

City of Mission Viejo

Personnel Policy

Subject: DRUG-FREE WORKPLACE

Purpose:

To set forth policies, procedures and guidelines designed to effectively deal with and eliminate substance abuse and its effects in the workplace.

Reference:

Drug Free Work Place Act of 1988
Employee Assistance Program

Background:

The City of Mission Viejo shall maintain a drug-free workplace through the measures set forth below. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance by any employee in the workplace is strictly prohibited.

Policy:

1. Substance abuse has been found to be a contributing factor to absenteeism, substandard performance, and increased potential for accidents, poor morale and impaired public relations. It is the goal of the City, therefore, to eliminate substance abuse in the workplace by clearly stating employee responsibilities relative to substance abuse and by providing managers and supervisors with guidelines and procedures for the detection of such abuse and the enforcement of rules relating thereto.
2. It is the responsibility of the City employees to cooperate in efforts to protect the life, personal safety and property of coworkers and fellow citizens. Employees shall, therefore, take all reasonable steps to abide by and cooperate in the implementation and enforcement of these policies and regulations.
3. The City encourages employees who believe that they may have a drug or alcohol problem to seek counseling, assistance and/or rehabilitation, and will be supportive of those employees who voluntarily seek help. However, the City will be equally firm in identifying and disciplining those employees who continue to be substance abusers and do not seek help.
4. Alcohol or drug abuse in the workplace will not be tolerated, and disciplinary action, up to and including termination, will be used as necessary to achieve the goal of eliminating substance abuse in the workplace.

Procedure:

1. Employee Responsibilities:

- a. An employee must: Not report to work or be subject to duty while "under the influence of drugs or alcohol";

NOTE: "Under the influence of drugs or alcohol" means: the use of any alcoholic beverage or any illegal drug or substance, or the misuse of any prescribed drug, in a manner and to a degree that impairs the employee's work performance or ability to use City property or equipment safely;

- b. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of City equipment;
- c. Not possess or use alcohol or impairing drugs (illegal drugs and prescription drugs without a prescription) during working hours or while subject to duty, on breaks, during meal periods or anytime while on City property;
- d. Not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either employee or both employees are on duty or subject to being called;
- e. Immediately complete and sign a consent form (see drug testing prerequisite) and submit to an alcohol and drug test when requested to do so by the employee's department head or supervisor;
- f. Provide within twenty-four (24) hours of request bona fide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug screen/test is positive. The prescription must be in the employee's name;
- g. Sign, if requested to do so by his/her department head or supervisor, a "Last Chance Agreement" (as provided herein) as a condition of continued employment subsequent to entering a drug and/or alcohol treatment or rehabilitation program;
- h. Report any conviction under a criminal drug statute to the City Manager within five (5) days of such conviction.

2. Management Responsibilities:

- a. Department heads and supervisors are responsible for reasonable enforcement of this policy.
- b. Department heads and supervisors may request that an employee submit to a drug and/or alcohol test in accordance with the guidelines for same set forth herein.
- c. Whenever any department head or supervisor encounters an employee who refuses to complete and sign a consent form (see drug testing prerequisites), or

refuses an order to submit to a drug or alcohol test upon request, the department head or supervisor shall remind the employee of the requirements and disciplinary consequences of this policy. Such refusal may be considered as insubordinate conduct and grounds for disciplinary action.

- d. Where there is a "reasonable suspicion" (as defined in Paragraph D-3-b) that the employee is under the influence of drugs or alcohol, the department head or supervisor should detain the employee for a reasonable time until the employee can be safely transported home.
- e. Department heads and supervisors shall not physically search the person of employees, nor shall they search the personal possessions of employees without the freely given consent of, and in the presence of, the City Manager and/or his/her designee.
- f. Department heads and supervisors shall notify the City Manager or his/her designee, whenever they have reasonable suspicion to believe that an employee may have illegal drugs in his/her or her possession or in an area not jointly or fully controlled by the City. If the Personnel Officer, or his/her designee, concurs that there is reasonable suspicion of illegal drug possession, the City Manager shall notify the Sheriff's Department.

3. Rehabilitation:

- a. General: The City encourages those employees who think that they may have a problem with drugs and/or alcohol to seek assistance and rehabilitation.
- b. Employee Assistance Programs: Employee Assistance Programs are available to assist the employee in these efforts. Information pertaining to such programs may be obtained by direct contact with the administering agency or by contacting the City Manager's office.
- c. Voluntary Referral: A decision by an employee to voluntarily seek treatment or rehabilitation for the first time will not be used as the basis for disciplinary action. However, the City may in such cases require such employees to comply with the provisions set forth herein pertaining to Last Chance Agreements and Follow-up Testing.
- d. Leave: If necessary, the employee will be granted a leave of absence without pay in order to accommodate treatment and rehabilitation.
- e. "Last Chance Agreements": Employees who undergo treatment and/or rehabilitation may be required to sign a "Last Chance Agreement" as a condition of continued employment. In said agreement, (see attached) the employee promises to complete the treatment or rehabilitation program and to comply with other terms stated therein. If the employee violates this agreement, he/she shall

be subject to disciplinary action up to and including dismissal.

- f. Follow-up Testing: An employee entering a rehabilitation program may be required to submit to random testing for up to one year after completion of the program. If the employee fails to comply or if further substance abuse is detected upon such testing, the employee shall be subject to disciplinary action up to and including dismissal.

4. Drug Testing Guidelines:

- a. Drug Testing Defined: Drug and/or alcohol tests may test for any substance which could impair an employee's ability to effectively and safely perform the functions of his/her job.

- b. Pre-employment Physical Examinations:

- i. Required: All pre-employment physical examinations may include drug testing as defined herein.
- ii. Results: A positive result from a drug and/or alcohol analysis may result in the applicant not being hired where the applicant's use of drugs and/or alcohol could affect requisite job standards, duties or responsibilities.

If a drug screen is positive at the pre-employment physical, the applicant must provide, within twenty-four (24) hours of a request, bona fide verification of a valid current prescription for the drug identified in the drug screen. If the prescription is not in the applicant's name or the applicant does not provide acceptable verification, or if the drug is one that is likely to impair the applicant's ability to perform the job duties, the applicant may not be hired.

- c. During Employment Physical or Alcohol/Drug Tests:

- i. Cause:

- (1) An employee may be requested to submit to a drug and/or alcohol test when his/her department head or supervisor has reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol while on the job or subject to being called.

- (2) In addition, follow-up drug and/or alcohol testing related to rehabilitation (see Rehabilitation) may also be required.

- ii. Reasonable Suspicion Defined: "Reasonable Suspicion" is define as a belief, based upon objective facts, sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that

the employee's ability to perform his/her job safely is reduced. For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- Slurred speech;
 - Alcohol odor on breath;
 - Unsteady walking and movement;
 - An accident involving City property;
 - Physical altercation;
 - Verbal altercation;
 - Unusual behavior;
 - Possession of alcohol or drugs;
 - Information obtained from a reliable person with personal knowledge.
- iii. Documentation: Any department head or supervisor requesting an employee to submit to a drug and/or alcohol test shall document, in writing, the facts constituting reasonable that the employee in question is under the influence of drugs or alcohol.
- iv. Prerequisite: Prior to the administration of any drug or alcohol testing, the department head or supervisor shall first obtain from the employee to be testing a completed and signed consent form (attached). Said consent form shall provide for the employee's consent, in writing, to physical and psychological examination and testing.
- v. Results: If the drug screen is positive, the employee must provide, within twenty-four (24) hours of request, bona fide verification of a valid current prescription for the drug identified in the drug screen. The prescription must be in the employee's name.
- d. Confidentiality: Laboratory reports or test results shall not appear in an employee's general personnel folder. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Personnel Officer. The reports or test results may be disclosed to the City Management on a strictly need-to-know basis and to the tested employee upon request.

Disclosures, without patient consent, may also occur when:

- i. The information is compelled by law or by judicial or administrative process;
- ii. The information has been placed at issue in a formal dispute between the employer and an employee;
- iii. The information is to be used in administering an employee benefit plan;

- iv. The information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

5. Disciplinary Action

- a. Disciplinary action, up to and including dismissal, may be taken against an employee for any of the following reasons:
 - i. Failure to comply with any of the Employee Responsibilities set forth herein.
 - ii. Positive results from a drug and/or alcohol test.

Adopted: By City Council - September 11, 1989 - Res. No. 89-92.

SAMPLE LAST CHANCE AGREEMENT

I have received a copy of the City of Mission Viejo's Policy on Substance Abuse, and I fully understand its provisions and acknowledge that compliance with the Policy is a condition of continued employment.

I hereby acknowledge that I have entered or will enter a treatment or rehabilitation program for alcohol or drug abuse satisfactory to the City of Mission Viejo. I agree to complete such program, perform the duties of my job in accordance with standards of performance reasonably expected, and comply with the City's rules, including the Policy on Substance Abuse. I agree to consent, for up to one year, to undergo physical or psychological examinations, and/or to random testing of my blood, urine, breath, or other body fluid specimens for alcohol, drugs, or their metabolites. I understand that a violation of said Policy or a breach of this agreement may result in disciplinary action, up to and including termination.