

# Drug & Alcohol Testing Policy



This Model Drug and Alcohol Testing Policy comes from the Construction Owners' Association of Alberta and needs to be adapted to the laws of your jurisdiction and the terms of applicable collective agreements.

## **1. Purposes of the Alcohol and Drug Policy**

1.1 The alcohol and drug policy is established:

- (a) to provide a safe workplace for all employees and those whose safety may be affected by the conduct of employees; and
- (b) to ensure that all employees are treated fairly and with respect.

## **2. The Alcohol and Drug Policy Is Important**

2.1 The use of alcohol and drugs adversely affects the ability of a person to work in a safe manner. Employees at construction workplaces are often working independently or with equipment or material in an environment that poses a threat to the safety of themselves, the workforce, the workplace and the property at the workplace, if handled without proper care and attention. In setting the requirements in the Work Rule it is acknowledged that assessments of risks relating to work activities, equipment and processes may lead to a workplace adopting more rigorous requirements in relation to the risks faced in particular work. This Policy will remind employees of the risks associated with the use of alcohol and

other drugs and provide understandable and predictable responses when an employee's conduct jeopardizes the safety of the workplace.

2.2 By pursuing the purposes of this alcohol and drug policy, the company promotes:

(a) the safety and dignity of its employees,

(b) the welfare of its employees and their families,

(c) the best interests of the bargaining agent or labour provider to which employees belong, and

(d) the best interests of the company, the owner, the construction industry and the public.

2.3 There are no other reasonable alternatives available to the company that impose a smaller burden on

### **3. Alcohol and Drug Work Rule**

3.1 An employee shall not:

(a) use, possess or offer for sale alcohol and drugs or any product or device that may be used to attempt to tamper with any sample for a drug and alcohol test while on company property or at a company workplace,

(b) report to work or work

(i) with an alcohol level equal to or in excess of 0.040 grams per 210 litres of breath,

(ii) with a drug level for the drugs set out below equal to or in excess of the concentrations set out below: [insert chart of appropriate levels], or

(iii) while unfit for work on account of the use of a

prescription or nonprescription drug,

(c) refuse to

(i) comply with a request made by a representative of the company under 4.3, or

(ii) comply with a request to submit to an alcohol and drug test made under 4.4, 4.5, 4.6 or 4.7, or

(iii) provide a sample for an alcohol and drug test under 4.8,

(d) tamper with a sample for an alcohol and drug test given under 4.8.

3.2 An employee complies with 3.1(a) or 3.1(b)(iii) of the alcohol and drug work rule if he or she is in possession while at a company workplace of a prescription drug prescribed for him or her or a nonprescription drug and

(a) the employee is using the prescription or nonprescription drug for its intended purpose and in the manner directed by the employee's physician or pharmacist or the manufacturer of the drug, and

(b) the use of the prescription or nonprescription drug does not adversely affect the employee's ability to safely perform his or her duties, and

(c) the employee has notified his or her supervisor or manager before starting work of any potentially unsafe side effects associated with the use of the prescription or nonprescription drug.

3.3 The supervisor or manager who has received a notification under 3.2 may not disclose any information provided under 3.2 to any person other than a person who needs to know, to discharge a statutory or common-law obligation.

## **4. Implementation of the Alcohol and Drug Work Rule**

### **4.1 Education**

4.1.1 The company is committed to informing employees of the existence of this alcohol and drug policy and to taking such other steps as are reasonable to inform its employees of the safety risks associated with the use of alcohol and drugs and the assistance available under the employee assistance services program.

4.1.2 The likelihood that an employee will comply with the alcohol and drug work rule is increased if he or she knows the safety risks associated with the use of alcohol and drugs and the assistance available under the employee assistance services program.

### **4.2 Self-help**

4.2.1 This policy encourages employees who believe that they may require the help provided by substance abuse experts (SAEs) and employee assistance services programs (EAPs) to voluntarily request that help. An employee requesting help will not be disciplined unless he or she:

- (a) has failed to comply with the alcohol and drug work rule,
- (b) has been requested to confirm compliance with the alcohol and drug work rule under 4.3,
- (c) has been requested to submit to an alcohol and drug test under 4.4, 4.6 or 4.7, or
- (d) has been involved in an incident referred to in 4.5.

4.2.2 An employee who believes that he or she may be unable to comply with the alcohol and drug work rule should seek help by:

- (a) contacting a person responsible for the administration of

the employee assistance services program,

(b) informing a family member or friend and asking for assistance in contacting a person responsible for the administration of the employee assistance services program, or

(c) informing a co-worker, a supervisor, or a representative of the company, the bargaining agent or labour provider to which the employee may belong of his or her wish to contact a person responsible for the administration of the employee assistance services program.

4.2.3 In responding to an employee's request for help, a foreman, supervisor or manager must

(a) inform the employee of the assistance available under the employee assistance services program,

(b) encourage the employee to utilize the employee assistance services program which may assist the employee, and

(c) inform the employee that if he or she fails to utilize the employee assistance services program the company may insist that the employee submit to any or all of the following:

(i) a medical assessment conducted by a physician,

(ii) alcohol and drug testing as set out in 4.8,

(iii) an assessment conducted by a substance abuse expert, and that his or her failure to do so may result in the termination of his or her employment.

4.2.4 An employee who receives assistance from the employee assistance services program on account of his or her use of alcohol and drugs must comply with the terms and conditions of any program established to help the employee as a condition of his or her continued employment.

4.2.5 An employee who is at work and enrolled in the

employee assistance services program must comply with the alcohol and drug work rule.

### **4.3 Possession of alcohol and drugs**

4.3.1 A representative of the company or the owner who has reasonable grounds to believe an employee may not be in compliance with 3.1(a) of the alcohol and drug work rule, must request

(a) that employee to confirm that he or she is in compliance with 3.1(a) of the alcohol and drug work rule, or

(b) the assistance of appropriate authorities to confirm that employee's compliance with 3.1(a) of the alcohol and drug work rule.

4.3.2 A representative of the company or the owner must provide to the employee the reason for the request under 4.3.1.

### **4.4 Observation of employee conduct**

4.4.1 A supervisor or a manager of an employee must request an employee to submit to an alcohol and drug test under 4.8 if the supervisor or manager and the next level of management present at the company workplace, if any, have reasonable grounds to believe that an employee is or may be unable to work in a safe manner because of the use of alcohol and drugs.

4.4.2 A supervisor or manager of an employee must provide to the employee the reason for the request under 4.4.1.

### **4.5 Incidents and near misses**

4.5.1 A supervisor or manager of an employee must request an employee to submit to an alcohol and drug test under 4.8 if the supervisor or manager and the next level of management present at the company workplace, if any, have reasonable

grounds to believe that an employee was involved in an incident or near miss.

4.5.2 A supervisor or manager of an employee must provide to the employee the reason for the request under 4.5.1.

4.5.3 A supervisor or manager must make a request under 4.5.1 immediately following an incident or near miss unless it is not practicable or reasonable to do so until a later time.

4.5.4 A supervisor or a manager of an employee need not request the employee to submit to an alcohol and drug test if the supervisor or manager and the next level of management present at the company workplace, if any, conclude that there is objective evidence to believe that the use of alcohol and drugs did not contribute to the cause of the incident or near miss.

#### **4.6 Random testing**

4.6.1 At work sites where the employer has confirmed in writing that each employee is covered by an employee assistance services program, the employer may implement a lawful computer-generated random alcohol and drug testing program in accordance with the procedures set out in the United States Department of Transportation Workplace Drug and Alcohol Testing Programs in force as of the date of this publication. In the event a lawful random alcohol and drug testing program is to be adopted by an employer, a written notice shall be delivered to each employee and a written notice shall be provided to any bargaining agent of affected employees of the implementation of random alcohol and drug testing at least 30 days prior to implementation of that program at the work site.

4.6.2 Where an owner directly or by contract requires random alcohol and drug testing, such a random testing program must be applicable to all companies and employees at the work site.

## **4.7 Site access testing**

When an owner directly or by contract requires site access testing, an employer may require alcohol and drug testing under 4.8 of any employee as a condition of access to the owner's property.

## **4.8 Alcohol and drug testing**

4.8.1 The company agrees to retain a laboratory, as defined in this policy, to conduct drug testing under 4.8 in accordance with those parts of the United States Department of Transportation Workplace Drug and Alcohol Testing Programs in force as of the date of this publication, which relate to testing procedures in laboratories. Additionally, the company agrees to have alcohol testing under 4.8 conducted by personnel in accordance with the above standards and procedures as they relate to alcohol testing.

4.8.2 Alcohol and drug testing is conducted to determine the presence of any of marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, amphetamines and alcohol in the specimen provided

4.8.3 A summary of the features of the alcohol and drug tests is set out in Appendix A of this alcohol and drug policy.

4.8.4 By continuing his or her employment with the company the employee accepts the terms of this alcohol and drug policy and authorizes the laboratory to provide the test results to the company or any person with legal authority to require the disclosure of the test results, subject to 4.9.4, below. Further, the employee authorizes the medical review officer to provide the test results to a substance abuse expert to whom the employee has been referred under the provisions of this policy.

## **4.9 Alcohol and drug testing results**



4.9.1 Alcohol and drug test results can be negative, positive, tampered and invalid or inconclusive. A negative test result means the employee is in compliance, a positive test result means non-compliance, a tampered test result means non-compliance, and an invalid or inconclusive test result cannot be relied upon to determine compliance or non-compliance. All test results will be provided in a confidential written report from the medical review officer to the designated company representative.

4.9.2 A report from the medical review officer to the designated company representative that the employee's sample produced a negative test result means that the employee complied with 3.1(b) of the alcohol and drug work rule. The designated company representative must notify the employee of the negative test result and that no other steps under this alcohol and drug policy will be taken. It may be appropriate to pursue procedures under other policies or take other steps, including a medical assessment, in order to assist the employee to perform at a satisfactory level.

4.9.3 A confidential written report from the medical review officer to the designated company representative that the employee's sample produced a positive test result means that the employee failed to comply with 3.1(b) of the alcohol and drug work rule, unless the medical review officer has determined that there is a legitimate medical explanation for the positive test result whereby a fitness-for-work assessment should be conducted and there may have been a failure to comply with 3.2.

4.9.4 A confidential written report from the medical review officer to the designated company representative that the employee's sample has been tampered with means that the employee failed to comply with 3.1(d) of the alcohol and drug work rule.

4.9.5 A confidential written report from the medical

review officer to the designated company representative that the employee's sample is invalid or inconclusive means that the test cannot be relied upon for the purposes of this work rule.

4.9.6 Where a person is referred to testing required under 4.7 by the bargaining agent or labour provider of that person, a confidential written report from the medical review officer shall be issued to the designated representative of the bargaining agent or labour provider.

4.9.7 In order to preserve the confidentiality of test results, the designated company representative and any person to whom disclosure is permitted under this alcohol and drug policy must not disclose the test results to any person other than a person who needs to know the test results to discharge an obligation under this alcohol and drug policy.

#### **4.10 Assistance of a representative**

4.10.1 A representative of a bargaining agent or labour provider of which an employee is a member and with whom the employer has a bargaining relationship may assist the employee with any matter arising under this alcohol and drug policy if the employee wishes to have the assistance of a representative.

4.10.2 A representative of a bargaining agent or labour provider of which an employee is a member and with whom the employer has a bargaining relationship, may attend any meeting or discussion which takes place under this alcohol and drug policy if the employee wishes the representative to attend and the attendance of the representative does not unduly delay the time at which the meeting or discussion takes place.

### **5. Consequences for Failure to Comply with the Alcohol and Drug Work Rule**

## **5.1 Company responses to violations**

The company may discipline, or terminate for cause, the employment of an employee who fails to comply with the alcohol and drug work rule. The appropriate consequence depends on the facts of the case, including the nature of violation, the existence of prior violations, the response to prior corrective programs and the seriousness of the violation.

## **5.2 Violation of 3.1(b) of the alcohol and drug work rule**

5.2.1 Prior to the company making a final decision with regard to disciplining or terminating the employment of an employee, who has failed to comply with 3.1(b) of the alcohol and drug work rule, the company shall direct the employee to and the employee shall meet with a substance abuse expert. The substance abuse expert shall make an initial assessment of the employee and make appropriate recommendations. The assessment by the substance abuse expert shall be applied utilizing the processes and approaches set out in Appendix B. The employee shall, through the substance abuse expert, provide to the company a confidential report of his or her initial assessment and recommendations. The company then shall make the final decision under 5.1. The initial assessment is to be completed as soon as possible, and the report shall be delivered to the company within two days of completion. Failure by the employee to attend the assessment or follow the of assessment and corrective rehabilitative programs recommended by the substance abuse expert the employee shall be deemed to be suspended from his or her employment without pay.

5.2.2 In addition to disciplining or terminating for cause the employment of an employee who fails to comply with 3.1(b) of the alcohol and drug work rule, the company may give written notice to that person that the person will not be re-employed again by the company unless the person provides the company with the following:

(a) a certificate issued

(i) by the rehabilitation program service provider certifying that the person who was terminated has successfully completed its rehabilitation program and continues to comply with all the requirements of the rehabilitation program, or

(ii) by a licensed physician with knowledge of substance abuse disorders certifying that the person who was terminated is able to safely perform the duties he or she will be required to perform if employed by the company, and

(b) a statement signed by the person and, if represented by a bargaining agent or labourer provider, by the bargaining agent or labour provider acknowledging that the person agrees to any conditions imposed as part of a corrective rehabilitative program and such other reasonable conditions set by the employer. The employer may terminate the employment of the employee who fails to comply with the conditions set out in such statement.

### **5.3 Violation of 3.1 (a), (c) or (d) of the alcohol and drug work rule**

If a company decides to discipline or terminate for cause the employment of an employee who fails to comply with 3.1(a) or (c) or (d) of the alcohol and drug work rule, the company shall refer such employee to a substance abuse expert and shall notify the bargaining agent or labour provider, if the employee has one, of such referral.

### **5.4 Owner responses to violations**

5.4.1 The owner of a site where a person was working when he or she failed to comply with the alcohol and drug work rule may give the person who failed to comply with the alcohol and drug work rule written notice that he or she shall not enter the owner's site.

5.4.2 The owner of a site where a person was working when he or she failed to comply with the alcohol and drug work rule may give that person who has been denied permission to enter its site under

5.4.1 written notice that the person may enter the owner's site if:

(a) a company engaged in work at the owner's site, or

(b) the bargaining agent or labour provider of that person, if the person is represented by a bargaining agent or labour provider, or

(c) a company engaged in work at the owner's site and the bargaining agent or labour provider of that person provides the owner with a written statement by the person who has been denied permission to enter the owner's work site under 5.4.1 acknowledging that that person agrees to reasonable conditions imposed by the owner or the contractor or the bargaining agent or labour provider or a part of a corrective or rehabilitative program.

5.4.3 The owner may withdraw permission given under 5.4.2 if the person given permission to enter the owner's work site under 5.4.2 fails to comply with the alcohol and drug work rule or any condition imposed under 5.4.2.

5.4.4 The owner is not obliged to give a person who has been denied permission to enter the owner's site under 5.4.3 another opportunity to work on the owner's site.

## **5.5 Bargaining agent or labour provider responses to violations**

A bargaining agent or labour provider shall decline to dispatch a person to a company until that organization has reviewed the initial assessment, referred to in Article 5.2 or 5.3, and until the conditions set out therein for the person

have been met.

## **6. Definitions**

6.1 In this alcohol and drug policy, the following definitions apply:

(a) Alcohol: Any substance that may be consumed and that has an alcoholic content in excess of 0.5 per cent by volume.

(b) Alcohol and drugs: Alcohol or drugs or both.

(c) Alcohol and drug test: A test administered in accordance with 4.8.1 of this alcohol and drug policy.

(d) Alcohol and drug work rule: The alcohol and drug work rule set out in 3.1 of this alcohol and drug policy.

(e) Company: A corporation, partnership, association, joint venture, trust or organizational group of persons whether incorporated or not.

(f) Company workplace: Includes all real or personal property, facilities, land, buildings, equipment, containers, vehicles, vessels, boats and aircraft whether owned, leased or used by the company and wherever it may be located.

(g) Drug paraphernalia: Includes any personal property which is associated with the use of any drug, substance, chemical or agent the possession of which is unlawful in Canada.

(h) Drugs: Includes any drug, substance, chemical or agent the use or possession of which is unlawful in Canada or requires a personal prescription from a licensed treating physician, any nonprescription medication lawfully sold in Canada and drug paraphernalia.

(i) Employee: Any person engaged in work on a work site where this policy applies.

(j) Employee assistance services program: Services that are

designed to help employees who are experiencing personal problems such as alcohol and drug abuse.

(k) Employer: A person who controls and directs the activities of an employee under an express or implied contract of employment.

(l) Incident: An occurrence, circumstance or condition that caused or had the potential to cause damage to person, property, reputation, security or the environment.

(m) Laboratory: A laboratory certified by the United States Department of Health and Human Services under the National Laboratory Certification Program.

(n) Manager: Includes team leaders and other persons in authority.

(o) Medical review officer (MRO): A licensed physician with knowledge of substance abuse disorders and the ability to evaluate an employee's positive test results who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

(p) Negative test result: A report from the medical review officer that the employee who provided a specimen for alcohol and drug testing did not have an alcohol and drug concentration level equal to or in excess of that set out in 3.1(b).

(q) Owner: The person in legal possession of a site.

(r) Positive test result: A report from the medical review officer that the employee who provided a specimen for alcohol and drug testing did have an alcohol or drug concentration level equal to or in excess of that set out in 3.1(b).

(s) Reasonable grounds: Includes information established by the direct observation of the employee's conduct or other

indicators, such as the physical appearance of the employee, the smell associated with the use of alcohol or drugs on his or her person or in the vicinity of his or her person, his or her attendance record, circumstances surrounding an incident or near miss and the presence of alcohol, drugs or drug paraphernalia in the vicinity of the employee or the area where the employee worked.

(t) Rehabilitation program: A program tailored to the needs of an individual which may include education, counselling and residential care offered to assist a person to comply with the alcohol and drug work rule.

(u) Substance abuse expert (SAE): A licensed physician; a licensed or certified social worker; a licensed or certified psychologist; a licensed or certified employee assistance expert; or an alcohol and drug abuse counsellor. He or she has received training specific to the SAE roles and responsibilities, has knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders, and has an understanding of the safety implications of substance use and abuse.

(v) Supervisor: The person who directs the work of others and may, depending on the nature of the company's structure, include the foreman, general foreman, supervisor, superintendent and team leader.

(w) Tamper: To alter, meddle, interfere or change.

(x) Work: Includes training and any other breaks from work while at a company workplace.

(y) Work site: A place at which a person performs work for an owner or employer.