

33. ALCOHOL AND DRUG USE

33.1 Purpose

The Agency recognizes that alcoholism and other drug dependencies are a significant problem in society and that this problem has the potential to cause severe effects in the workplace. In an effort to continue to maintain a drug-free work place, and in order to comply with the federal Drug-Free Workplace Act of 1988, Stearns-Benton Employment & Training Council adopts the following policy.

33.2 Definitions

"Work-related Alcohol and Other Drug Abuse" is defined as the use of mood-altering drugs, including all forms of alcohol, narcotics, depressants, stimulants, hallucinogens, marijuana, or other use of prescription drugs when resulting behavior or appearance adversely affects work performance.

"Adversely Affects Work Performance" and "Under the Influence" shall be determined to be present if the employee is perceptibly impaired; has impaired alertness, coordination, reactions, responses, or effort; if the employee's condition threatens the safety of the employee or others; or if the employee's condition or behavior presents the appearance of unprofessional or irresponsible conduct detrimental to the public's perception of Stearns-Benton Employment & Training Council as an employer as determined by the supervisor or Executive Director or others observing the employee.

"Controlled Substances" means those substances whose distribution is controlled by regulation or statute including, but not limited to, narcotics, depressants, stimulants, hallucinogens, or cannabis.

"Mood-altering or Alter" means changed behavior which may limit an employee's ability to safely and efficiently perform job duties or poses a threat to the safety of the employee or other.

33.3 Scope

This policy is applicable to all employees of Stearns-Benton Employment & Training Council and shall be enforced by the Agency to the fullest extent possible.

33.4 Prohibited Activities

33.41 Reporting to Work Under the Influence

No employee shall report to work or be on call under the influence of alcohol, marijuana, controlled substances, or other drugs that affect the employee's alertness, coordination, reaction, response, judgement, decision-making, or safety.

33.42 Operation of Machinery Under the Influence

No employee shall operate, use, or drive equipment, machinery, or vehicle of Stearns-Benton Employment & Training Council's while under the influence of alcohol, marijuana, controlled substances, or other mood-altering drugs. Such employee is under affirmative duty to immediately notify the employee's supervisor if the employee is not in appropriate mental or physical condition to operate, use, or drive Agency equipment.

33.43 Controlled Substances

During work hours, while on the Agency's premises or wherever the Agency's work is being performed, no employee shall manufacture, distribute, dispense, possess, sell, or use any controlled substance, including marijuana, except as medically prescribed and directed with the following exception: When an employee is taking medically authorized drugs or other substances which may affect job performance, as defined in the Definitions above, the employee is under an affirmative duty to notify the appropriate supervisor of the employee's temporary inability or impairment in the ability to perform the job duties.

During an employee's work hours, or while on the Agency's premises, no employee shall use, possess, or transfer alcoholic beverages, with the following exceptions:

- a. Consumption, possession, sale, or purchase of alcohol when authorized by Agency administration under separate statutory or executive Agency authority.
- b. Possession of alcohol while in an employee's personal vehicle on the Agency's premises in compliance with applicable statutory requirements.

Additionally, employees shall not participate in these activities during rest breaks or during overtime work.

33.44 Disciplinary Action Related to Controlled Substances

Engaging in off-duty sale, purchase, transfer, use, or possession of controlled substances may have a negative effect on an employee's ability to perform the job. In such circumstances, the employee may be subject to discipline in employment in addition to any other criminal or other sanctions.

33.45 Notification

The Executive Director or designee shall notify the appropriate law enforcement agency when they have reasonable suspicion to believe that an employee may have illegal drugs in the employee's possession at work or on Agency premises.

33.46 Disciplinary Action Related to Alcohol

Employees are advised that in any situation subsequent to the intake of alcohol where the employee must continue conducting the Agency's business, any employee whose condition or behavior adversely affects the employee's performance shall be subject to possible discipline, up to and including discharge or the requirement of satisfactory participation in a drug assistance or rehabilitation program.

33.5 Employee Assistance Program

Stearns-Benton Employment & Training Council has in place a formal Employee Assistance Program to assist employees in addressing problems such as alcohol or other drug abuse. Employees who may have an alcohol or other drug abuse problem are encouraged to seek a professional assessment through the Employee Assistance Program before the problem affects their employment status. An employee may choose to voluntarily participate in this program or may be required by his/her physician.

33.6 Education: Drug-Free Awareness

Each Stearns-Benton Employment & Training Council employee will receive a copy of this policy and will be expected to read it. New employees will receive a copy of this policy at orientation. The Executive Director will provide, upon request, information regarding any available drug counseling, rehabilitation, and employee assistance program that an employee may enter through his or her health insurance program. Employees who may have an alcohol or other drug abuse problem are encouraged to seek a professional assessment before the problem affects the employment status. The Executive Director will also maintain information regarding the dangers of drug abuse in the work place.

33.7 Employee Reporting Requirements

Pursuant to the requirements of the Drug-Free Workplace Act of 1988, all Stearns-Benton Employment & Training Council employees, as a condition of employment, will agree to abide by the terms of the policy and will notify the Executive Director of any criminal drug statute conviction for a violation occurring in the work place no later than five (5) days after such conviction. Upon receipt of this notice, Stearns-Benton Employment & Training Council

will, within ten (10) days after receiving such notice or actual notice, notify the contracting agency of the conviction.

33.8 Non-Discrimination

Stearns-Benton Employment & Training Council's policy on work-related substance abuse is non-discriminatory in intent and application. However, in accordance with Minnesota Statutes, Chapter 363, disability does not include any condition resulting from alcohol or other drug abuse which prevents an employee from performing essential functions of the job or creates a direct threat to property or the safety of individuals.

33.9 Consequence of Violations

In addition to possible criminal prosecution, violations of this policy will constitute just cause for discipline, including discharge or the requirement of assessment and satisfactory participation in a drug abuse assistance or rehabilitation program. Each situation will be evaluated on a case-by-case basis depending upon the severity and circumstances involved.

33.10 Drug/Alcohol Testing

33.101 Probable Cause

All employees are subject to testing based on probable cause (reasonable suspicion testing). The employee will be required to undergo drug and alcohol testing if the Agency has a reasonable suspicion that the employee:

- a. is under the influence of drugs or alcohol;
- b. has violated the employer's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the Agency's premises or operating the Agency's vehicle, machinery, or equipment;
- c. has sustained a personal injury or has caused another employee to sustain a personal injury; or
- d. has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

Any alcohol and/or drug testing of employees undertaken by the Agency shall be based on probable cause (reasonable suspicion) and will be in accordance with Minnesota Statutes 181.950-957 (1987), the Minnesota Drug and Alcohol Testing in the Workplace Act, and be done in the following manner:

- a. Employee will be provided with a copy of the SBETC Alcohol and Drug Use policy;
- b. Supervisor will obtain a signed consent form from employee that contains the following information:
 - 1) I acknowledge that I have seen the Agency's drug and alcohol testing policy.
 - 2) I also offer the following information that may be relevant to the reliability of the drug and alcohol test or explain a positive test result.
- c. Refusal to consent to alcohol and/or drug testing based on probable cause (reasonable suspicion) will be subject to discipline up to and including termination. A lesser penalty may be imposed if the employer, in its sole discretion, determines that the circumstances do not warrant termination.
- d. Employee will undergo a breathalyzer screening.
- e. Management contacts Midwest Occupational Medicine to set up an immediate confirmatory drug/alcohol blood test, giving name of person who will accompany employee for testing.
- f. After hours testing can be obtained at the St. Cloud Medical Group Urgent Care until 9:00 p.m. and at the St. Cloud Hospital Emergency Room after 9:00 p.m.
- g. Following testing, results are evaluated by a Medical Review Officer through Medtox.
- h. Results take 24 to 72 hours to obtain.

33.102 External Applicants

External applicants for positions with Stearns-Benton Employment & Training Council may be required to undergo drug testing upon a conditional offer of employment. Such testing will be done in accordance with Minnesota Statutes 181.950-957, the Minnesota Drug and Alcohol Testing in the Workplace Act, and will be done in the following manner:

- a. Management will schedule an appointment with Midwest Occupational Medicine and notify the candidate of the time and place of the appointment.

- b. The candidate must present him/herself in person to sign a release form prior to a test date.
- c. Refusal to test will result in the withdrawal of offer of employment.
- d. Following testing, results are evaluated by Medical Review Officer through Medtox.
- e. Results are obtained within 24 to 72 hours.

If a job offer is withdrawn, the applicant will be notified in writing of the reason for this action. The employee or job applicant has the right to refuse to undergo drug and alcohol testing; however, such refusal will be grounds for termination.

In the event that the employee takes the test and the confirmatory test verifies the positive test result on an initial screening test, the Agency will not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the Agency unless the following conditions have been met:

- a. The employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Agency after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
- b. The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

The Agency may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the Agency determines that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. An employee who has been suspended without pay must be

reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.

In all other instances, the Agency will discipline, up to and including discharge, based on the Agency's assessment of the seriousness of the offense.

Within three (3) working days after notice of a positive test result on a confirmatory test, the employee or job applicant may submit information to the Agency to explain that result or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense.

Within three (3) working days after receipt of a test result report from the testing laboratory, the Agency will inform the employee or job applicant in writing of a negative test result on an initial screening test or of a negative or positive result on a confirmatory test and the right of the employee or job applicant to request and receive a copy of the test result on any drug or alcohol test.

An employee or job applicant may request a confirmatory retest of the original sample at the employee's or job applicant's own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the employee or job applicant shall notify the Agency in writing of the employee's or job applicant's intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, the Agency shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest. The original testing laboratory shall ensure that the chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.

The Agency will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

The Agency will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of

medical history information revealed to the employer unless the employee was under an affirmative duty to provide the information before, upon, or after hire.

An employee will be given access to information in the Agency's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the Agency will not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test.

A positive result from this testing procedure will not be used as evidence in a criminal action against the employee or job applicant tested.

Confidentiality Limitations: Test result reports and other information acquired in the drug or alcohol testing process are private data on individuals as that phrase is defined in Section 23 and may not be disclosed by an employer or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested. This restriction shall not apply and evidence of a positive test result on a confirmatory test may be used in the following instances: 1) in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under chapter 43 A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; 2) disclosed to a federal agency or other unit of the United States Government as required under federal law, regulation, or order or in accordance with compliance requirements of a federal government contract; and 3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

33.103 DOT Drug Testing

DOT drug testing is in place for employees who are required to have a Commercial Driver's License for their job. Such testing will be done in compliance with the DOT Drug/alcohol Testing Policy.