

Subject Drug & Alcohol Use
Section Human Resources
Approved by Marissa Madrigal, Chief Operating Officer
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Replaces Drug & Alcohol Use, Adopted February 1, 2017

Policy Purpose: The purpose of Metro’s Drug and Alcohol Use Policy is to promote a safe, healthy, and productive work environment for employees and a safe and high quality service delivery system for the public. This policy outlines expectations for employee conduct and procedures for drug and alcohol testing.

Policy

1. This policy is applicable to all employees and interns. Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.
2. Definitions
 - a. **Controlled Substances:** Drugs or substances that under federal law have been declared illegal for sale or use except for medical or other limited purposes. Some controlled substances are legal to use under a physician's prescription but may nonetheless impair an employee’s ability to work safely and effectively. These substances are regulated under schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and 21 C.F.R.1308.11 through 1308.15. Examples of controlled substances include but are not limited to methamphetamines, cocaine, heroin, oxycodone, hallucinogens, anabolic steroids and cannabis. *Note:* Marijuana is still considered an illegal controlled substance under federal law and within the definition of this policy.
 - b. **Employee Assistance Program (EAP):** A confidential service that can provide support, guidance and resources to address issues with drug or alcohol abuse and other problems that interfere with your day-to-day activities. This service is provided by Metro as an employee benefit and administered by a third party provider.
 - c. **Impairment:** An effect on the employee’s mental or physical abilities that is likely to deprive the employee of the clearness of intellect and control the employee would otherwise possess. Note that the possession or use of drugs or alcohol may violate Metro policy even if the employee’s abilities are not impaired.

- e. Positive test for alcohol: When an employee has an alcohol test result showing an alcohol concentration level of 0.02 or greater.
 - f. Positive test for drugs: A confirmed positive test result for use of controlled substances per this policy. In addition, it means the misuse of legal drugs (prescription and possibly over-the-counter).
 - g. Reasonable suspicion: An articulable belief based on specific, observable facts and reasonable inferences drawn from those facts.
 - h. Substance abuse professional: Licensed medical professional or a licensed and certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.
3. Compliance with Metro's Drug and Alcohol Use Policy is a condition of employment for all employees. Employees are expected to report to work in an appropriate mental and physical condition to work safely and effectively and to represent Metro's values to co-workers and the public. The possession and use of unlawful controlled substances and the misuse of alcohol, prescription drugs or over-the-counter drugs in the workplace are inconsistent with Metro's values of public service, excellence, and respect. Violations of this policy may lead to discipline, up to and including termination.
 4. Metro encourages employees to report workplace injuries, accidents and illnesses. While Metro will not take any adverse employment action against employees for reporting such issues, Metro retains the right to discipline employees for violating Metro policies and safety protocols.
 5. Employees may be required to undergo drug and alcohol testing under certain circumstances, including following the report of a workplace accident or injury, and/or where reasonable suspicion supports the belief that the employee is impaired by drugs or alcohol.
 6. Metro encourages employees with substance abuse problems to seek voluntary assistance through Metro's Employee Assistance Program (EAP) and/or a chemical dependency rehabilitation program.
 - a. It is the employee's responsibility to seek help before drug and alcohol problems adversely affect their work performance or lead to violations of this or other employment policies.
 - b. Often, an employee's health benefits provide resources for a drug or alcohol problem. The EAP may also be a resource for employees seeking counseling and referral assistance for a drug or alcohol problem.
 7. Some venues and departments have individual work rules addressing drug and alcohol use that may be stricter than this policy. If an employee works for a venue or department with its own work rules, the employee must abide by both those work rules as well as the provisions of this policy.
 8. All employees shall report to work in an appropriate mental and physical condition to work

safely and effectively. No employee shall report to work or engage in work while impaired by alcohol, controlled substances, including prescription drugs being used for a different purpose than as prescribed, and over-the-counter medications except as allowed below. The distribution, possession or use of alcohol, an unlawful controlled substance, or prescription drugs for which the employee does not have a current, valid prescription is prohibited in the workplace. These requirements apply:

- a. During work hours for the employee, including rest and lunch breaks;
- b. In Metro vehicles and/or equipment;
- c. In the workplace.

9. This policy is not intended to restrict the lawful and appropriate use of alcohol when patronizing Metro's visitor venues or other premises outside of work hours as a member of the public.
10. The reasonable consumption of alcohol is permitted by Metro employees at work-related events, meetings or social gatherings that occur outside of normal work hours for the employee whether on Metro premises or elsewhere and whether those employees are officially representing the agency or not, provided alcohol is consumed in moderation and does not lead to impairment. Employees participating in such gatherings are expected to act responsibly and use good judgment. In no event may employees in such situations become impaired or act in such a manner as to embarrass Metro or bring the agency into disrepute. Examples of events where a responsible and moderate consumption of alcohol is permitted include professional gatherings such as conferences, commemorative or fund raising events with receptions and/or where dinner is served.
11. Under limited circumstances, the General Manager of Visitor Venues may approve a Business Development & Hospitality Waiver for the job-related purchase and consumption of alcohol at business development or hospitality events. Please see the Business Development & Hospitality Waiver at Appendix A for applicable rules and procedures.
12. The appropriate use of legal prescription and over-the-counter medication to treat a medical condition does not violate this policy, subject to the conditions listed below under Procedures (8).
13. A positive test result obtained through drug or alcohol testing conducted upon a determination of reasonable suspicion in accordance with the procedures below will be sufficient to establish a violation of this policy.
14. An employee who engages in conduct that has the purpose or effect of interfering with the enforcement of this policy or its collection and testing procedures or refuses to consent to drug and alcohol testing required under this policy is subject to disciplinary action up to and including termination. The reason for the refusal to consent to testing will be considered in determining the appropriate disciplinary action.
15. Prescription and Over-the-Counter Medication: This policy is not intended to prohibit the use of prescription and/or over-the-counter medication when taken in standard dosage and/or according to a physician's prescription. Employees may use such medication as long as it

does not interfere with their ability to safely and effectively perform the essential duties of their position.

- a. An employee taking prescribed or over-the-counter medications is responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with the safe performance of their job. If the use of a medication could compromise the safety of the employee, fellow employees or the public, it is the employee's responsibility to avoid unsafe workplace practices and call in sick following normal procedures.
 - i. If appropriate, the employee may seek medical leave under the Family and Medical Leave Act (FMLA) and/or the Oregon Family Leave Act (OFLA) and/or reasonable disability accommodation under the Americans with Disabilities Act (ADA).
 - ii. If an employee is taking medication that may impair work safety and effectiveness, they may be required to provide a release from their health care provider before returning to work. An employee who is not sure whether a medication or combination of medications will cause impairment should consult with his or her health care provider.
- b. An employee must immediately notify their supervisor if they are present at work while taking medication that contains a safety warning relevant to the employee's work duties, or that the employee knows may impede their ability to work safely. Depending on the circumstances and the nature of the employee's work duties, the supervisor may refer the matter to the Total Compensation Manager for guidance. The Benefits Division may follow up to request more information from the employee if needed to evaluate the employee's fitness for work.
 - i. The employee must only report the present or anticipated effects of the medication as they relate to the performance of the employee's work duties and any medical restrictions related to work issued by the employee's health care provider. For privacy reasons, the employee should not tell the supervisor the name or nature of the underlying condition. The Benefits Division may require additional information to evaluate the need for leave or modified duty.
 - ii. Modified duty may be provided consistent with Metro's Modified Duty for Non-occupational Conditions Policy.
 - iii. Medication that is known to cause drowsiness, dizziness or impaired perception, coordination or judgment must be reported because these effects can compromise safety regardless of the employee's specific work duties.
- c. The use of prescription or over-the-counter medication in a manner that is inconsistent with the prescription or patient information instructions may violate this policy if it interferes with work performance. It is a violation of this policy to

intentionally misuse and/or abuse prescription medications.

- d. When an employee's work performance is affected by prescription medication, the employee may be required to submit a copy of a valid prescription.
 - i. The prescription must be current, lawfully issued by a health care provider with prescribing authority, and in the employee's name.
 - ii. The employee must provide this information to the Total Compensation Manager as soon as possible and no later than within 48 hours of the request.
- e. The use of medical marijuana is illegal under federal law and is not excused under Metro's Drug and Alcohol Use Policy even if recommended by a health care provider. Metro is not legally required to reasonably accommodate the use of medical marijuana.
- f. All medical information will be kept confidential consistent with applicable law.

16. Any employee who observes or has knowledge of another employee on duty in a condition that poses a hazard to their own safety or welfare or that of others due to drug or alcohol use shall report the information to his or her immediate supervisor, the employee's supervisor, or the Human Resources Director.

Drug-Related Convictions

17. An employee who is convicted of any drug crime that occurred in the workplace or while on duty must notify the Human Resources Department in writing no later than five (5) calendar days after the conviction. Metro will take appropriate action within 30 days of notification.
 - a. If an employee who performs any activity under a federal grant or contract is convicted for a drug offense occurring in the workplace or while on duty, Metro will notify the granting or contracting agency within 10 days, consistent with the requirements of the Drug-Free Workplace Act of 1988. Such notification will be at the direction of the Office of Metro Attorney. This requirement applies even if the employee is not paid with grant funds.
18. Any Metro employee convicted for a drug crime that occurred in the workplace or while on duty may be determined to have violated this policy and may be subject to discipline, up to and including termination.

Right to Inspect

19. Entering Metro property constitutes consent to searches and inspections. Metro reserves the right to inspect, without employee consent, all areas and property over which Metro maintains joint or full control. There is no expectation of privacy and all Metro vehicles, equipment, offices, desks and lockers are subject to search by management.

- a. Inspections which are undertaken specifically to investigate violations of this policy shall be conducted in the presence of the employee, if practical. If the employee is not available, or if the employee so requests, a reasonable time will be allowed for a union representative or co-worker to be present before an inspection is conducted. This limitation on Metro's right to examine Metro property does not apply to property used jointly by more than one employee.
 - b. Metro may not inspect an employee's person or personal property (e.g. car, purse, or backpack) without the employee's permission.
20. If there is reason to believe a crime may have been committed while on duty or involving Metro premises or property (e.g. possession of unlawful controlled substances, including on Metro grounds; driving with an open container of alcohol in the vehicle) management should secure the Metro premises/property in question and immediately notify the police and either the Human Resources Department or the Office of Metro Attorney. Inspections which could result in criminal prosecution should be conducted only by sworn law enforcement personnel.

Drug and Alcohol Testing

21. Reasonable suspicion testing: Employees may be required, as a condition of continued employment, to submit to testing for drugs and/or alcohol when there is a reasonable suspicion to believe that the employee has used drugs or alcohol during work hours or is impaired by drugs or alcohol during work hours.
- a. All managers who may be involved in the determination to require a reasonable suspicion drug and/or alcohol test will receive training to identify the physical, behavioral, and performance indicators of drug use and alcohol misuse.
 - b. The decision to require reasonable suspicion testing will be based on a trained manager's specific observations and reasonable inferences regarding indicators of improper drug and alcohol use, supported by the concurrence of a second trained manager.
 - c. Relevant indicators of improper drug or alcohol use include, but are not limited to, an employee's appearance, odor, behavior, speech, work performance, and/or causing a workplace accident, and/or safety-related incident that results in injury, or damage to equipment, machinery, or vehicle.
 - d. The determination of reasonable suspicion will be based on the totality of the circumstances in recognition of the fact that these indicators may be caused by conditions other than drug and alcohol use.
22. Commercial Drivers: All employees who hold a Commercial Drivers' License (CDL) and operate commercial vehicles on behalf of Metro will be subject to the federally-mandated drug and alcohol testing requirements of the Federal Motor Carrier Safety Administration (FMCSA) in addition to the other requirements of this policy.

- a. Before performing an alcohol or controlled substances test required by the FMCSA, Metro will notify the employee that the test is required under those regulations.
- b. If a CDL driver engages in conduct prohibited by the Drug and Alcohol Use Policy, before returning to duty in an assignment requiring the performance of a “safety-sensitive function,” they must pass a return-to-duty drug and alcohol test.
 - i. Safety-sensitive functions include, but are not limited to, the following: inspection activities; activities involving the servicing or conditioning of commercial motor vehicles; driving a commercial motor vehicle or time spent therein; loading or unloading a commercial vehicle; supervising or otherwise assisting in the loading or unloading of the vehicle; remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments so loaded or unloaded; and all time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.
- c. Ongoing follow-up drug and/or alcohol testing may be required for CDL drivers found to have violated the Drug and Alcohol Use Policy. Follow-up drug or alcohol testing shall only be conducted during, just preceding or just after the performance of “safety-sensitive functions.”
 - i. The number and frequency of such follow-up alcohol and/or controlled substance tests shall be directed by a substance abuse professional, but will consist of a minimum of 6 tests within the first 12 months following the employee’s return to duty, but will not continue beyond 60 months.
 - ii. The tests may be unannounced.

23. Testing procedures and protections

- a. A represented employee who is required to submit to a drug and/or alcohol test based on reasonable suspicion will be informed of a right to representation by a union representative; however, the securing of such a representative, if requested, shall not unreasonably delay the testing.
- b. An employee who has been notified that they will be required to submit to a drug and/or alcohol test must report immediately to the collection site designated by Metro. The employee will be transported to and from the collection site by two Metro managers or supervisors. The employee will not be permitted to use restroom facilities, consume beverages, or smoke until specimen collection is completed.
- c. All drug and alcohol testing will be conducted in a manner that assures a high degree of accuracy and reliability by using techniques, standards, chain of custody procedures, and equipment and laboratory facilities that have been approved, or are comparable to those certified, by the U.S. Department of Health and Human Services.

- d. Employees will have an opportunity to disclose any prescription medication to the testing facility to ensure that the use of lawfully prescribed medication will not result in a positive test result. This information will not be shared with Metro.
24. Confidentiality: Laboratory reports or test results will be retained in an employee's confidential medical file maintained by the Benefits Division. The reports or test results may be disclosed to Metro management on a strictly need-to-know basis and to the tested employee upon request. Disclosures without patient consent may also occur when:
- a. The information is compelled by law or by judicial or administrative process;
 - b. The information has been placed at issue in a formal dispute between the employer and employee;
 - c. The information is needed by medical personnel for the diagnosis or treatment of a patient who is unable to authorize disclosure.
 - d. An employee may provide written authorization to allow a union representative to view or obtain copies of this information.

Consequences for violating Metro's Drug and Alcohol Use Policy

25. A violation of any part of the Drug and Alcohol Use Policy may result in discipline, up to and including termination, in accordance with disciplinary rules established by Metro policy or a collective bargaining agreement.
26. Any employee who has tested positive for drugs or alcohol, engaged in conduct that has the purpose or effect of interfering with the enforcement of the policy or its collection and testing procedures, or refused to be tested may be referred to a Substance Abuse Professional (SAP) for evaluation. The employee's willingness to accept a SAP referral and cooperate with a SAP-recommended course of treatment will be considered a mitigating factor in any disciplinary action arising from the employee's violation of the Drug and Alcohol Use Policy.
27. Responsibilities
- a. Employees/Interns:
 - i. Do not report to work or engage in work while impaired by alcohol, controlled substances, or any other disabling substance, including prescription drugs and over-the-counter medications. Do not consume alcohol or controlled substances at work, before reporting to work, or during break periods. You may only consume alcohol in limited circumstances as described in section 10 of this policy, or when covered by the Business Development & Hospitality Waiver (Appendix A) and subject to prior manager approval.
 - ii. Do not engage in the unlawful possession, distribution, manufacture or use of alcohol or any controlled substance at any time in the workplace, in a Metro-owned or operated vehicle or equipment.
 - iii. Immediately notify your supervisor when you are at work and using any medication that contains a safety warning relevant to your work duties, or that you know may impede your ability to work safely. If you are not sure if it could impact your work performance or ability to work safely, err on

- the side of informing your supervisor. You do not have to tell your supervisor about the medical condition for which you are taking the medication.
- iv. If you are convicted of a drug-related crime which occurred in the workplace or while on duty, report the conviction to the Human Resources Department no later than 5 calendar days after the conviction.
 - v. If you observe or have knowledge of another employee on duty in a condition which poses a hazard to their own or others' safety or welfare due to drug and alcohol use, report the information to his or her immediate supervisor, your supervisor, or the Human Resources Director.
 - vi. If you have a substance abuse problem, seek assistance before drug and/or alcohol problems adversely affect your ability to perform your job or compromise your ability to comply with this Policy.
- b. Supervisors/Managers:
- i. Attend training regarding the Metro Drug and Alcohol Policy and the physical, behavioral, and performance indicators of probable drug use and alcohol misuse.
 - ii. Monitor the workplace and ensure compliance with this Policy.
 - iii. Contact HR if any question arises about an employee's fitness to work due to the use of prescription or non-prescription medications.
 - iv. Send any medical documents received from the employee directly to Human Resources Benefits Division without keeping a copy. Maintain confidentiality of any medical records received.
 - v. Inform employees who exhibit signs of drug or alcohol-related performance or behavioral problems that confidential employee assistance for drug and alcohol abuse, and other personal issues, is available through Metro's Employee Assistance Program. Do not refer the employee to EAP in lieu of sending the employee for reasonable suspicion testing when appropriate under this Policy.
 - vi. Advise an employee of their right to have either an available union representative (if any) or a co-worker present during an investigatory interview.
 - vii. Appropriately and immediately investigate any apparent violation of this Policy in consultation with Human Resources.
 - viii. Notify CDL drivers if a drug or alcohol test is required by the Federal Motor Carrier Safety Administration (FMCSA).
- c. Human Resources
- i. Notify all employees of this Policy.
 - ii. Provide training to all managers.
 - iii. Serve as a resource to managers who are investigating policy violations.
 - iv. Maintain contracts with appropriate resources to administer drug testing and the Employee Assistance Program.
 - v. Advise supervisors/managers and employees about the availability of the Employee Assistance Program for counseling on drug and alcohol abuse and related performance issues.
 - vi. Maintain the confidentiality of laboratory reports and other medical information.

Attachments

Appendix A – Business Development & Hospitality Waiver

References

Drug-Free Workplace Act of 1988

Federal Motor Carrier Safety Administration (FMCSA) Regulations, 39 CFR 382 et seq. Recording and Reporting Occupational Injuries and Illness, 29 CFR 1904

Driving and Vehicle Use Policy

Appendix A
Business Development & Hospitality Waiver
Applicable to Visitor Venues only

Due to business development and hospitality needs, some employees may be approved for a Business Development & Hospitality Waiver that allows them to consume, purchase, possess and/or be reimbursed for alcoholic beverages for work-related purposes.

Nothing in this Waiver is intended to authorize an employee to become impaired or intoxicated due to the consumption of alcohol or to drive a motorized vehicle while impaired by the consumption of alcohol.

Definitions

Business development: Activities or events aimed at developing growth opportunities, promoting business and/or increasing sales for MERC venues.

Hospitality events: Activities or events which have the objective of developing and maintaining positive professional relationships with prospective or existing customers/clients, business partners, donors or sponsors.

In order for Metro employees to purchase, possess, be reimbursed or consume alcohol as part of their work, the following process must be followed:

- a. At the beginning of each fiscal year, Visitor Venue Directors will develop a list of the employees who they believe require a Business Development & Hospitality Waiver to consume, possess or purchase alcohol for Metro business. For each employee, the list should provide:
 - i. A statement that explains why a waiver is necessary;
 - ii. The specific event(s) for which the waiver will apply;
 - iii. Whether alcohol will be provided by the event organizers or purchased by the Metro employee;
 - iv. If the Metro employee will be purchasing alcohol, the approximate dollar limit authorized for the purchase and whether the alcohol will be consumed or stored; and
 - v. Any other information required by Financial and Regulatory Services Department procedures.

This list shall be submitted to the General Manager of Visitor Venues. The General Manager will then communicate approval of the list to the Visitor Venue Directors and employees. The General Manager will also forward the waiver list to the Director of Finance and Regulatory Services.

- b. Unforeseen events may require permission to extend a waiver on a short-term basis to another employee or allow the employee to exceed the original dollar amount listed for the purchase of alcohol.
- c. Until approval is received from the General Manager of Visitor Venues, employees should not assume they have approval for the consumption, possession and/or purchase of alcohol for business development or hospitality purposes.
- d. After receiving approval, itemized receipts showing alcohol charges must be submitted as part of the purchase card and/or reimbursement process. Summary receipts will not be accepted.
- e. Metro Finance and Regulatory Services will monitor spending and reimbursement. If the pre-authorized limit is exceeded, notification should be sent to the General Manager for appropriate action.
- f. Employees who receive a Business Development & Hospitality Waiver remain subject to the Metro Drug and Alcohol Use Policy if they are not participating in a pre-authorized event.
- g. Employees are prohibited from driving a motorized vehicle if they have become impaired or intoxicated.
- h. Approval for a Business Development & Hospitality Waiver may be rescinded at any time without notice; however, it may not be done retroactively without evidence of abuse.
- i. Further restrictions, guidelines and limitations on the purchase and consumption of alcohol are at the discretion of the Facility Director (i.e., no alcohol consumed prior to 5pm or approval granted for a reception or dinner function only after the hour of 5pm).