

DRUG FREE WORKPLACE POLICY:

SECTION I. PURPOSE:

The purpose of this Policy is to implement the Federal Drug Free Workplace Act of 1988 by providing for a safe and productive work environment that is free from impaired performance caused by employee use or abuse of alcohol, controlled substances and/or medication.

SECTION II. AUTHORITY:

This Policy has been enacted pursuant to the statutory authority granted to the Board of Selectmen by the Federal Drug Free Workplace Act of 1988 and the Federal DOT Omnibus Transportation Workers Testing Act of 1991, and any applicable amendments made thereto. These Federal Acts are incorporated by reference and made part of this Policy.

SECTION III. POLICY STATEMENT:

The Town of Windham has adopted a zero tolerance position on the use of illegal drugs, including alcoholic beverages while in the employ of the Town and shall impose strict prohibition measures. Windham Town management will take an active role to ensure a drug free workplace and provide a safe and healthy work environment for their employees and the public at large.

SECTION IV. DEFINITIONS:

- A) “Alcoholic Beverage or Alcohol”: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol.
- B) “Alcohol and Drug Test”: A generally accepted and proven test methodology or methodologies as recommended by the Rules and Regulations under 49 CFR Part 282m Substances and Alcohol Use and Testing. This test method determines whether an individual has ingested or otherwise used the substance in question within a period of time before the test.
- C) “Alcohol Use”: The consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
- D) “Applicant”: A person who has applied for a position with the Town of Windham including past employees eligible for rehire, and present employees voluntarily seeking another Town of Windham position.
- E) “Appointing Authority”: For purposes of this policy shall mean the Board of Selectmen.
- F) “Confirmation Test”: A second analytical test to verify the accuracy of the preliminary test, screening test, or to identify a specific drug, alcohol, or metabolite in a specimen.

- G) “Covered Employee”: All non-union personnel employed by the Town of Windham, as well as any unionized personnel who meet the definition of “Driver” per paragraph “H”.
- H) “Driver”: Any person who operates a commercial motor vehicle (CMV) and retains a Commercial Drivers License (CDL) that is subject to DOT regulations, including, but not limited to:
1. Full time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle (CMV) at the direction of or with the consent of an employer.
 2. For purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle (CMV).
- I) “Drugs”: Any legal or illegal drug, including alcohol that may affect or inhibit an employee to perform their assigned job duties.
- J) “Employed or Employ”: In the actual employment of the Town, to mean being compensated for and / or while in the actual performance of ones job responsibilities.
- K) “Employee Assistance Program (EAP)”: A confidential counseling program available to all Town of Windham employees as a benefit of the NHMA provided health insurance program.
- L) “Evidential Breath Testing Device (EBT)”: An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified in the CPL as conforming with the model specifications available from the NHTSA, Office of Alcohol and State Programs.
- M) “Illegally Impaired”: An employee that tests positive for the drug screen as administered per Section VI and/or the alcohol standard (for drivers is 0.04, 0.02 for anyone under 21 yrs of age or 0.08 for anyone 21 yrs of age and older).
- N) “Medical Review Officer (MRO)”: A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's controlled substances testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with his or her medical history and any other relevant bio-medical information. Town’s current MRO is provided through the Town’s designated occupational health clinic.
- O) “Positive Test”: Alcohol and Drug test results that meet or exceed the standards outlined under 49 CFR.

- P) “Random Testing”: A scientific selection method used to select employees for testing at random timeframe. The selection is currently performed by the NH Motor Transport Association per DOT regulations and follow-up testing is performed by Town through Salem Occupational & Acute Care.
- Q) “Reasonable Suspicion”: A belief, based on specific facts and reasonable inferences drawn from those facts, that an employee may be under the influence of drugs or alcohol to the extent that job performance may be impaired or the ability to perform the job safely may be reduced. Circumstances which constitute a basis for determining "reasonable suspicion" may include, but are not limited to:
1. A pattern of abnormal or erratic behavior.
 2. Information provided by a reliable and credible source.
 3. Direct observation of drug or alcohol use.
 4. Presence of the physical symptoms of drug or alcohol use (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes).
- R) “State Law”: Refers to RSA 265-A and all related subsections, as amended.
- S) “Substance Abuse”: Refers to patterns of controlled substance and/or alcohol abuse that results in health consequences and/or impairment in social, psychological and occupational functioning.
- T) “Substance Abuse Professional (SAP)”: A licensed or certified employee assistance professional or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and/or drug disorders. The Town’s current SAP is provided through the Town’s health insurance provider
- U) “Zero Tolerance”: A term used to describe a non-discretionary enforcement policy for laws, administrative rules or other matters of organizational conduct. Under a system of zero tolerance, persons in positions of authority – who might otherwise exercise their discretion in making subjective judgments regarding the severity of a given offense – are instead compelled to act in particular ways and, where relevant, to impose a pre-determined punishment regardless of individual culpability.

SECTION V. PERSONNEL RESPONSIBILITIES:

- A) The Town of Windham, as the employer will:
1. Administer and execute the provisions of this policy and defining regulations. The Department Authority under the Appointing Authority will be the coordinator of the program for the Town of Windham within each specific department.
 2. Pay all costs for testing, training, and record keeping. The Town of Windham may contract for testing and other services related to this Policy and will ensure that procedures used for testing meet the requirements of 49 CFR, Part 40. The Town of Windham will ensure the integrity of the

- testing process, and ensure the validity and confidentiality of the test results.
3. Provide training to all covered employees on the content of this Policy and other governing directives. Additional training will be provided when changes in the Policy or directives occur. Training may be coordinated through JLMC. (Material to be provided to employees is outlined in 49 CFR 382.601)
 4. Provide targeted training for Department Heads, supervisors, and management personnel responsible for the performance of Town covered employees. This training will include issues relating to the use and abuse of drugs and alcohol in the workforce, regulation and obligation, and identification of behavior leading to Reasonable Suspicion.
 5. Ensure confidentiality of individual employee records kept under the terms and conditions of this Policy and governing directives. Except as required by law or expressly authorized or required by the governing directives, employee records will be released to individuals or outside agencies only with the written authorization of the employee which indemnifies the Town of Windham. Example of Exception: A Criminal Investigation or Action.
 6. Provide anti-drug and anti-alcohol abuse training and information on counseling and rehabilitation services through the Town's Employee Assistance Program (EAP).

B) Department Heads and Supervisory Personnel:

1. Monitor and enforce the terms and conditions of this Policy.
2. Upon Reasonable Suspicion, the employee shall be immediately relieved of their job duties and directed to submit to appropriate drug or alcohol testing. Provisions shall be made to transport said employee to designated locations and oversee drug and/or alcohol testing.
3. As a result of an accident, decision to perform a drug and/or alcohol test and made part of the Town's incident/accident report.
4. Immediately report to Town Administrator or designee, by or through the Department Head, any violation of the terms and conditions of the Policy and action(s) taken.
5. Fully document, in writing within twenty four (24) hours, the circumstances, conditions, and observations that result in the removal of an employee from their job duties and other subsequent actions using Appendix B.
6. Ensure that employees receive training and understand Policy.
7. Make every effort to detain an employee from leaving work without escort when relieved from their job duties for questionable behavior.

C) Employees:

1. As a condition of employment, employees shall be required to adhere to the terms and conditions of this Policy. Employees who violate the terms and conditions of this Policy may be subject to disciplinary action. The type of discipline shall depend on the circumstances surrounding each situation, up to and including termination.
2. While on the job or performing official duties, employees are expected to be in a mental and physical condition which enables safe and efficient job performance. Reporting to work while illegally impaired by alcohol or a controlled substance is strictly prohibited. The consumption of alcohol and the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance while on the job or while performing official duties is strictly prohibited. The consumption of alcohol at social functions during non-working hours is excluded from this section. Exception: Law Enforcement and Fire personnel are occasionally required to come into contact with or possess illegal substances as a regular part of their job duties. In such circumstances, these employees are exempt from the "possession" component of this policy. All other prohibitions apply.
3. Employees are encouraged to exercise extreme caution in the use of lawfully prescribed or over-the-counter medications, particularly those, which contain a Warning Label stating that the use of the drug may impair their ability to safely operate equipment or machinery. Employees may be allowed to work while using such medication when the drug is prescribed by a licensed medical practitioner who is familiar with the employee's medical history and assigned duties and who has advised the employee that the prescribed drug will not adversely affect their ability to safely perform their job. Employees should inform their Department Head and / or supervisory designee if they are experiencing any problems. .
4. Any employee who is required to drive equipment or vehicles as part of his/her job duties must notify the Administrative Offices of any alcohol or drug related traffic violation which results in restrictions being imposed by law on the employee's driving privilege. Loss of an employee's driving privilege, which is required for their position, may be grounds for termination--depending upon the specific circumstances.
5. Employees are encouraged to seek professional assistance (EAP) for problems associated with use of drugs, including alcohol.
6. An employee who is pending litigation or is convicted of a drug-related criminal violation shall notify their employer immediately upon notice of the legal action.
7. An employee is urged to report questionable behavior of fellow employees to his/her immediate supervisor at the time the behavior is witnessed.

SECTION VI. DRUG/ALCOHOL TESTING CATEGORIES:

The Drug Free Workplace Policy is not intended to violate individual rights. It is intended to meet the Town's objective of safeguarding employees and the public from accidents resulting from the misuse of alcohol or use of controlled substances.

Types of Testing

For all testing categories identified below, testing will consist of an alcohol screen and a 5-panel drug screen, which includes marijuana, cocaine, PCP, opiates and amphetamines. In addition, for all testing categories other than random mandated testing, the drug screen will include an additional test for vicodin, oxycontin and percocet. A confirmed positive test for these three specific drugs will only result from the MRO's assessment that these drugs are being used without a valid prescription.

Substance testing will be required under the following circumstances:

1. **RANDOM MANDATED TESTING:** Periodic, unannounced, scientifically random selection of drivers, reference Section X and XI. Random selection is made by the NH Motor Transit Association and their affiliated drug/alcohol testing consultant.
2. **POST ACCIDENT TESTING:** Any employee involved in an accident in which their actions or lack of action may have contributed to the cause of the accident may be tested for the presence of drugs or alcohol as may be determined by the law enforcement personnel during their accident investigation. Any driver, operating a vehicle for the Town under their CDL, that is involved in an accident will be tested for both drugs and alcohol, as soon as practicable, within the time frames allowed by 49 CFR 382.303 or State Law, whichever is more restrictive. Testing conducted by Federal, State or local officials having independent authority, conforming to applicable requirements may be considered to meet these requirements. Testing conducted by local officials will be administered through the MRO as per Appendix D.
3. **REASONABLE SUSPICION TESTING:** An employee will be required to submit to a drug and/or alcohol test when there is reasonable suspicion to believe that the employee is under the influence of illegal drugs or alcohol or the abuse of prescription medication. Reasonable suspicion must be based on objective criteria, including specific physical, behavioral or performance indicators as referenced in Appendix C. Third party observations and reports, alone, will not constitute reasonable suspicion. A second witness, who is a trained supervisor, shall observe and/or concur to make the decision to test. Testing will only be administered after review and concurrence that reasonable suspicion exists. A Town management liaison shall transport and accompany employee for testing.
4. **PRE-EMPLOYMENT TESTING:** Prior to any conditional offer of employment, any applicant must be tested for a specific drug panel with a negative result. Employees seeking internal transfer or promotion to positions requiring a CDL shall be required to participate in the random drug testing program.

- a) The applicant shall be required to take a drug test at specified clinic.
 - b) The MRO shall release the information to the Town of Windham.
 - c) After the Town authorized authority has received the test results from the MRO or testing facility, eligibility for employment will be determined. The test results shall be kept confidential.
5. RETURN TO DUTY TESTING: A drug/alcohol test with verified negative results must be completed for any employee who has previously tested positive before the employee may return to their respective job.
6. FOLLOW-UP TESTING: Following return to duty after removal for drug or alcohol use, an employee who has completed a prescribed rehabilitation program (EAP), shall be tested randomly at least 6 unannounced times in the first twelve months after return. Further random, unannounced follow-up testing may be conducted for up to 60 months.
7. CONFIRMATION TESTING: A retest may be required to substantiate the initial test results at the request of the employer or employee, including a split-specimen and/or use of a secondary testing facility. A split-specimen will be the method of testing used in any case other than pre-employment testing. The retest request must be made within 72 hours after the positive result is known. If the employee requests the test, the individual agrees to pay the cost of retesting and MRO review. If the retest is negative, the Town will reimburse the individual for any lost wages, benefits and reasonable expenses resulting from the initial verified positive test.

SECTION VII. NOTICE AND CONSENT:

- A) Before a drug and alcohol test is administered, employees and job applicants, who have been offered conditional offers of employment, shall be notified of reasons and asked to sign a consent form (Appendix B) authorizing the test and permitting the release of test results to those Town officials that have a need to know. Drivers under mandatory testing, Section **X**, do not require a consent form and shall adhere to the requirements of DOT regulations 49 C.F.R.
- B) All recruitment announcements for any Town position shall disclose that a drug test shall be required for an applicant.

SECTION VIII. CONSEQUENCES:

If an employee or applicant violates this Policy, the Town of Windham may consider, but is not limited to, the following:

- A) APPLICANTS FOR TOWN POSITIONS: Job applicants will be denied employment with the Town of Windham if they refuse to submit to a drug and alcohol screening test or a positive test result has been confirmed, or the applicant does not request a confirmation test. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive test result.

- B) POSITIVE TEST RESULT: When prescribed testing results in indication that an employee has engaged in conduct prohibited by this policy and governing directives, the employee will be immediately suspended without pay. The employee will be advised of resources available for evaluating and resolving problems associated with alcohol and controlled substance misuse, including the Town of Windham's EAP. Names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs will be provided.
1. An employee who has been evaluated or begun evaluation by a substance abuse professional(SAP), will be returned to pay status upon presentation to the Appointing Authority of a confirming written communication from the SAP. The employee will notify the Town of Windham of the progress of the evaluation within three days of commencing the evaluation, and results of the evaluation within three days of receipt of the results of the evaluation.
 2. An employee who fails to participate in this evaluation within two weeks of being placed in non-pay status, or who fails to notify the Town of Windham of the results of the evaluation within three days of receipt, will be terminated by a vote of the Board of Selectmen. The Town of Windham reserves the right, at its sole discretion, to grant an extension of these deadlines for extenuating circumstances, but in no case shall participation in this evaluation or notification occur after 30 days of the employee being suspended without pay.
 3. Positive results, from return to duty testing, for alcohol (standard for drivers is 0.04, 0.02 for anyone under 21 yrs of age or 0.08 for anyone 21 yrs of age or older) or presence of a controlled substance, will result in termination.
 4. Any employee who tests positive in a second separate incident, indicating continued, or recurring misuse of alcohol or controlled substance use, will be terminated.
 5. When the evaluation of a substance abuse professional (SAP) determines that a rehabilitation program is required by an employee to resolve problems associated with alcohol misuse or controlled substance abuse, the employee will properly follow the prescribed program as a condition of continued employment with the Town of Windham. Failure to properly follow, or successfully complete, a prescribed rehabilitation program, as determined by a substance abuse professional (SAP), will result in termination.
- C) REFUSAL TO SUBMIT: Any employee who has been notified of the requirement for testing who fails to provide adequate breath for alcohol testing, fails to provide adequate urine for controlled substance testing, or engages in conduct that clearly obstructs the testing process will be considered to have refused to submit to testing.
1. Refusal to submit to testing will result in termination for an employee required by position to have a valid CDL.
 2. Other employees will be permanently excluded from assignments requiring a CDL and may be disciplined up to and including termination.

3. A job applicant who refuses to consent to a drug and alcohol screening test will be denied employment with the Town of Windham.
- D) ILLEGAL DISTRIBUTION: Any employee, who knowingly illegally sells, distributes, manufactures, and/or transfers drugs, including alcohol, or is convicted of a drug or alcohol related crime subject to long-term incarceration more than 30 days shall be immediately terminated from employment.
- E) OTHER COMPLIANCE: Any employee, or supervisor, who fails to comply with provisions and requirements of this policy, except as delineated above, will be subject to disciplinary action up to, and including, termination.

SECTION IX. CONFIDENTIALITY OF TEST RESULTS:

- A) All information regarding an employee's or applicant's drug and alcohol test is strictly confidential. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of all tests shall be released by the MRO to the Town of Windham where they shall be kept in a secure file. Testing protocol shall meet Federal Standards per 49 CFR.
- B) Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation or administrative proceedings arising out of a positive drug or alcohol test or other violations of this Policy.
- C) Any unauthorized or improper disclosure of confidential information associated with the application of this Policy will result in termination.

SECTION X. EMPLOYEES SUBJECT TO MANDATORY TESTING:

- A) As mandated by the DOT Omnibus Transportation Employee Testing Act of 1991, drug and alcohol testing regulations apply to every person who operates a Commercial Motor Vehicle (CMV) in interstate or intrastate commerce, and is subject to the commercial driver's license requirements of 49 CFR. Part 383.
- B) The drivers to be tested under this Policy are those required to have a Commercial Driver's License (CDL) and operate a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle
 1. Has a gross vehicle weight rating in excess of 26,000 pounds; or
 2. Is designed to transport 16 or more passengers, including the driver; or
 3. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placard under the Hazardous Materials Regulations, 49 CFR. Part 172, Subpart F.
- C) 49 CFR. Part 383 does not apply to employers and their drivers:
 1. Required to comply with the alcohol and drug testing requirements of parts 653 and 654 of 49 CFR.; or

2. Granted a full waiver from the requirements of the DOT Commercial Driver's License Program, e.g., Fire Department; or
3. Who have been granted a State option waiver from the requirements of 49 CFR. Part 38.

SECTION XI. AMENDMENTS:

This Policy may, from time to time, be amended by a majority vote of the Board of Selectmen, at a regularly scheduled Selectmen's meeting.

SECTION XII. EFFECTIVE DATE:

This policy, and any amendments made thereto shall take effect immediately following a majority vote of the Board of Selectmen at a regularly scheduled Selectmen's meeting and being recorded with the Town Clerk.

Note: This Policy replaces CDL Policy WIN #1:00:06:97

Adopted By Board of Selectmen – Date: November 5, 2007

Alan Carpenter

Dennis Senibaldi

Roger Hohenberger

Margaret Crisler

Bruce Breton
Board of Selectmen

APPENDIX A

ACKNOWLEDGMENT OF POLICY

I hereby acknowledge that I have read the Town of Windham's Drug Free Workplace Policy and have been instructed on the terms and conditions of said Policy and have had the opportunity to ask questions about the Policy and the consequences for violating any terms of the Policy.

I understand that my compliance with all terms of the Policy is a condition of my employment with the Town and I agree to abide by all terms of the Policy.

I authorize the lab and/or Medical Review Officer, or designee, retained by the Town to release test result information to the Town.

Employee Name: _____

Employee Signature: _____

Date: _____

Original acknowledgment form to be kept on file with employer.

APPENDIX B

REASONABLE SUSPICION REPORT

EMPLOYEE NAME: _____ DATE: _____
 DEPARTMENT: _____ JOB TITLE: _____
 TIME: _____ AM/PM LOCATION: _____

REASON(S) FOR SUSPICION (Check all that apply):

Breath : Odor of Alcohol Odor of Drugs

Clothing : Odor of Alcohol Odor of Drugs

Color of Face : Pale Flushed Other

Eyes : Bloodshot Watery Glassy

Pupils : Contracted Dilated Not Equal Size

Speech : Confused Mumbled Mush Mouthed
 Slurred Thick Tongued Not Understandable

Unusual Actions : Belching Crying Fighting
 Hiccoughing Laughing Mood Swings
 Vomiting

Observed Behavior : Carefree Cocky Combative
 Excited Hilarious Indifferent
 Insulting Sleepy Talkative

Body Control : Repeatedly Tried to Perform Task(s) Staggering
 Unable to Control Bodily Functions

Describe Other Reason(s) for Suspicion: _____

Witness(es): _____
 Time Employee was Instructed to be Tested: _____ AM/PM

Observing Supervisor: _____ Title: _____
 Signature: _____ Date: _____

Date Tested: _____
 Town Liaison Name: _____ Title: _____
 Check One: _____ Drug _____ Alcohol
 Department Head: _____ Date: _____

APPENDIX C

CONSENT FORM
(Upon Reasonable Suspicion)

I, _____, hereby state that I am an employee of the Town of Windham and therefore am required to submit to drug and/or alcohol testing. I further state that I have received, read, and understand the Town of Windham Drug Free Workplace Policy regarding drugs and alcohol testing of employees, and do consent to this testing of my own free will with full knowledge and understanding of the possible ramifications of a positive test result. Consent shall be witnessed by Town management personnel, preferably Department Head. Test results shall be released to specified administrative personnel under strict confidentiality, including employee or applicant.

CHECK TESTS REQUIRED

_____DRUGS

_____ALCOHOL

Signature of Above Name Individual

Date

Witnessed by:

Title