

conduct rests in the sole discretion of the County.

Signature requirement. If a written disciplinary action is given, the employee will be required to sign the document to acknowledge that the document has been presented to and discussed with the employee. The employee's signature does not mean the employee agrees with the contents of the document. An employee who refuses to sign the acknowledgement will be suspended until the document is signed. If not signed in 3 days, the employee will be deemed to have resigned and will be administratively separated from County employment with the termination decision subject to reconsideration at the employee's request through the grievance process.

## **Smoke-Free Work Environment**

To protect and enhance indoor air quality and to contribute to the health and well-being of all employees, the County does not allow smoking on County property except in designated smoking areas. Smoking is prohibited in all enclosed areas including common work areas, conference and meeting rooms, private offices, hallways, employee break rooms, stairs, restrooms, employer-owned or leased vehicles and all other enclosed facilities. Employees may smoke in their personal vehicles, but smoke and tobacco products must be completely contained within the vehicle. It is not acceptable for smoking or non-smoking employees to be subjected to smoke that they must walk through to reach their vehicles or any other destinations on County property.

While the County makes designated areas available for smoking, it has no legal responsibility to do so. Employees who choose to use the designated smoking areas do so at their own risk. No additional breaks are allowed to any employee who smokes. Smokers and users of tobacco products must dispose of the remains in the proper containers.

## **Drug-Free Workplace Policy**

Special Note: By accepting employment and by continuing to work for the County, a County employee agrees as a condition of employment to abide by this Drug-Free Workplace Policy.

### **1. Notice of Drug-Free Workplace Policy.**

The County uses reasonable means to give notice to County employees of the existence and content of the Drug-Free Workplace Policy. For example, employees are notified of the following during employee orientation and during periodic workforce Handbook training sessions (a) the existence and content of the Drug-Free Workplace Policy and (b) how to access the Drug-Free Workplace Policy on the County's website which makes the policy available 24-hours a day 7-days a week.

## **2. Reasons for Drug-Free Workplace Policy.**

Public interest demands that effective measures be taken to identify, deter and eliminate Drug Abuse (as "Drug Abuse" is defined in section 3.A. of this policy) in the County. It is the policy of the County to comply with the Drug-Free Workplace Act, to comply with applicable government regulations, and to establish and maintain drug-free workplaces. To that end, the County has adopted this Drug-Free Workplace Policy with the purpose of eliminating the serious potential dangers to the public and to the workforce that arise from Drug Abuse. It is well-recognized that Drug Abuse has harmful effects on public health and safety, on the welfare of employees, on morale, and on productivity. For example, Drug Abuse in the workplace leads to physical and mental impairment, loss of judgment, and safety violations that, in turn, expose the public and the work force to the risk of death and serious bodily injury as well as to the risk of significant property damage.

## **3. Employee Drug Abuse**

### **A. Drug Abuse Defined and Prohibited.**

For purposes of this policy, Drug Abuse shall be defined as swallowing, inhaling, injecting, dealing in, possessing, or otherwise using any substance from the following categories:

- Illegal drugs;
- synthetic drugs;
- prescription drugs which are not prescribed for the employee's use;
- prescription drugs which have been prescribed for the employee's use but are not being used as prescribed.

All employees are prohibited from violating this policy. This prohibition applies any time, both on-the-job and off-the-job. County law enforcement employees are, of course, permitted to possess any substance when required by their jobs or for the purpose of lawful delivery to another person.

### **B. Self-Reporting Drug Abuse**

#### **1. When Required.**

As a condition of employment, employees agree to notify the Human Resources Director within five calendar days after any criminal arrest and/or conviction for the manufacture, distribution, dispensation, possession, or use of (i) illegal drugs, (ii) synthetic drugs, (iii) prescription drugs not prescribed for the employee's use, or (iv) prescription drugs which have been prescribed for the employee's use, but are not being used as prescribed. The County shall notify all state and federal grantors/contracting agencies of such employee convictions as required by the state and federal Drug-Free Workplace Acts. "Conviction" means a finding of guilt, imposition of a sentence, a plea of no contest, or a plea of guilty. "Arrest" means being issued or served with a charging document to include but not limited to: Uniform Traffic Ticket, Arrest Warrant, Grand Jury Indictment, or Prosecutor's Direct Indictment. The County shall notify law enforcement authorities whenever it appears that illegal drugs have been found in the workplace.

**2. When Voluntary.**

Any employee involved in Drug Abuse may voluntarily self-report to the Human Resources Director. If this self-reporting (i) is the employee's first self-report, (ii) occurs before the employee is selected for drug testing, and (iii) before the occurrence of an event that would result in drug testing, then the employee will be subject to section 4.C.2 of this policy. If an employee voluntarily self-reports in accordance with the previous paragraph, the employee will be discharged if the employee fails to comply with the requirements of section 4.C.2.

**C. Employee Assistance Program.**

In an effort to prevent the negative consequences of Drug Abuse, the County makes available to employees an Employee Assistance Program. The Employee Assistance Program is usually referred to as "EAP." An employee's use of the EAP may be the employee's own decision or may be required under certain circumstances by the County.

The EAP provides employees with professional help for Drug Abuse as well as with many other problems an employee may face, such as alcohol abuse, emotional stress, money management difficulties and unpleasant family situations. Periodically, the EAP sponsors programs or distributes written materials regarding Drug Abuse. Employees are encouraged to review the materials and attend the programs. Employees who would like additional information about the County's EAP are encouraged to contact the Human Resources Director or the Tri-County Commission on Alcohol and Drug Abuse (also commonly known locally as the Dawn Center).

**4. Effect of Drug Abuse on County Employment.**

**A. During the Application Process.**

The County will not hire an applicant who engages in Drug Abuse during the pendency of his/her application for employment or tests positive on the pre-employment drug test. Under those circumstances, the person will not be considered for County employment for a period of two years. After that two-year period, the person may be considered for vacancies if s/he can demonstrate s/he is no longer in violation of section 3.A of this policy. This demonstration requires (i) that the applicant provide to the Human Resources Director with the employment application a recent negative drug test result from a test run by an independent, third-party drug testing provider and paid for by the applicant and (ii) a negative drug test result from the County's pre-employment drug test. The demonstration may require proof of successful completion of a counseling and/or rehabilitation program.

**B. During Introductory Period (Termination).**

The County will terminate an employee who engages in Drug Abuse during the employee's introductory period. This employee category (i) includes an employee whose introductory period has been extended, but (ii) excludes an employee who is serving an introductory period by virtue of being promoted or transferred.

**C. After Completion of Introductory Period.**

For purposes of this section, employees who have completed their introductory period include those employees who are serving an introductory period by virtue of being promoted or transferred.

**1. Level of Disciplinary Action.**

If an employee engages in Drug Abuse after completion of the employee's introductory period, then the County will discipline the employee up to and including termination.

**2. Last Chance.**

If the County does not terminate an employee who engages in Drug Abuse, then the County will condition the employee's continued employment upon the successful completion of a drug counseling and/or rehabilitation program of the County's choice. Employees who are offered this last chance to remain in County employment will be required to provide an authorization for the performance of drug tests and provide a waiver under HIPAA for the provider to release all test results and recommendations to the County. Without this authorization, employees will not be considered for a last chance.

**a. Requirements:**

Under circumstances in which the employee undertakes a last chance, the County will:

- Refer the employee to a Substance Abuse Professional (DOT regulated employees with CDLs) or Certified Addictions Counselor (Non-DOT regulated employees) for assessment and require the employee to follow the SAP's or CAC's prescribed program of counseling/treatment and testing recommendations.
- Require the employee to authorize the Employee Assistance Program or other facility to report periodically to the County during the course of counseling/treatment.
- Retest the employee for drug use in violation of this policy before allowing the employee to return to duty.
- Require the employee to submit to unannounced follow-up testing for a period not to exceed five years according to the recommendations and clinical guidance of the service provider (EAP) or other facility professional. (The employee will be solely responsible for the total cost of all follow-up tests conducted pursuant to this policy.)
- Employees who are offered participation in this program will be required to provide an authorization under HIPAA for the provider to release all test results and recommendations to the County. Without this authorization employees will not be considered for the program.
- Should an employee whose continued or future employment is conditioned upon the successful completion of a counseling or rehabilitation program refuse or fail to participate in a single counseling or treatment session, the employee will be terminated.
- An employee whose return-to-duty drug test indicates that the employee is in violation of this policy will be terminated.
- Require the employee to engage in a Return to Work Conference with the Human Resources Director and the assigned EAP professional to discuss and understand expectations upon the employee's return to work.
- Retest the employee for Drug Abuse and receive negative test results before allowing the employee to return to duty; and
- Place the employee on probation for a minimum of six months following the employee's return to duty during which time the employee remains in an at-will status and is not guaranteed continued employment.

**b. Limitations Regarding Operation of County Equipment and Vehicles and Effect on Employment.**

For any employee who is an equipment operator and/or any employee who operates a County vehicle, the employee will not be allowed to operate County equipment or vehicles during the last chance period. If the County is aware of a vacant non-operating position for which the employee is fully qualified, then the County may consider transferring the employee to the vacant non-operating position for a temporary period of time. Absent the described transfer, the County will place the employee on administrative leave without pay pending the conclusion of the last chance probation period.

**c. Non-Compliance.**

If an employee's continued employment is conditioned upon compliance with last chance requirements, any non-compliance whatsoever with those requirements, no matter how minor, may result in the County terminating the employee.

**5. Drug Testing**

**A. Circumstances Leading to an Employee Being Drug Tested.**

The circumstances pursuant to which the County will require an employee to be drug tested are as follows: (i) pre-employment drug testing; and (ii) post-employment drug testing due to Reasonable Suspicion or Special Need or holding a commercial driver's license or post-incident.

**1. Pre-Employment Drug Testing.**

The County will conduct pre-employment drug tests for all applicants tentatively selected for employment. Applicants will be required to provide an authorization for the performance of the drug test and a waiver under HIPAA to release the results to the County. Applicants who fail to provide this authorization and waiver will not be considered for employment.

**2. Post-Employment Drug Testing.**

After a person has passed pre-employment drug testing and has joined the County workforce, the County limits drug testing in accordance with legal precedents applicable to government employers. Effective immediately, any employee whose circumstances reflect the following will be subject to post-employment drug testing:

**a. Reasonable Suspicion.**

If an employee's circumstances reflect Reasonable Suspicion of violation of section section 3.A. of this policy, then the employee will be subject to drug testing by urinalysis. "Reasonable Suspicion" is described in section 6 of this policy.

**b. Special Need.**

If an employee's circumstances reflect Special Need, then the employee will be subject to Random drug testing by urinalysis. "Special Need" and "Random" are described in section 6 of this policy.

**c. Commercial Driver's License.**

If an employee is required as a condition of employment to possess a Commercial Driver's License, then the employee is subject to Federal Regulations, including Random drug testing. CDL Federal Regulations are described in section 6 of this policy.

**d. Workers Compensation Process.**

A drug test may be required by the County's Workers' Compensation process including accident or injury on the job.

**e. Serious Incident.**

“Serious incident” is defined as: 1) an incident involving a fatality; 2) an incident causing bodily injury to the employee or any other person which requires medical care away from the scene of the incident; 3) an incident causing total aggregate property damage reasonably believed at the time of the incident to be \$1,000 or more; 4) an incident involving one or more vehicles which results in one of the vehicles being towed from the scene by a tow truck or other vehicle; or 5) an incident involving a non-vehicular incident causing bodily injury to the employee or any other person which requires medical care away from the scene or if there is a fatality or bodily injury involving non-vehicular equipment (on- or off-road vehicle including heavy equipment) or there is property damage reasonably believed at the time of the incident to be \$1,000 or more.

**B. Consequences for Refusal to be Drug Tested.**

The County shall not hire any applicant tentatively selected for employment who refuses to submit to a drug test or whose pre-employment drug testing indicates Drug Abuse. If an employee refuses to submit to a drug test as the County directs, the County shall terminate the employee. Refusal to submit to drug testing will have the same effect on County employment as a positive test.

**C. Testing Procedure.**

**1. Urinalysis.**

Drug testing will be conducted by an independent, third-party service qualified to conduct drug testing urinalysis. The use of the phrase Medical Review Officer in this policy is a reference to the Medical Review Officer utilized by the independent, third-party service.

**2. Samples.**

The collection of samples will be performed under reasonable conditions. Urine normally will be collected according to DOT standards for all employees. However, collection of the urine sample may be directly observed by a person of the same gender where the person supervising the collection believes an employee has tampered with an earlier urine sample or the employee has previously admitted or been found by the County to have violated the Drug-Free Workplace Policy. Urine samples will be sealed, labeled, and documented in the presence of the employee in accordance with the procedure of the drug testing service. Labeling, storage, and transportation of samples shall be performed so as to reasonably preclude the probability of erroneous identification, sample contamination, or sample adulteration.

### **3. Substances to be Screened.**

Samples will typically be checked for one or more of the following:

- Amphetamines;
- Barbiturates;
- Benzodiazepines;
- Cocaine;
- Creatinine;
- Marijuana;\*
- Methadone;
- Methaqualone;
- Opiates;
- Phencyclidine (PCP); and
- Propoxyphene

\*Special Note: CBD, or cannabidiol, is one of several compounds found in cannabis plants, including marijuana (which is illegal in South Carolina) and hemp (which is regulated in South Carolina). Under federal and South Carolina law, CBD is generally legal to use and possess as long as it contains no more than .3% of the psychoactive compound delta-9 tetrahydrocannabinol (THC).

CBD products, including CBD-infused food and drink are widely available. However, they are not regulated by the U.S. Food and Drug Administration, which still considers them to be illegal when added to food and drink. In addition, little to no research has been done to determine the effects of

use of CBD. The result is a lack of consistency in the cannabinoid concentrations, manufacturing processes, and recommended dosing or serving sizes. In addition, CBD is not regulated in vaping or topical oils. These inconsistencies could lead to CBD or other hemp-based products having THC concentrations high enough to result in a positive result for marijuana on a drug screen. Accordingly, the County urges employees to use extreme caution when considering the use of CBD or other hemp-related products. CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result. Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if an employee claims to have only used a CBD product.

While marijuana use has been legalized in a number of states, it remains illegal under federal law. Accordingly, a positive drug screen for marijuana will be treated as a violation of County policy regardless of where the marijuana was used.

#### **4. Determining Whether a Result is Positive.**

Applicants and employees will have an opportunity to provide to the testing service provider's Medical Review Officer any information which they consider relevant to the test, including identification of currently used prescription drugs, nonprescription drugs, or other relevant information. Samples which initially result in a positive finding will be re-tested by the gas chromatography/mass spectrometry (GCMS) method. If the GCMS test results in a positive finding, and is verified by the Medical Review Officer, the written report of the Medical Review Officer shall be conclusive for all employment-related purposes. The Medical Review Officer will normally allow a person whose drug test results have been confirmed as positive the opportunity to justify the result before the Medical Review Officer notifies the County. Any prescription drug use discovered as a result of the drug screening must be contemporaneous with physician or other licensed medical provider treatment. The prescription must be in the employee's name and given by a physician or other licensed medical provider for a recent or ongoing illness/injury.

#### **D. Test Results: Notification; Limited Confidentiality.**

If for pre-employment drug testing, an applicant will be notified of the drug test results provided the applicant requests the results within 60 days of being notified of the disposition of the employment application. If for post-employment drug testing, an employee will be notified of the results of all positive drug test results. Drug testing results will be considered as a medical

record and will be kept separate from the personnel file. Pursuant to the provisions of the Americans with Disabilities Act and other state and federal statutes and regulations the results will be maintained as confidential unless otherwise permitted to be disclosed.

**E. Testing Costs.**

The County will pay the costs of all drug tests to which the County requires an employee to submit, except for any unannounced follow-up testing set forth in this policy for last chance agreements. Any such unannounced follow-up testing will be the sole financial responsibility of the employee.

**6. Definitions.**

For purposes of this policy, the following phrases have the following definitions and descriptions.

**A. CDL Federal Regulations.**

CDL Federal Regulations include those set forth in the Federal Department of Transportation's Motor Carrier Safety Regulations and 49 CFR 382. In general, CDL Federal Regulations address misuse of drugs, testing requirements, and reporting requirements among DOT regulated employees.

**B. Drug Abuse.**

The term Drug Abuse is defined in section 3.A of this policy.

**C. Random.**

The term Random relates to the process by which persons are selected for drug testing from the group of employees whose situations present Special Needs. The County has implemented measures to ensure that selection of persons to be tested is made at random from the group of employees whose situations present Special Needs. One such measure is the County's use of the DOT random drug testing selection process for those employees who are subject to CDL Federal Regulations. Random selection and testing are unannounced and administered by an outside entity. The random selection will include the entire employee population who are in a pool of employees in Special Need positions who are scheduled to be at work at the time of testing or who are not on approved leave.

**D. Reasonable Suspicion.**

Reasonable Suspicion exists when specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience causes a supervisor and the Human Resources Director or Risk Services Director to conclude that an employee is in violation of

section 3.A. of this policy. Drug testing based on Reasonable Suspicion shall not occur absent authorization from the Human Resources Director or Risk Services Director or, in their absence, Deputy County Administrator, the County Administrator or the County Administrator's designee.

The following are merely examples of facts that will give rise to Reasonable Suspicion and should not be interpreted as an exclusive list of facts that would give rise to Reasonable Suspicion.

At least one of the following:

- Extreme mood swings;
- Slurred speech;
- Unusual clumsiness;
- Staggering;
- Dilated pupils;
- Lethargy or sleeping on the job;
- Unexplained excessive sweating;
- Behavior that is aberrational for the employee; or
- The employee is involved in a non-vehicular incident during the employee's work period for which: (i) the employee is treated by a licensed healthcare provider; or (ii) there is a fatality or bodily injury to the employee or anyone else; or (iii) there is property damage reasonably believed at the time of the incident to be in excess of \$1,000.
- The employee is involved in a vehicular incident in which a County on- or off-road vehicle (including heavy equipment) is involved.

**E. Special Need.**

Legal precedent recognizes that a Special Need may arise by virtue of an employee's job duties that justifies drug testing on a Random basis even when Reasonable Suspicion is absent such as:

- Job duties require employee to hold a commercial driver's license and employee performs services that require the holding of a commercial driver's license.
- Job duties require employee to hold a South Carolina driver's license and the driving is not merely incidental to the position.
- Job duties require employee to perform mechanical services on vehicles or equipment if failure to properly maintain same has the potential to cause serious injury.

- Job duties require employee to be involved in patient care, specifically including dispatchers, 911 operators, EMTs, paramedics, nurses, physicians, counselors, or other certified or licensed health care workers.
- Job duties require employee to be prepared to use and have access to a firearm, weapon, or other less lethal device.
- Job duties require employees to come into regular contact with known drug users or traffickers.
- Job duties require employees to routinely handle illegal substances in the course and scope of their employment.
- Job duties require employee to be prepared to use and have access to instruments capable of inflicting temporary physical incapacity, such as batons, stun sprays or stun guns.
- Job duties require employee to have access to confidential law enforcement information. This category includes those persons who are law enforcement officers and includes those employees who are not law enforcement officers, but whose job duties in support of law enforcement cause the employee to have access to confidential law enforcement information such as, but not limited to, employees who render IT services or employees who have access to NCIC, SLED or other restricted law enforcement agency data.
- Job duties require employee to come into physical contact at any time with persons who have been delivered to the County Detention Center for detention, even when the physical contact takes place at a location other than the County Detention Center. This category includes correctional officers and includes those employees who are not correctional officers, but who come into physical contact with detained persons.
- Job duties require employee to regularly be involved with or supervise minors.
- All promotion applicants who are being considered for the promotion to a Special Need position.
- All Department of Transportation (DOT) regulated employees are considered to hold positions presenting Special Need and are subject to testing pursuant to 49 CFR Part 382.

## **Alcohol Use and Alcohol Testing**

The abuse and misuse of alcohol is a very serious problem and is especially dangerous in the workplace. The County is committed to maintaining a safe and productive work environment.