follow-up Alcohol And Drug Testing** Following a determination by a substance SAP that a Safety-sensitive employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the Safety-sensitive employee may be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional.

6.6 DISCIPLINARY ACTION AND REMOVAL FROM DUTY

- 6.6.1 Disciplinary action.** In addition to any other consequences described in this Title, any Safety-sensitive employee who violates any directive contained in this policy shall be subject to disciplinary action up to and including termination of employment. A refusal to test shall be treated as if the Safety-sensitive employee tested positive for a controlled substance and/or the results of an alcohol test demonstrated a blood alcohol level of .02% or higher. Further, a Safety-sensitive employee who refuses to submit to drug or alcohol testing loses his/her right to have his/her split specimen tested, if a split specimen was provided by the employee. If an employee substitutes or adulterates his/her specimen, the County will consider this action as a refusal to test.

- 6.6.2 Removal from duty.** Any Safety-sensitive employee who tests positive for alcohol at a level of .02 or above, or receives a verified positive drug test, shall be removed from all duty immediately. If the employee requests a second test as described in Section 4.4 and such test fails to confirm the presence of drugs found in the first test, the employee shall be returned to work without loss of pay.

If no disciplinary action is instigated to terminate the Safety-sensitive employee, the employee will be subject to the following procedures set forth in Section 6.7 and will not be permitted to return to duty to perform safety-sensitive functions until such procedures are met.

6.7 REFERRAL, EVALUATION AND REHABILITATION PROGRAM PARTICIPATION

- 6.7.1** A Safety-sensitive employee, who has violated the provisions of Section 6.4 of this policy, shall be subject to disciplinary action up to and including termination. Upon notice that a Safety-sensitive employee has tested positive, such employee shall be relieved from duty until a determination of whether or not there shall be disciplinary action and the extent of that action. An employee may use their vacation and/or compensatory pay until disciplinary action is determined. The employee shall meet with his/her supervisor or Appointing Authority at which time the employee shall be advised that a Last Chance Agreement is available to them. If the employee desires to enter into a Last Chance Agreement, the employee should be advised that enrollment into a substance abuse program and evaluation by the County's Substance Abuse Professional is required within seven days of entering into the Last Chance Agreement. The SAP will recommend assistance and follow-up testing, if necessary. (See Paragraph 5.3)
- 6.7.2** Any Safety-sensitive employee, who voluntarily enters a drug and/or alcohol rehabilitation program and has not engaged in prohibited conduct as detailed in 6.4 of this policy, may be eligible for a leave of absence without pay for a residential drug and/or alcohol rehabilitation program for a reasonable period of time. The employee may be required to present verification of attendance and/or participation at any drug and/or alcohol rehabilitation program. Upon returning from a rehabilitation program, the employee shall provide the County with documentation that he/she has satisfactorily completed the rehabilitation program and shall be subject to return to duty and follow-up testing as set forth by the SAP and within the limits of this policy.
- 6.7.3** Any Safety-sensitive employee who voluntarily enters a drug and/or alcohol rehabilitation program