

ATTACHMENT C_CMA #5312

DRUG FREE WORKPLACE

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§ 5312-1. Purpose.

The purpose of this Instruction is to provide for procedures and implementation of the Drug-Free Workplace policy as authorized by the County Manager.

§ 5312-2. Concept.

The Board of County Commissioners (BCC) has a vital interest in maintaining a safe, healthy, and efficient working environment. Being under the influence of a drug or alcohol on the job, or the use, sale, purchase, transfer, or possession of an illegal drug or alcohol in the workplace poses unacceptable risks for safe, healthy, and efficient operations to the user and to all those who work with the user. Collier County is obligated to the public and its employees to provide services that are free of the influence of illegal drugs and alcohol and will endeavor through this policy to provide drug-and alcohol-free services.

- A. Employees will be informed of the dangers of alcohol and/or drug use in the workplace during New Hire Orientation within the first month of employment.
- B. The County intends, through this policy, to comply with federal and state rules, regulations or laws that relate to the maintenance of a workplace free from illegal drugs and alcohol.
- C. It is also County policy that all job classifications that are under the authority of the United States Department of Transportation (DOT) including, but not limited to, the FMCSA, FAA, and FTA, to comply with all current Federal regulations. County employees shall comply with all current State of Florida statutes and/or the Florida Administrative Code and/or Collier County rules and regulations.
- D. Employees in a mandatory drug testing position, safety-sensitive position, or who perform safety-sensitive functions are subject to Random Drug Testing. All County employees are subject to Post-Accident Testing and Reasonable Suspicion Testing and are subject to drug and alcohol regulations included in this administrative procedure. All applicants offered employment with the County will be required to take and pass a drug test prior to being employed.

§ 5312-3. Definitions.

Authorized Collection Personnel is a person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the Federal Drug Testing Custody and Control Form (CCF).

Commercial Driver's License (CDL): A commercial driver's license is required to operate any combination of vehicles with a gross combination weight rating (GCWR) of 26,001 lbs. or more, to include a towed vehicle that is HEAVIER than 10,000 lbs. There are 3 classifications: A, B and C with additional endorsements that can be found at the Florida Department of Motor Vehicles. CDL requirements are included in the job classification and may be under the FMCSA regulatory requirements.

Confirmation Test, Confirmed Test or Confirmed Drug Test is a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

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Controlled Substance is a controlled substance as defined in Schedules I through V of § 893.03, *Fla Stat.*

Conviction is a finding of guilt (including a plea of no contest) or imposition of sentence or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

Criminal Drug Statute is a criminal statute involving the illegal manufacture, distribution, dispensation, use or possession of any controlled substance.

Department of Transportation (DOT) This term encompasses all United States DOT (USDOT) agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of this part, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a USDOT agency for drug testing purposes only since the USCG regulation does not incorporate Part 40 for its alcohol testing program. These terms include any designee of a USDOT agency.

Designated Employer Representative (DER) is defined in 49 CFR Part 40. The DER is an employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. The Environmental Health and Safety (EHS) Manager is the DER for the Board of County Commissioners (BCC).

Disciplinary Action – The County will be consistent with CMA 5351, Discipline.

Drug includes alcohol, distilled spirits, wine, malt beverages, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; opioids; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in *Fla. Stat.* § 893.03; Drug Abuse Prevention and Control. An employer may test an individual for any or all of such drugs.

Drug Test or Test includes any chemical, biological, or physical instrumental analysis administered by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care Administration, for the purpose of determining the presence or absence of a drug or its metabolites.

Employee is any person who works for salary, wages, or other remuneration for the County. Staff members of contractors or vendors of the County are not included in this definition.

Employee Assistance Program (EAP) is an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to § 397.311(28), *Fla Stat.*

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Employer is a person or entity that employs a person and that is covered by the Workers' Compensation Law.

Federal Drug Testing Custody and Control Form (CCF). The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program.

Initial Drug Test is a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens, using an immunoassay procedure or an equivalent, or a more accurate scientifically accepted method approved by the United States Food and Drug Administration or the Agency for Health Care Administration as such more accurate technology becomes available to be more cost-effective.

Job Applicant is an external applicant who has applied for a position with the County and has been offered employment conditioned upon successfully passing a drug test.

Mandatory Drug Testing. §440.102(o), *Fla. Stat.* defines “Mandatory-Testing Position” as, with respect to a public employer, a job assignment that requires the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with detainees in the correctional system, work with confidential information or documents pertaining to criminal investigations, work with controlled substances, or a job assignment that requires an employee security background check, pursuant to s. [110.1127](#), or a job assignment in which a momentary lapse in attention could result in injury or death to another person.

Medical Review Officer (MRO) is a licensed physician, employed by or contracted with an employer, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's or job applicant's positive test result in relation to the employee's or job applicant's medical history or any other relevant biomedical information.

Non-CDL Drivers – Any County employee who has a position that requires them to drive a County vehicle or a combination vehicle less than 26,001 pounds as part of their normal duties as determined by Risk Management and the Division Director.

Prescription or Non-Prescription Medication is a drug or medication obtained pursuant to a prescription as defined by §893.02, *Fla. Stat.*, or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries. Prescription and over-the-counter drugs are not prohibited when taken in label dosage and/or according to a physician's prescription.

Public Employer is any agency within state, County, or municipal government that employs individuals for a salary, wages, or other remuneration.

Random Drug Testing is a method of testing for drug use by safety-sensitive employees through a process of random selection. These tests are conducted without prior notice to the employee and a systematic selection process is used to assure that each employee has an equal chance of being chosen for testing. Because there is no prior notice as to when this testing will occur, or who will be selected, random drug testing serves both to detect and deter drug use. Employees designated as DOT (FMCSA, FTA, FAA) Safety Sensitive or meet the requirements under Safety-Sensitive fall into this category.

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Reasonable-Suspicion Drug Testing. §440.102(n), *Fla. Stat.* defines reasonable suspicion drug testing as testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:

- (a) Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug.
- (b) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- (c) A report of drug use, provided by a reliable and credible source.
- (d) Evidence that an individual has tampered with a drug test during their employment with the current employer.
- (e) Information that an employee has caused, contributed to, or been involved in an accident while at work.
- (f) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

Risk Management Hazard Assessment is a systematic process of evaluating the potential risks that may be involved in a projected activity or undertaking and assigning a probability and severity score to identify a category of risk.

Safety-Sensitive Position is a position in which a drug or alcohol impairment constitutes an immediate direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations or confidential juvenile information, or work with controlled substances; a position in which a drug or alcohol impairment constitutes an immediate and direct threat to the employee's health or safety; a position which has access to a juvenile facility; a position in which the employee is responsible for the well-being of a minor; a position in which a momentary lapse in attention could result in injury or death to another person; and/or all job classifications that are under the authority of the United States Department of Transportation (DOT), including, but not limited to, the FMCSA, FAA and FAA, that complies with the current Code of Federal Regulations (CFR). All Safety-Sensitive positions and employees performing safety-sensitive functions as determined by Risk Management Hazard Assessment will be included in the BCC Random Drug Testing pool. Positions include, but are not limited to:

- (a) DOT Safety-Sensitive positions (FMSCA, FAA, and FTA).
- (b) Heavy Equipment Operators, including but not limited to those who operate forklifts, skid steers, front-end loaders, track hoes, rollers, backhoes, graders, bucket trucks, or any other equipment not covered under DOT testing requirements.
- (c) Paramedics/Paramedic Firefighters/EMTs/Pilots/Helicopter Maintenance.
- (d) Chemical Laboratory personnel.
- (e) Positions where the incumbents are required to carry firearms or weapons.
- (f) Positions that work with or have access to drugs/controlled substances.
- (g) Facilities Services (non-administrative positions).
- (h) Plant Operators and Maintenance personnel at Wastewater Treatment Plants.
- (i) Wastewater Collection personnel.
- (j) Plant Operators and Maintenance personnel at Water Plants.
- (k) Water Distribution personnel.
- (l) Pool and Water Feature Maintenance personnel.
- (m) Employees with access to potentially hazardous chemicals (meets the IDLH values used by the

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National Institute for Occupational Safety and Health (NIOSH)).

- (n) Any position that requires an employee to enter an IDLH environment (confined space entry, chlorine process, trenching and shoring, maintenance of traffic, lockout/tagout, etc.) as determined by Risk Management and the Division Director.
- (o) Non-CDL drivers whose regular duty requires them to drive as an essential function of their position duties in support of business operations.
- (p) All Equipment Mechanics (Fleet, Plant, Field).
- (q) Positions where the incumbents work closely with or oversee children (Childcare services personnel, Recreation Instructors, Camp Counselors, Summer childcare program positions, Voluntary Pre-Kindergarten (VPK) personnel, Library services, Lifeguards/pool attendants, etc.).
- (r) Mandatory Drug testing positions as defined by Section 440.102, Fla. Stat.

If there are any changes in work protocol that could move a position into a Safety-Sensitive status, it is the responsibility of Department and Division management, along with the Risk Management Environmental Health & Safety Manager, or designee, to determine if the tasks to be performed are Safety-Sensitive and designate the position as such.

Specimen is tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration or the Agency for Health Care Administration.

Substance Abuse Professional (SAP) is a licensed or certified professional credentialed by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC), or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC), or by the National Board of Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) who evaluates employees who have violated a DOT drug and alcohol regulation or County policy and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Test Identification Form is the required form used to ensure that all documentation is accurate, the proper type of test is provided, and to ensure chain of custody accuracy. A test identification form must be provided and is required to be used for all test types.

Third-Party Administrator is an individual or organization that manages the Collier County Random Drug Testing selection, the DOT and non-DOT drug/alcohol testing protocol and maintains the required testing records. They perform tasks as agreed to by the County to assist in implementing the drug and alcohol testing program and to assist the employer in remaining compliant with the DOT (FMCSA, FTA and FAA) and Florida Statutes Drug and Alcohol testing rules and regulations.

Volunteer is any person who of his or her own free will, provides goods or services to any unit of county government without receiving monetary or material compensation, as defined in Section 125.9501, Fla. Stat.

§ 5312-4. Policy.

The County and its employees must make every effort to maintain the highest standards of safety, quality, and reliability. In order to achieve these desired standards, the County prohibits possession of alcohol and/or illegal drugs in County vehicles, use or possession of alcohol and/or illegal drugs while operating or otherwise in control of County vehicles, equipment or machinery, illegal drugs from being brought on the County premises, the use of alcohol and/or illegal drugs during the workday, including breaks and meal periods, the unlawful manufacture, distribution, dispensation or use of alcohol or controlled substances in the workplace,

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and further prohibits Collier County employees from working while impaired or under the influence of legal or illegal drugs, alcohol, and other substances. Employees who appear to be in violation of the County's drug and alcohol program shall be immediately removed from their job and will be subject to discipline pursuant to CMA 5351.

- A. As a condition of employment, all employees are required to abide by the terms of this policy and to notify County management of any conviction of a criminal drug statute occurring in the workplace no later than five (5) days after such conviction.
- B. To maintain a safe and healthy work environment and to ensure compliance with state and federal laws, County authorizes, at its expense, drug testing under the circumstances and conditions defined within this Instruction.
- C. Employees found to be under the influence of alcohol or controlled substances or refusing to be tested when an accident or injury occurs may forfeit their eligibility for medical and indemnity benefits through the County's Workers' Compensation Benefits and may be subject to disciplinary action up to and including termination of employment.
- D. Employees who violate any of the alcohol or controlled substance use prohibitions shall be immediately removed from work.
- E. When the use of alcohol or controlled substances by an employee is confirmed through an authorized test, employees in a Safety-Sensitive position or performing Safety-Sensitive functions will be recommended for corrective action, up to and including termination of employment. Under no circumstance will the employee be allowed to return to any Safety-Sensitive position and/or task until completing the entire program (counseling and testing) in accordance with the direction of the SAP.

§ 5312-5. Testing.

The conditions and circumstances for conducting drug and alcohol testing are defined below. Refusal to submit to an alcohol or drug test/analysis when requested by the County, or law enforcement personnel, in accordance with state and federal law or County policy, may constitute insubordination, be grounds for disciplinary action up to and including dismissal, or (in the case of an external applicant) is cause to retract a conditional offer of employment. Failure to provide adequate breath or urine (within a reasonable time) for testing without a valid medical explanation by a medical doctor, failure to sign the alcohol breath testing certification form and/or initial the logbook entry for the screening and/or confirmation test, or refusal to take the test constitute a refusal to submit.

The Risk Management Division is responsible for developing and implementing procedures for communication of this policy, off-site testing, chain of custody, types of drugs to be tested for, confirmation and medical and administrative review of positive test results, confidentiality and other activities associated with administering the applicant testing program in accordance with §440.102, *Fla. Stat.* or applicable Code of Federal Regulations (CFR).

The Environmental Health and Safety (EHS) Manager will receive the test results and will coordinate with the appropriate Human Resources representative for the division/department in which the employee works to provide a status report on the employee being able to return to work. The Human Resources representative will serve as the point of contact to coordinate communication with the employee and provide information on the status of the employee to the division/department supervisor/manager/director/Department Head. All drug test results are considered confidential and are exempt from the provisions of §119.07(1), *Fla. Stat.* and

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§24(a), Art. 1, of the State Constitution.

- A. **Post Offer Drug Testing (pre-employment):** The Risk Management Division will perform and/or coordinate all post offer applicant drug screening and/or testing and communicate the results of such testing to Human Resources personnel. Applicants will be notified of the County's Drug Free Workplace procedure including the types of testing to which an applicant may be required to submit and the actions the County may take against a job applicant based on a positive confirmed drug test result. All external job applicants will be tested for controlled substance use prior to final consideration for hire.
- 1) External job applicants for vacant County positions will be tested for illegal drugs prior to an offer of employment being finalized. Drug testing will only be administered to those applicants who have been made a conditional job offer pending the successful completion of the medical examination and/or other background investigations (references, criminal, and driver's license).
 - 2) For positions of employment that will result in the applicant or employee falling under FMCSA, FAA and/or FTA regulations, the United States Department of Transportation (DOT) requires the County to obtain drug and alcohol testing history from any previous employer for whom an external job applicant or current employee has worked as described in the current and applicable jurisdictional regulations. Candidates or employees will complete the DOT release form authorizing the County to obtain these records. If the candidate refuses to authorize release of the records, this will result in a withdrawal of the employment offer.
 - 3) All job applicants or current employees who fall into the category of "Mandatory-Testing position" as outlined in §440.102(o), *Fla. Stat* and/or applicable and current federal regulations, will be tested for illegal drug use prior to an offer of employment, promotion, lateral transfer, reassignment, reclassification, or voluntary demotion being finalized. Drug testing will only be administered to applicants/employees who have been given a conditional job offer pending the successful completion of a medical examination and/or other background investigations (references, criminal history record checks, and driver's license.)
- B. **Post Accident Testing:** The Risk Management Division will coordinate and schedule all post-accident drug testing through its EHS Manager or designee. In the event of an accident/incident, the employee's supervisor shall contact the DER (the EHS Manager) or the assistant DER in the Risk Management Division and the assigned Human Resources representative. If this occurs outside of normal working hours, the Supervisor will immediately contact the DER. The Supervisor, Health & Safety Specialist and/or EHS Manager shall make the determination whether an alcohol or drug test should be administered, based on the investigation and initial observations, as set forth herein. If it is determined that an employee should be tested, the employee will be required to submit to both breath alcohol and urine drug testing. Post Accident/Incident testing will be based on one or more of the following:
- 1) Any employee who has caused or contributed to an accident while at work, if there is reasonable suspicion in accordance with § 440.102, *Fla. Stat.*, may be required to submit to a post-accident drug test as a condition of continued employment.

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- 2) Vehicular Accident (DOT Safety-Sensitive): A DOT-covered employee (FMCSA, FAA, FTA) shall be tested in accordance with current agency-specific federal regulations in 49 CFR, part 40. If the DOT-covered employee does not meet the criteria, in accordance with the current agency federal regulations, they may still be required to be drug and alcohol tested under the County's criteria. In that case, the employee will be tested under the non-DOT process.
- 3) Vehicular accident (non-DOT): An employee who is operating a County vehicle involved in an accident that results in issuance of a citation from law enforcement to the employee operator, or the employee operator is determined by Risk Management to be at fault or contributed to the accident that results in any damage to a County asset, a citizen's asset, and/or where there is bodily injury requiring immediate treatment away from the scene, shall be required to submit to both alcohol and controlled substance tests immediately following the accident. If the accident/incident results in a death at the scene, the operator shall be required to submit to both alcohol and controlled substance tests immediately following the accident, regardless of who is at fault.

Employees who are subject to post-accident testing will remain readily available for the tests or may be deemed to have refused the tests. Employees are not prohibited from leaving the scene of the accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Upon notification from the DER, the employee(s) will immediately stop the performance of their duties and will not be allowed to leave the accident site in their County or personal vehicle. A County supervisor will transport the employee to the testing facility and, after the appropriate testing has been completed, to the employee's place of residence if the testing results are not available. The employee will be placed on paid administrative leave pending the alcohol and/or drug test results.

The Test Identification Form shall be used to ensure that all documentation is accurate, the proper type of test is provided, and to ensure chain of custody accuracy.

If an employee who caused or contributed to an accident cannot submit to a post-accident drug/alcohol test immediately following the accident due to hospitalization, Risk Management shall contact the medical establishment (hospital, emergency room, etc.) and ask that an appropriate test be conducted as soon as practical after emergency treatment has been provided.

- C. **Reasonable Suspicion Testing:** The Risk Management Division administers the Reasonable Suspicion Testing Program. Testing may be required where there is reasonable suspicion that an employee possesses or uses alcohol, controlled substances, or illegal drugs, or is under the influence of alcohol, controlled substances, or illegal drugs while on duty. Supervisors will monitor employees for alcohol, controlled substance, or illegal drug use. When a supervisor and/or EHS staff member has reasonable suspicion, drawn from specific objective and describable facts, that an employee is under the influence of alcohol, a controlled substance, or illegal drugs, the Supervisor and/or EHS staff will notify the Risk Management Division DER.

Any such reasonable suspicion testing shall be conducted in accordance with §440.102, *Fla. Stat.*, and any further action by the County based upon the results of such testing shall be in accordance with that statute. When a supervisor and/or EHS staff member observes or receives a complaint

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regarding another employee's activity that may constitute reasonable suspicion, the following procedures apply:

- 1) Unless initiated by EHS staff, the Supervisor of the suspected employee must contact the DER in the Risk Management Division and the assigned HR representative. If outside of normal working hours, the Supervisor will immediately contact the DER. The DER shall make the determination of whether an alcohol and drug test should be administered for a reasonable suspicion case based on the investigation and initial observations. The employee will be required to remain available to submit to both breath alcohol testing and urine drug testing.
- 2) The Reasonable Suspicion Testing Report must be completed by the Supervisor and/or EHS staff member who made the determination of reasonable suspicion during the observation. If possible, another Supervisor and/or EHS staff member should be present and complete their own Reasonable Suspicion Testing Report without discussing the indicators, if any, with the employee's immediate supervisor or the initial observer who determined that reasonable suspicion existed to warrant testing. Such report shall be forwarded to the Division Director, Department Head, EHS Manager, and Human Resources Director and shall be kept confidential.
- 3) The Supervisor of the suspected employee will inform the employee of the suspicion of influence of alcohol, a controlled substance, and/or illegal drugs. Another Supervisor, EHS staff member, or member of management must be present.
- 4) Upon notification from the DER, the Supervisor and/or EHS staff member will notify the suspected employee(s) to immediately cease the performance of their duties and will advise the employee(s) they will not be allowed to leave the work site in their county or personal vehicle. A County Supervisor will stay with the employee until the authorized collection personnel have arrived at the worksite, and/or will transport the employee to the BCC-approved testing facility. After the appropriate testing has been completed, the Supervisor will transport the employee to their place of residence. The employee will be placed on paid administrative leave pending the alcohol and/or drug test results.
- 5) The Test Identification Form (along with the Reasonable Suspicion Testing Form) shall be used to ensure that all documentation is accurate, the proper type of test is provided, and to ensure chain of custody accuracy.

D. Random Testing: The Risk Management Department through its EHS Manager or designee will administer the Random Testing Process as described in this policy.

- 1) On an annual basis, for DOT Safety-Sensitive positions, the County will meet or exceed the minimum current DOT percentage requirements for Random Drug testing. The non-DOT Safety-Sensitive positions will be tested at a maximum of 10% annually. The selection of individuals for the random testing shall be made by a Third-Party Administrator using a computer-based program that will randomly select employees from the County's DOT required employee list. Under this selection process each employee will have an equal chance of being tested each time a random selection is made.
- 2) The random alcohol and controlled substances tests are unannounced, and the dates and times

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of the testing will be spread reasonably throughout the year, occurring at least once per quarter.

- 3) The EHS Manager will provide a list of all current DOT (FMCSA, FAA, FTA) positions and non-DOT Safety-Sensitive employees to the County's outside testing agency for random selection, in accordance with this policy.
- 4) The EHS Manager serves as the contact person to be notified that a specific DOT and non-DOT Safety-Sensitive employee has been chosen for a random alcohol and drug test. Each affected Division will also have an internal contact person to assist Risk Management in ensuring selected employees are properly tested. The contact person is responsible for seeing that the employee is immediately relieved of any job tasks and immediately transports the employee to the test site to complete their testing.
- 5) Every attempt will be made to provide the list of randomly selected employees to the employees' immediate Supervisor(s) within 24 hours of the test date. This will allow Division management to adequately arrange work schedules accordingly to ensure efficient and uninterrupted operations. Under no circumstances shall any Division Director or Supervisor notify the employees who are to be tested prior to their transport to the testing facility on the day of the test.
- 6) The Test identification form shall be used to ensure that all documentation is accurate, the proper type of test is provided, and to ensure chain of custody accuracy.

- E. **Fitness-For-Duty Testing:** Employees may be required to undergo an employee fitness-for-duty medical examination, which may include drug testing. An employee's refusal to undergo a fitness-for-duty medical examination or submit to a drug test is considered cause for disciplinary action, up to and including dismissal. Any action by the County based upon results of drug tests conducted as part of an employee fitness-for-duty medical examination shall be in accordance with §440.102, *Fla. Stat.*
- F. **Follow-Up Testing:** Follow-up testing will be conducted prior to employees return to work following a positive test result.
- G. **Volunteer Screenings:** Volunteers may be required to have a physical examination depending on their volunteer assignment, which may include drug testing, prior to the commencement of their volunteer services. The Risk Management Division will perform and/or coordinate all volunteer drug/alcohol screening and/or testing and communicate the results of such testing to Human Resources personnel.

§ 5312-6. Medical Review Officer.

Collier County contracts with a Medical Review Officer (MRO), who is responsible for interpreting and evaluating an employee's test result.

- A. If the initial test is positive, the MRO will contact the employee or applicant directly by telephone to discuss the possible use of prescription or non-prescription medications. An employee or applicant who receives a positive confirmed test result may contest or explain the result to the MRO within five working days after receiving written notification of the test result. If the employee's or applicant's

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explanation or challenge is unsatisfactory, or where the employee/applicant fails to speak to the MRO, does not return MRO messages, or if the MRO is unsuccessful in contacting the employee or applicant at the number provided, the MRO shall report a positive test result back to the County.

- B. If the MRO informs the County that a positive drug test was diluted, Collier County Government will treat the test as a verified positive test. The County will not direct the employee to take another test since the specimen was positive diluted.
- C. If the MRO informs the County that a negative drug test was diluted, Collier County Government will treat the test as an “inconclusive” test. Based on the diluted test, the employee shall be required to take a second test.

§ 5312-7. Positive Results.

Upon determination of a positive test for alcohol and/or a controlled substance, regardless of the levels:

- A. When the MRO confirms a positive drug or alcohol test above the legal limit, the employee must immediately be removed from work and will be placed on unpaid administrative leave for a minimum of seven (7) business days. This will permit the County to establish a return-to-work protocol and appropriate disciplinary action recommendation. Based on the severity of the offense, the employee may be recommended for termination of employment; employees in their initial probationary period of employment will be terminated from County service. Except in cases where an individual has been approved for a leave of absence, employees must submit to and pass required follow-up tests within thirty (30) days of the initial positive test. A negative test result is required prior to returning to work in any capacity. If an employee is unable to provide a negative result in that timeframe, they will be terminated from County service.
- B. Employees in Safety-Sensitive Positions or Functions:
 - 1) Employees with designated Safety-Sensitive positions who have an MRO positive confirmed test result, and the drug confirmed is an illicit drug under §893.03, *Fla. Stat.*, will be removed from the safety-sensitive function and recommended for corrective action, up to and including termination of employment.
 - 2) Employees who test positive may be offered the opportunity to participate in a rehabilitation program. If an employee is eligible to do so, the County will require employees with designated Safety-Sensitive positions to participate in a Substance Abuse Program as a condition of employment. All employees must agree to complete the entire program (counseling and testing) and act in accordance with the SAP’s direction as a condition of continued employment and/or returning to a Safety-Sensitive position. Participation is considered a last chance to comply with the County’s drug-free workplace policy, and failure to abide by the conditions of the program or SAP recommendation will result in termination of County employment.
 - 3) DOT covered employees must comply with all State and Federal laws applicable to maintaining their DOT-designated position. Where there is a conflict between laws, the most restrictive law shall apply.
 - 4) Employees with designated Safety-Sensitive positions who have an MRO positive confirmed test result, and the drug confirmed is an illicit drug under §893.03, *Fla. Stat.*, they will lose the ability to drive a County vehicle for up to one (1) year, in accordance with CMA 5805, Eligibility to Drive County Owned Vehicles.
 - a. Employees will be ineligible to drive a County vehicle until completing all requirements of the SAP

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program.

- b. If an employee is ineligible to drive a County vehicle and driving is an essential position function, the employee may be reassigned to a non-driving position if one is available and the employee is qualified for the position. Based on the position to which the employee is reassigned, the employee may receive a reduction in pay for the duration of the reassignment.
- 5) Employees may appeal any recommendation for discipline as outlined in CMA 5351, with the exception of a termination resulting from failure to abide by the conditions of a substance abuse treatment program; failure to adhere to SAP recommendations; or a subsequent positive test for illegal drugs or alcohol following approval of a last chance agreement.
 - a. If a suspension or termination recommendation is overturned or reduced because of an appeal, the employee will be required to participate in the Substance Abuse Program and will be on a last-chance agreement.
 - b. If an employee is unable to return to a safety-sensitive position, the employee may elect to use any accrued leave time to remain in paid status, rather than being placed into a non-safety-sensitive classification.
 - c. The Substance Abuse Program requirement is not subject to appeal.
- 6) The employee and/or applicant may contest the drug test result pursuant to law.
- 7) All costs associated with a Substance Abuse Program are the responsibility of the employee.

C. Employees and Volunteers in Non-Safety Sensitive Positions:

- 1) Employees and Volunteers in Non-Safety Sensitive positions who have an MRO positive confirmed test result and the drug confirmed is an illicit drug under §893.03, *Fla. Stat.*, may be recommended for corrective action, up to and including termination.
 - 2) Employees who test positive may be offered the opportunity to participate in a rehabilitation program. If an employee is eligible to do so, the County will require employees to participate in a Substance Abuse Program as a condition of employment. All employees must agree to complete the entire program (counseling and testing) and act in accordance with the SAP's direction as a condition of continued employment. Participation is considered a last chance to comply with the County's drug-free workplace policy, and failure to abide by the conditions of the program or SAP recommendation will result in termination of County employment.
 - 3) Employees and Volunteers in Non-Safety-Sensitive positions who have an MRO positive confirmed test result and the drug confirmed is an illicit drug under §893.03, *Fla. Stat.*, will lose the ability to drive a County vehicle for up to one (1) year in accordance with CMA 5805, Eligibility to Drive County Owned Vehicles, and may have that length of time extended at the SAP's direction.
 - 4) Employees may appeal any recommendation for discipline as authorized in CMA 5351.
 - 5) The SAP requirement is not subject to appeal.
 - 6) The employee or applicant may contest the drug test result pursuant to law.
 - 7) All costs associated with a Substance Abuse Program are the responsibility of the employee.
- D. All Drug and Alcohol testing results are filed in a confidential file separate from the general employee file. The files are located in Risk Management with secure access limited to the DER.
- E. Collier County will meet all aspects of 49 CFR Part 40, Subpart P - Confidentiality and Release of Information.
- F. In the event of a positive Post Offer Drug Test (pre-employment), the applicant will be given the name of an SAP in accordance with Federal guidelines.

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- G. Some violations of this policy are so severe that they may warrant an immediate discharge or other disciplinary action.

§ 5312-8. Return to Work.

Employees who do not fall into the category of Safety-Sensitive positions will be subject to follow-up testing after a positive test result, prior to returning to their regular duties. Follow-up testing will be scheduled during the employee's regularly scheduled work hours, and results must be obtained prior to the employee being allowed to return to any Safety-Sensitive position or prior to being allowed to perform any Safety-Sensitive job tasks. The EHS Manager will coordinate with the appropriate HR representative to schedule testing, and any follow-up required of the employee by the SAP. Employees may be required to participate in a Substance Abuse Program upon determination of a positive test.

- A. Employees in need of assistance in resolving problems associated with alcohol and/or controlled substances use/abuse shall be subject to unannounced follow-up testing as directed by the County's SAP, the Human Resources Division and Risk Management Division, and in accordance with §440.102, *Fla. Stat.*
- B. Upon confirmation of a "negative" test result, following the return to work (follow-up) test, the employee may return to any non-Safety-Sensitive position. Employees with designated Safety-Sensitive positions must complete the entire Substance Abuse Program and/or the SAP's recommendations prior to returning to any Safety-Sensitive position or duties.
- C. The County is committed to providing reasonable accommodations (including rehabilitation) to those employees whose alcohol or drug problem classifies them as disabled under Federal law, and providing they are not under the influence of drugs or alcohol while on the job. Accordingly, an Employee Assistance Program (EAP) is available for those employees who voluntarily seek help for alcohol and/or drug problems. Employees may contact their Supervisor or the Human Resources Division for additional information.
- D. Outpatient Rehabilitation programs shall be attended on the employee's time and scheduled outside of work hours; where this is not possible, time will be charged against an employee's accrued leave time. In instances where Inpatient Services are required, an employee may request time under FMLA or other applicable leave of absence.

§5312-9. Employee Notification of Prescription or Non-Prescription Medication.

Any BCC employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with safe performance of their job.

No employee shall report for duty or remain on duty while using any controlled substances, unless such substances are used in accordance with the prescription by and direction of a medical doctor who has advised, based on a review of the employee's job description, that the substance will not adversely affect the employee's ability to safely perform their job. In such cases, employees shall be required to provide written documentation of clearance to perform work activities to their Supervisor before reporting for duty. Any medical documentation must not be retained in division/department files and should be immediately forwarded to the Human Resources Division. The failure of an employee to notify their supervisor prior to beginning work may result in disciplinary action, up to and including termination of employment.

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§ 5312-10. Training.

The Risk Management Division will provide this CMA to all covered employees, informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace, and specifying the actions that will be taken against employees who violate the policy.

The Risk Management Division will provide annual training, including electronic training programs, to all BCC Supervisors on the dangers of drug abuse in the workplace; our policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; the penalties that may be imposed upon employees for drug abuse violations and identifying the signs and symptoms of drug and alcohol abuse. Because this is a federal mandated requirement, failure to attend annual training will result in a recommendation for discipline in accordance with CMA 5351, "Discipline".

§ 5312-11. Currency.

The Risk Management Division is responsible for maintaining the currency of this Instruction.

§ 5312-12. Reference.

Collier County Personnel Ordinance, Ordinance No. 2001-50: Drug Free Workplace: It is the Board of Collier County Commissioners' policy to prohibit the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace. This policy is consistent with **§112.0455** and **§440.102, Fla. Stat.** Additionally, it is the Board of Collier County Commissioners' policy to comply with the Omnibus Transportation Employee Testing Act of 1991.