

County of Victoria
Drug-free Workplace Policy

Revised July 9, 2009

A. Introduction

The County of Victoria has a responsibility to provide and maintain a safe and healthy workplace free from the influence of alcohol, inhalants and illegal drugs for its employees. The County of Victoria will vigorously comply with the requirements of the Drug Free Workplace Act of 1988, Art. 8308-7.10 (VTCS) 1992 and all applicable drug testing regulations issued by the Department of Transportation (DOT).

The County of Victoria recognizes that the status of an employee's health affects his/her job performance and safety. The County also recognizes that drug, alcohol and inhalant abuse ranks as one of the major health problems in the world and adversely affects an employee's performance and safety on the job. Therefore, it is necessary and required by law for the County to provide a drug-free, alcohol-free and inhalant-free working environment for its employees.

Compliance with the County of Victoria's Drug-Free Workplace policy is a condition of employment for all employees hired prior to and after the effective date of this policy, January 1, 2000, and any revisions thereafter.

Compliance with the County of Victoria's Commercial Driver's License Drug and Alcohol Testing section of the Drug-Free Workplace Policy is a condition of employment as a driver/operator for employees required by the County to maintain a CDL.

This policy applies to all County employees including part-time and temporary employees. From time to time, the County of Victoria shall formulate administrative procedures to accompany the rules of this section. Such procedures shall be legally binding on all County employees and shall be available for copying and inspection in Administrative Services. Department of Transportation and other federal regulations may apply to some County employees.

B. Fitness For Duty

An employee is not fit to safely and fully perform his/her duties if:

1. He/she reports for duty while under the influence of alcohol, inhalants or any illegal drug; or
2. He/she uses alcohol, inhalants or any illegal drug while on duty; or

3. He/she reports for duty while using any controlled substance which impairs his/her ability to safely and fully perform assigned duties, even if the controlled substance is prescribed by a physician.

Employees who are not fit for duty will not be permitted to work. A supervisor must relieve the employee of duty and immediately notify the Director of Administrative Services. The employee will be taken to the County test facility for testing and/or evaluation.

Employees must report to their supervisor the side effects of any prescription or non-prescription drugs, which may affect their fitness for duty. The employee may be sent to the County test facility for an evaluation of fitness for duty.

C. Definitions Under This Policy

1. **Alcohol** - "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol (ethanol), or any other low molecular weight alcohol including methyl and isopropyl alcohol.
2. **Alcohol Concentration** - "Alcohol Concentration" (or content) means alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test or by weight per volume in a blood test.
3. **Alcohol Use** - "Alcohol Use" means the consumption of any beverage's, mixture, or preparation, including any medication containing alcohol.
4. **Breath Alcohol Technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.
5. **County Premises Or Work Sites** - "County premises or WORK SITES" include all property, buildings, structures, job sites (where an employee is working), parking lots, and means of transportation owned, leased, or otherwise used for County business including motor vehicles, equipment, or machinery.
6. **Commercial Drivers License Holders** - The County of Victoria requires County employees with certain job descriptions to maintain a Commercial Driver's License (CDL). The Department of Transportation (DOT) regulations (49 CFR Parts 40 and 382) require the County to have a special, mandatory controlled substance and alcohol testing policy for these employees. All applicable drug and alcohol testing procedures under this policy shall meet DOT regulations. A copy of 49 CFR Parts 40 and 82 shall be available for copying and inspection in Administrative Services.
7. **Controlled Substance** - A "controlled substance" includes illegal drugs plus any other substances covered by Schedules I through V of the Federal Controlled Substances Act (21 U.S.C. 801 et seq.) or the Texas Controlled Substances Act

(Chapter 481, Texas Health and Safety Code). Controlled substances include amphetamines, barbiturates, methadone, benzodiazepines, methaqualone, morphine, codeine, and anabolic steroids. A controlled substance is "unauthorized" if the employee does not have a valid prescription for that substance at the time of its use or possession.

8. **Conviction** - "Conviction" means the finding of guilt including a plea of nolo contendere or imposition of sentence, or both by any judicial party charged with responsibility to determine violations of the federal or state criminal drug statutes.
9. **Drug Paraphernalia** - "Drug paraphernalia" is equipment, a product or material of any kind mentioned in Vernon's Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act), Sec. 481.002(17).
10. **Evidential Breath Testing Device (EBT)** - A device approved by the NHTSA for the evidential testing of breath for alcohol.
11. **Failing A Drug Test** - "Failing a drug test" is defined as confirmation of initial test results which shows positive evidence of the presence of a prohibited substance in the body.
12. **Illegal Drugs** - "Illegal drug" includes heroin, cocaine, crack cocaine, cannabinoids (marijuana, hashish, THC), and PCP (phencyclidine), LSD (lysergic acid diethylamide) or any other controlled substance not validly prescribed by a physician.
13. **Inhalant** - Those volatile chemicals and their isomers as listed in Section 484.002 of the Texas Health and Safety Code and abusable glue and aerosol paint as defined in Section 485.001 of the Texas Health and Safety Code.
14. **Mandatory Substance Abuse Program** - A treatment or counseling program in which an employee is enrolled and must successfully complete in accordance with disciplinary action taken by an employee's supervisor in lieu of termination.
15. **Medical Review Officer (MRO)** - A licensed physician with knowledge of substance abuse disorders and training to interpret and evaluate confirmed positive test results.
16. **Passing A Drug Test** - "Passing a drug test" is defined as initial or confirmation test results which do not show evidence of the presence of an illegal drug or unauthorized controlled substance in the body.
17. **Safety Sensitive Functions** - Any of those on-duty functions which include:
 - a. Time waiting to be dispatched to operate a Commercial Motor Vehicle or

equipment (CMV);

- b. Inspecting, servicing or conditioning a CMV;
- c. Driving or operating a CMV;
- d. Loading, unloading a CMV, supervising or assisting in the loading or unloading, remaining in readiness to operate a CMV; or
- e. Repairing a CMV.

18. **Shy Lung** - "Shy Lung" is the condition in which an individual cannot blow the required volume of air into alcohol test equipment for a breath alcohol test. In such circumstances, the employee will be required to have a blood sample taken for testing purposes.

D. Employee Assistance

Employees who have substance abuse problems are encouraged to obtain assistance for their problems before they are required to submit to drug, inhalant and/or alcohol tests. The County is concerned about the health of its employees and it supports sound treatment efforts for chemical dependency. Normal employee benefits such as sick leave, vacation leave, and group medical plans may be used during the treatment process to the extent applicable and available. No employee's job will be jeopardized if he/she conscientiously seeks assistance for substance abuse voluntarily before he/she is required to submit to a drug, inhalant and/or alcohol test. This option will be offered once during employment. In order to obtain management cooperation in an assistance program for chemical dependency, the employee will be required to:

- 1. Recognize and admit that he/she has an alcohol, inhalant or drug problem;
- 2. Ask for assistance in the form of employee benefits;
- 3. Accept and understand that if he/she does not correct the problem and maintain satisfactory job performance, he/she will be subject to discharge;
- 4. Submit to drug, inhalant and/or alcohol tests, both urine and/or breath or blood tests, at the beginning of the treatment program, at periodic intervals during the treatment program and at the end of the treatment program. Such drug, inhalant and/or alcohol tests must show a declining presence of drugs, inhalants and/or alcohol in his/her body as the treatment program is conducted; and
- 5. Submit to an interview and physical examination by a physician to determine his/her

fitness for duty, such licensed physician will be appointed by the County.

In obtaining counseling for his/her chemical dependency problem, the employee will be fully protected from discipline if he/she continues to follow the requirements of this Section. However, this does not preclude the County's right to administer discipline, including termination for on-the-job conduct or other grounds, even though it is related to the use of drugs, inhalants and/or alcohol. The employee must also be fit for duty at all times when he/she is on-the-job for the County of Victoria. Information regarding an employee's personal problems will be kept in strict confidence, and information will only be released on a need-to-know basis unless required by law or in defense of the County.

E. Prohibited Activities And Violations Under Policy

This policy prohibits:

1. Use, possession, manufacture, distribution or sale of illegal drugs, or drug paraphernalia by employees.
2. Unlawful use, possession, manufacture, distribution or dispensing of controlled substances by employees.
3. Unauthorized use or possession of alcohol by employees.
4. Unauthorized use or possession of inhalants by employees.

Items 1, 2, 3 and/or 4 apply to employees while they are:

- a. On any County premises or work sites while conducting County business; or
 - b. Operating or occupying any County vehicle at any time; or
 - c. During the employee's working hours including lunch and break times.
5. Unauthorized storing of any illegal drug, drug paraphernalia, unauthorized controlled substance, unauthorized inhalants, or alcohol in a locker, desk, vehicle, equipment or other repository on County premises or work sites.
 6. Being under the influence of alcohol, unauthorized inhalants, or any unauthorized controlled substance or illegal drug while on duty or reporting to work.
 7. Unauthorized possession or use of alcohol, inhalants or the possession, use, manufacture, distribution, or sale of illegal drugs or unauthorized controlled substances off County premises or work sites during off duty hours which affects the employee's ability to safely and fully perform assigned job duties, renders the

employee at risk to self or others at work, or which brings discredit upon the County of the public service.

8. Switching or altering any urine sample submitted for testing.
9. Refusal to consent to testing and submit a specimen for testing when required under this policy. Consent is indicated by signing any form required by the County of Victoria, County physician or laboratory collecting the specimen for testing.
10. Refusal to submit to an inspection of any desk, locker, or other County property under an employee's control when asked to do so by a supervisor.
11. Failure to meet requirements of any mandatory substance abuse treatment or counseling program in which an employee is enrolled.
12. Conviction under any criminal drug statute for a violation occurring in the workplace.
13. Public conduct at any time involving alcohol, or illegal drugs or unauthorized controlled substances resulting in arrest or conviction under circumstances which bring discredit upon the County or the public service.
14. Failure to notify the County of any arrest or conviction under any criminal drug statute within five (5) days of the arrest or conviction.
15. Failure to report an arrest or conviction for driving while intoxicated for violations occurring on or off County premises within five (5) days of the arrest or conviction..
16. Failure to report to the supervisor the side effects of a prescription or non-prescription drug which may impair the employee's behavior or physical or mental ability to safely and fully perform assigned duties.
17. Failure to keep prescribed medicine in its original container or to provide other proof of identification of drug prescription and prescribing physician.
18. Refusing to sign a statement agreeing to comply with the County's Drug-Free Workplace Policy.
19. Failure of a County employee to report the use or possession of an illegal drug or unauthorized controlled substance, unauthorized inhalant and/or alcohol by another County employee or the existence of an unauthorized alcoholic beverage, unauthorized inhalant, illegal drug or controlled substance in any County vehicle, machinery, or equipment.

20. Reporting for duty while "on call" status while under the influence of alcohol, inhalants or any illegal drug or unauthorized controlled substance and/or the recurring inability to report to work as required in a condition to safely and fully perform assigned duties.
21. Failing to adhere to provisions of any agreement executed by the employee which requires treatment or counseling for alcohol or drug abuse.

F. Consequences For Violation Of This Policy

1. **The following violations of this policy will result in automatic and mandatory termination upon the first offense:**
 - a. Use, possession, manufacture, distribution or sale of any illegal drug, drug paraphernalia, or unauthorized controlled substance while on duty, reporting to work, or on work sites. Illegal substances will be confiscated and turned over to the appropriate law enforcement agency.
 - b. Operating a County vehicle, motor driving equipment, machinery, or personal vehicle while on County business while under the influence of alcohol, inhalants or any illegal drug or unauthorized controlled substance at any time.
 - c. Unauthorized use or possession of alcohol when reporting for duty, while on duty or while occupying any County vehicle or personal vehicle including lunch or other break periods.
2. Violations involving other parts of this policy will result in discipline up to and including termination.
3. Within 30 days of the County's receipt of knowledge of conviction under a criminal drug statute, disciplinary actions will be initiated related to the conviction.

G. Condition Of Employment

APPLICANTS: During post-employment screening, applicants will be advised that they are subject to drug testing. Any job offer will be contingent on passing a drug test (negative results). Applicants will be required to sign a consent form for such testing.

Applicants who fail the test (confirmed positive results) will not be allowed to reapply for twelve (12) months after the date of the test.

H. Testing Requirements

The County, at its discretion, may have designated personnel use non-instrumented drug and/or alcohol test devices to provide, rapid drug and/or alcohol test results. These rapid test devices have been certified as being as accurate as standard, initial laboratory test equipment.

The rapid test devices will only be used to screen out negative test results. Positive results will require additional samples which will be analyzed using standard laboratory testing equipment and following standard laboratory testing procedures as described below.

Standard testing and analysis for drugs, inhalants and/or alcohol shall be performed by a properly licensed and certified laboratory approved by the Commissioners' Court. DOT required chain-of-custody procedures will be followed to account for the integrity of each urine or blood sample by tracking its handling and storage from point of specimen collection to final disposition of the specimen.

The initial drug test (also known as a screening test) shall be an enzyme immunoassay screen (EMIT) to eliminate "negative" urine specimens from further consideration.

If the initial drug test indicates a positive result, a confirmation test by gas chromatography/mass spectrometry (GC/MS) will be used to confirm the presence of a specific drug or metabolite. The confirmation test shall be independent of the initial test and uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. For classes of drugs where GC/MS is not an approved confirmation procedure, an alternative confirmation test will be used.

The initial test for alcohol shall be performed by a Blood Alcohol Technician (BAT) using an Evidential Blood Testing device approved by the National Highway Traffic Administration (NHTSA). Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any results less than 0.02 per cent concentration is considered a ☐negative☐test.

If the concentration of alcohol is 0.02 or higher, a second or confirmation test must be conducted. The employee and the BAT must complete the alcohol testing form to ensure that results are properly recorded. The confirmation test, if required, must be conducted using an Evidential Breath Testing device that prints out the results, date, time, a sequential test number and the name and serial number of the EBT to ensure the reliability of the results.

If an individual cannot blow the required volume of air into alcohol test equipment for a breath alcohol test, the employee will be required to have a blood sample taken for testing purposes. The initial blood alcohol test shall be an Enzymatic Assay-ADH screen test to eliminate "negative" blood specimens from further consideration. If the initial blood alcohol test indicates a positive result (0.02 or greater), a confirmation test by gas chromatography will be used to confirm the level of alcohol. The confirmation test shall be independent of the initial test and uses a different technique and chemical principle from that of the initial

test in order to ensure reliability and accuracy.

The following drug testing will be conducted under this policy:

1. PRE-EMPLOYMENT:

- a. All job offers are contingent upon selected applicant passing a drug test.
- b. All applicants for CDL positions, including new hires, promotions, and transfers must test negative for both alcohol and drug screening, before they can perform safety sensitive duties.

2. REASONABLE SUSPICION:

All employees shall be required to submit to drug, inhalant and/or alcohol tests, if the employee's supervisor and/or Department Head has a reasonable suspicion based on specific, articulable, and/or observable acts that the employees are in violation of the rules of this section or any other disciplinary rule of the County of Victoria relating to drug, inhalant and/or alcohol use. A reasonable suspicion may be based on but not limited to the following criteria:

- a. Observable phenomena such as direct observation of drug, inhalant and/or alcohol use or possession or physical- symptoms of being under the influence of a drug, inhalant and/or alcohol;
- b. A pattern of abnormal or erratic behavior, including an on-the-job accident;
- c. Arrest or conviction of a drug, inhalant and/or alcohol related offense on-the-job or off-the-job or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking;
- d. Information provided either by reliable and credible sources or information which is independently corroborated;
- e. Newly discovered evidence that an employee has tampered with a previous drug, inhalants and/or alcohol test; or
- f. Possession of drug paraphernalia.

All specific, articulable, and/or observable facts which form the basis of reasonable suspicion shall be reduced to writing by the supervisor and/or Department Head and/or witness in a timely manner, but no later than 24 hours from the time of the event or incident in question, and submitted to, the Director of Administrative Services for review for approval of drug, inhalant and/or alcohol testing.

3. POST-ACCIDENT:

Whenever a County employee is involved in an accident involving a fatality, serious bodily injury, or damage to property of a combined total of \$2,000 or more, regardless of fault, the employee will be required to submit a specimen for drug and alcohol testing. Drug and alcohol testing, regardless of monetary amounts, will be required for accidents involving another vehicle. Inhalant testing, if necessary, will be determined by the supervisor on the scene.

- a. Post Accident Testing For Alcohol - The employee's supervisor will prepare, Administrative Services will maintain on file, a record stating the reasons if the test is not administered within the following time constraints:
 1. within two (2) hours, following the accident, or
 2. within eight (8) hours of the accident. After eight hours, the County will cease attempts to administer an alcohol test.
- b. Post Accident Testing for Drugs and/or Inhalants - If the test is not administered within thirty-two (32) hours, the County will cease attempts to administer the test. The employee's supervisor will prepare, and the Administrative Services Department will maintain on file, a record stating the reasons the test was not promptly administered.
- c. Employee Responsibility - The employee driver(s) involved in the accident shall remain available for testing, or the County may consider the employee to have refused to be tested.

4. RANDOM TESTING:

A verifiable, scientific, random method of choosing employees for alcohol and drug testing will be utilized for County drivers required to maintain a commercial driver's license.

- a. Random Alcohol Testing will be conducted as follows:
 1. A minimum annual rate of twenty-five (25) percent of the average number of driver positions.
 2. Tests will be unannounced and spread reasonably throughout the calendar year.
 3. Upon notification the employee must proceed immediately to the

testing site.

4. An employee will only be tested for alcohol while performing safety-sensitive functions, just before performing safety-sensitive functions or just after performing safety-sensitive functions.

b. Random Controlled Substance Testing will be conducted as follows:

1. A minimum annual rate of fifty (50) percent of the average number of driver positions.
2. Tests will be unannounced and spread reasonably throughout the calendar year.
3. Upon notification, the employee must proceed immediately to the testing site.
4. Random controlled substance tests may be administered any time the employee is on duty.

I. Detection Levels And Test Results

1. ALCOHOL:

Two detection levels are established for the detection of alcohol in breath or blood for the purposes of all alcohol tests required by the County of Victoria.

Level 1: Between .02% and .04% weight per volume of alcohol or ethyl alcohol. If found in an employee's breath, blood or urine, employer shall require the employee to undergo counseling for alcohol abuse. If the employee successfully completes the counseling program, no disciplinary action shall be taken against him/her. If found in a job applicant's breath, blood or urine, employer shall automatically reject the job applicant.

Level 2: 0.04% and above weight per volume of alcohol or ethyl alcohol. If found in an employee's blood or on the breath, employee will have tested positive for the presence of alcohol at detectable levels, and the positive test result shall be grounds for termination from employment. If found in a job applicant's blood or on the breath, employer shall automatically reject the job applicant.

2. DRUGS:

The detectable levels for drugs for the purposes of certain drug tests required by the County of Victoria are listed as follows. The detectable levels for drugs not included on the following list will be determined by the County's testing laboratory.

ASSAY	DRUG OR METABOLITE IN URINE	CONCENTRATION EMIT DETECTION LIMIT (INITIAL SCREENING	GC/MS DETECTION LIMIT IN URINE / BLOOD CONFIRMATORY TEST
Amphetamine	Methamphetamine	1000 ng / ml per ml	500 ng / ml per ml
Barbiturate	Secobarbital Pentobarbital Amobarbital Butabital Talbutal	300 ng / ml per ml	300 ng/ml per ml
Benzodiazepine	Oxazepam (target metabolite) Chlordiazepoxide Diazepam N-Desmethyldiazepam Flurazepam	300 ng / ml per ml	300 ng/ml per ml
Cannabinoid (Carboxy THC)	Cannabinoid metabolites found in urine after use of marijuana or hashish	30 ng / ml per ml	15 ng / ml per ml
Cocaine	Benzoylcegonine Ecgonine	Lowest Detectable Level	Lowest Detectable Level
Methadone	Methadone and metabolites	300 ng / ml per ml	300 ng / ml per ml
Opiate	Morphine Morphine glucuronide Codeine Major heroin metabolites	300 ng / ml per ml	300 ng / ml per ml
Phencyclidine	Phencyclidine (PCP) Metabolites and Analogs	25 ng / ml per ml	25 ng / ml per ml

J. Post Test Practices

The County of Victoria will use a positive test result for drugs and/or alcohol at detectable levels as grounds to automatically reject a job applicant or to terminate employment of an employee ONLY AFTER IT HAS BEEN VERIFIED by a confirmatory drug test different from the initial drug screening test or a confirmatory alcohol test.

Any regular employee who tests positive for the presence of drugs, inhalants and/or alcohol at detectable levels shall be allowed to assert, as an affirmative defense to any disciplinary action, that the employee has a valid prescription for the controlled substance from a licensed medical practitioner or that the employee has taken an over-the-counter medication in accordance with the manufacturer's instructions. The controlled substance taken by prescription must be taken in the prescribed dosage by the employee and shall be prescribed only for the employee who tests positive. The burden of proving the affirmative defense shall rest on the employee.

Strict confidentiality of the drug, inhalants and/or alcohol testing process shall be maintained to protect the privacy of employees and job applicants tested. Information on test results and all forms completed by the employee or applicant shall be released within the County organization only on a need-to-know basis unless required by law or in defense of the County. An employee or job applicant may obtain his/her own test results upon written request to Administrative Services. Test results shall not be released to any other person not associated with the County of Victoria without the written consent of the employee or the job applicant unless such release is required by law or in defense of the County.

K. Compliance With Policy

1. An employee reasonably suspected of the use of illegal drugs, unauthorized inhalants, unauthorized controlled substances and/or alcohol during regular working hours (Monday - Friday, 8:00 a.m. - 5:00 p.m.) will be taken to the designated County laboratory for testing. If outside of regular working hours or on holidays or weekends, employees will be taken to the designated County laboratory for testing with a completed and signed consent form.
2. The Department Head at his/her discretion may have the employee taken home and paid for the time required to get test results or may assign the employee to safe, non-driving, duty pending the test results.
3. Applicants and employees will have the opportunity prior to testing to voluntarily list all prescription and non-prescription drugs they have used in the last thirty days and to explain the circumstances surrounding their use.
4. Employees who are convicted, who plead nolo contendere, or who plead guilty to violations of criminal drug and/or alcohol statutes involving activities on-the-job are considered to be in violation of this section. In addition, an employee is required to notify his/her supervisor of any criminal drug statute conviction for a violation occurring in the workplace by the employee no later than five (5) days after the conviction.

5. Violations of this policy will be considered to be a violation of the Personnel Policy Manual.

L. Drug-free Awareness Program

1. Drug-free Awareness Program will provide an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace. This program will inform employees and their families about:
 - a. The dangers of alcohol and drug abuse in the workplace;
 - b. This County's Alcohol and Drug Policy;
 - c. The availability of treatment and counseling for employees who voluntarily seek such assistance; and
 - d. The discipline which will be imposed for violations of this policy.
2. Initial and on-going supervisory training will be mandatory for supervisors covering the following areas:
 - a. Identifying and documenting job performance and on-the-job behavior that may reflect the impact of personal problems;
 - b. Identifying evidence of on-the-job use of, or impairment, or presence of alcohol, inhalants or drugs and impairment resulting from the use of alcohol, inhalants or drugs;
 - c. Procedure for voluntary referral of troubled employees for assessment;
 - d. Procedure for testing employees suspected of violating the County's Drug Free Workplace Policy;
 - e. Constructive confrontation techniques; and
 - f. Orientation on drug and alcohol testing procedures and technology.

M. Records Procedures

1. RELEASE OF INFORMATION

Requests for employment verification or reference for an individual terminated under this policy shall be forwarded to the Director of Administrative Services for response. For Texas Employment Commission hearings on granting unemployment compensation, the County will cite a rules violation as the reason for termination and will supply a copy of the letter of termination, which states specific reasons.

2. REPORTING CONVICTIONS TO FEDERAL AGENCY

In compliance with the Drug Free Workplace Act, the Personnel Department will notify the appropriate federal agency within ten (10) days after receiving notice from the employee of a conviction under criminal drug statutes. Within thirty (30) days of knowledge of conviction, disciplinary sanctions will be initiated related to the conviction.