

Effective Date May 10, 2016

The Town of North Elba Drug and Alcohol Free Workplace Policy

1. Covered Workers/Applicability

a. Pre-employment Screening/Testing

All persons seeking permanent employment with the Town of North Elba in a recognized Safety Sensitive Position will be required to submit to drug and alcohol screening and testing. The Town of North Elba will not hire any applicant who test positive on a detection test for a controlled substance or alcohol.

b. Covered Workers shall mean any (full-time) employee holding a Safety Sensitive position as defined under Definitions

2. Purpose and Goal

The purpose of this policy is to provide a safe workplace and to assist employees in the guiding of their conduct, thereby promoting productivity and protecting the Town from liability. It provides instruction to supervisors when an employee appears impaired at work. This policy is also intended to comply with all applicable state and federal regulations governing work place alcohol and drug programs. All of these efforts will contribute to a safer work environment and protect Town employees and the public from the risks posed by the use of alcohol and prohibited drugs.

3. Prohibited Behavior

It is a violation of our drug-free workplace policy to use, possess, sell, trade, and/or offer for sale alcohol, illegal drugs or intoxicants.

An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter, will not sign the required forms or refuses to cooperate in the testing process in such a way that prevents completion of the test.

4. Notification of Convictions

Any employee who is convicted of a criminal drug violation must notify the Town in writing within five calendar days of the conviction. The written notice must state the date and time that the underlying criminal transaction occurred. The Town will take appropriate action within 30 days of receipt of written notification. Federal contracting agencies will be notified when appropriate.

5. Searches

Entering the Town's property constitutes consent to searches and inspections. If an individual is suspected of violating the drug-free workplace policy, he or she may be asked to submit to a search or inspection at any time. Searches can be conducted of lockers, desks and work stations and vehicles and equipment.

6. Violation under this Policy

1. Employees who fail to comply with any of these procedures and guidelines of this Drug and Alcohol Free Workplace Policy (the or this "Policy") shall be in violation of this Policy.
2. Employees who adulterate or otherwise interfere with accurate testing are in violation of this Policy.
3. Any employee, who uses or possesses illegal drugs or uses alcohol during work hours, when conducting business on behalf of the Town, while on call, during paid or unpaid standby, while on Town property and at Town sponsored events shall be in violation of this Policy.
4. Violation of this policy will subject the employee to immediate termination, suspension without pay pending review of circumstances, or other reprimands as deemed appropriate by the Town Board.

7. Definitions

Knowledge means knowledge by the Town that an employee has used alcohol or controlled substances based on the Town's information provided by the (1) employee's previous employer(s); (2) a traffic citation for driving a CMV while under the influence of alcohol or controlled substances; (3) a positive drug test to be actual knowledge that an employee had used a controlled substance without authorization; (4) direct observation of an employee's use of alcohol or drugs; (5) an employee's admission of alcohol or controlled substance use; or (6) any other evidence tending to establish a violation of this Policy .

Blood Alcohol Concentration (BAC) means a percentum by weight of alcohol in a person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva.

Controlled Substances means cocaine, opiates, phencyclidine (PCP), amphetamines (including methamphetamines), barbiturates, benzodiazepines, methaqualone, methadone, propoxyphene and any other substance defined as a controlled substance under Section 220.00 of the Penal Law of the State of New York or such successor statute.

Designated Employer Representative (DER) means an employee designated by the Town to take immediate action(s) to insure that employees who appear to be in violation of this policy are removed from safety sensitive duties and to make the necessary decisions with regard to testing and evaluation processes. A DER also receives test results, SAP reports, and other communications on behalf of the Town.

Driving includes, but is not limited to, activities by an employee that the Town requires to hold a valid driver's license including:

- Time at or on Town property, or on any public property, waiting to be dispatched unless the driver has been relieved from duty by the appropriate supervisor;
- Time spent inspecting equipment or otherwise inspecting, servicing, or conditioning any motor vehicle at any time;
- Time spent driving (operating) a motor vehicle;
- All time, other than driving time, in or upon an motor vehicle;
- Time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a

- vehicle being loaded or unloaded remaining in readiness to operate the vehicle;
- Time spent performing driver requirements under federal regulations relating to accidents;
- Time spent repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle

Employee Assistance Program (EAP) means the Town sponsored/supported service that provides free and confidential assessment and referral services for employees and family members who are experiencing personal problems, including substance abuse issues with drugs and alcohol.

Major Accident means an accident involving a Town employee while performing Town business in which:

- There is a loss of human life; or
- A Town employee receives a citation under State or Local law for a moving traffic violation arising from an accident; or
- The involved vehicle sustains disabling damage that necessitates major repair work; or
- Anyone receives bodily injury that requires medical treatment away from the accident scene.

MRO means the licensed physician selected by the Town to be responsible for receiving laboratory results generated by the Town's drug testing program.

Positive Alcohol Test occurs when an employee's test results in a BAC of 0.04 of one percentum or more by weight of alcohol in such person's blood.

Positive Test (drug) occurs when an employee's test or retest results indicates the presence of a controlled substance in such employee's system which has been verified by the MRO to be a positive test.

Random Selection means a scientifically valid method for the selection of employees to be tested that results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and does not give an employer discretion to waive the selection of any employee under the mechanism. Thus, an employee might be selected more than once during a year. Town of North Elba DOT employees must be in a separate pool for selection than other employees.

Reasonable Suspicion means a belief that an employee has violated alcohol or controlled substances prohibitions based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, motor coordination or body odors of that employee or any other evidence surrounding the circumstances of the incident which indicates the employee has used or possessed alcohol or a controlled substance. In the case of controlled substances, the observation may also include indicators of the chronic and/or withdrawal effects of controlled substances. Some examples would be, but are not limited to: unsteady gait, odor of alcohol on the breath, thick or slurring speech, aggressive or abusive language, disorientation or lethargy.

Refusal To Submit To A Required Alcohol Test includes failure to appear for any test within a reasonable time, failure to provide a breath or saliva specimen for a required test, failure to remain at the testing site until the testing process is complete, failure to provide sufficient breath specimen without a medical explanation, failure to undergo a medical examination following inability to provide a sufficient breath specimen, refusal to sign Step 2 of the Alcohol Testing Form, and /or failure to cooperate with the testing process in any way.

Refusal To Submit To A Required Drug Test includes failure to appear for any test within a reasonable

time, failure to remain at the collection site until the testing process is complete, refusal to provide a urine specimen for a required drug test, failure to permit a directly observed or monitored collection when required, failure to provide a sufficient amount of urine without a medical explanation, failure to undergo a medical examination following inability to provide a sufficient urine sample, and failure to cooperate with the collection/testing process (including refusing to empty pockets at the collection site).

Safety Sensitive Position means any position designated by the Town as a position that, by the nature of assigned duties, is vital to the safety and well-being of the public. Safety Sensitive Positions include all positions in which the employee is driving a Town vehicle or operating a piece of Town motorized equipment on public roadways.

SAP means Substance Abuse Professional who is a licensed physician (medical doctor or doctor of osteopathy), or licensed or certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse (ICRC), with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders. A SAP evaluates employees who have violated a drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

TPA means the Third Party Administrator with whom the Town contracts to conduct its Drug and Alcohol Testing.

8. Employee Responsibilities

It is the policy of the Town of North Elba that:

- a) The use, sale, distribution, dispensement or manufacture of a controlled substance, any intoxicating substance, any illegal drug or alcohol while on duty, while conducting Town business off premises, or otherwise while at work is absolutely prohibited and will subject an employee to termination. All illegal drugs discovered during an investigation will be given to the appropriate law enforcement agency and may result in criminal prosecution.
- b) If an employee is aware of illegal drug and alcohol use by a coworker at work including managers and supervisors, the employee shall report such concerns to the Town DER or the Town Supervisor, when appropriate.
- c) No employee shall report to work unfit for duty at the beginning of a shift or upon returning from any break, lunch or rest period, as a result of consuming alcohol, illegal drugs or a controlled substance or other intoxicant. Further, no employee notified of being in a safety sensitive position, shall report to work in a condition that violates this policy.
- d) An employee holding a safety sensitive position as defined by this policy is further prohibited from the use of alcohol or a controlled substance four hours prior to reporting to work.
- e) While prescription drugs are not prohibited, they should not necessarily render an employee holding a safety sensitive position unfit for duty. A Town employee who is prescribed medication that includes a warning label regarding drowsiness or similar type impairment is prohibited from performing safety

sensitive duties until and unless the Town is provided with appropriate authorization from the prescribing licensed professional. Situations of this nature should be brought to the Department Head's attention by the employee. Each situation will be addressed confidentially on a case-by-case basis.

- f) If prescription drugs affect an employee's job performance, and the employee holds a safety sensitive position, the Town shall make a reasonable effort to temporarily assign the employee to another position which does not require the performance of a safety sensitive function. If the problem persists then the employee may use sick leave, vacation leave or personal leave credits if he/she is unable to perform his/her normal duties. If none are available then he/she will be placed on leave without pay for up to two (2) months at which time the matter will be reviewed by the Town to determine whether or not additional leave will be granted. If additional leave time is warranted, the employee may be placed on leave in accordance with Section 72 of the Civil Service Law.
- g) An employee who has a substance abuse problem may submit voluntarily to drug testing prior to testing directed by the Town. Once an employee is randomly selected for drug testing, the employee may not voluntarily submit to drug testing to avoid dismissal upon a positive result.

An employee who agrees to voluntarily participate in a rehabilitation/detoxification program at his/her expense shall be allowed to charge sick leave or annual leave credits while such employee participates in a rehabilitation/detoxification program. If no leave credits are available, such employee may be placed upon a leave of absence without pay for the period of the rehabilitation/detoxification program. Upon certification of successful completion of such program, the employee shall be reinstated or placed on a preferred list as the case may be. Reinstatement will be subject to a return to duty drug and alcohol test.

- h) No employee shall leave the scene of a work-related accident, without a valid reason, before contacting a supervisor. Any work related accident or injury involving, but limited to, Town vehicles, equipment and/or property where it appears that the use of alcohol, drugs, or other intoxicants may have been a contributing factor requires an immediate post-accident test. A safety sensitive employee shall not use alcohol for eight hours following an accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- i) The Drug-Free Workplace Act of 1988 requires that each employee of the Town "must notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction." Failure to do so will result in termination.
- j) Reasonable suspicion is defined in the Definitions of this Policy and may also be based on specific reliable observations about the employee's appearance, behavior, speech, or body odors. Some examples would be: unsteady gait, odor of alcohol on the breath, thick or slurring speech, aggressive or abusive language or behavior, disorientation or lethargy. Usually reasonable suspicion will be based upon a combination of these factors.
- k) Refusing to submit to an alcohol or controlled substances test will be considered as testing positive for drugs or alcohol and may result in discipline up to and including termination.
- l) A 60 minute training class on the Town's Drug and Alcohol Policy, the Employee Assistance program (EAP) and the signs and effects of drug use in the workplace will be provided to employees on an

annual basis.

9. SUPERVISORY RESPONSIBILITIES

- a) Supervisors will receive a minimum of one hour of training on alcohol misuse symptoms and indicators used in making determinations for reasonable suspicion testing and a minimum of one hour training on drug misuse symptoms and indicators used in making determinations for reasonable suspicion testing.
- b) Supervisors are responsible for determining, through direct observation, whether an employee is capable of performing his/her assigned duties. Symptoms of being under the influence of alcohol and drugs include the criteria set forth in the definition of Reasonable Suspicion and also includes incoherent or belligerent speech, smell of alcohol, difficulty working, or erratic or unusual behavior uncommon to the employee. (See Employee Responsibilities Section.)
- c) Employees who are determined to be unfit for duty may not remain at the workplace. Such incidents and situations as described herein should be witnessed and documented in writing as soon as practicable. Clearly, an employee who is impaired should not be allowed to drive home from the workplace. (See e) below for further direction.)
- d) Employees whose behavior give rise to a “reasonable suspicion” that they are unfit for duty as a result of alcohol or drug use should be directed to submit to an alcohol or drug test. Medical examinations and/or testing should be arranged for as soon as practical by the appropriate Department Head by contacting the DER. It shall be the responsibility of the Supervisor or Department Head to personally escort the employee to be tested, whether the test is predicated on “reasonable suspicion” or is a “random” test.
- e) If a Supervisor or Department Head has determined an employee to be unfit for duty, the Supervisor or Department Head should arrange to send such employee home with a member of the employee's family or friend of the employee or in a taxi at the employee's expense. If these alternatives are exhausted, a Department Head may allow an employee who is unfit for duty to be driven home by the supervisor's designee in a Town vehicle.
- f) The fact that an employee has been determined to be unfit for duty based upon reasonable suspicion that he or she is under the influence of alcohol or drugs is not considered a disciplinary suspension. After a removal is achieved, the Department Head should discuss the specifics of the situation with the DER to review which actions are appropriate, depending on the test results. If the test comes out negative, the Town will pay for the cost of said test and there will be no loss of pay to the employee.
- g) When an employee displays dangerous, aggressive or abusive behavior, due to the suspected influence of alcohol or a controlled substance, which constitutes a danger to that employee or others and the employee resists voluntarily leaving the workplace, it should immediately be brought to the attention of the Department Head. In cases where the employee does not comply with reasonable directives and the employee continues to display aggressive and/or abusive behavior that constitutes a danger in the workplace, the Department head should contact local law enforcement authorities to remove the employee from the workplace. Law enforcement intervention should only be taken if it is believed an immediate danger to persons or property exists and the other measures-described above were unsuccessful in controlling the situation.

10. Drug and Alcohol Testing

To ensure the accuracy and fairness of our testing program, all testing will be conducted according to Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines where applicable and will include a screening test; a confirmation test; the opportunity for a split sample; review by a Medical Review Officer, including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody.

All drug-testing information will be maintained in separate confidential records.

Each employee, as a condition of employment, may be required to participate in drug and alcohol testing in the following situations:

- pre-employment;
- random;
- post-accident;
- reasonable suspicion; and
- return-to-duty and follow-up testing upon selection or request of management.

Testing for the presence of alcohol will be conducted by analysis of breath.

Testing for the presence of the metabolites of drugs will be conducted by the analysis of urine.

11. Assistance

The Town of North Elba recognizes that alcohol and drug abuse and addiction are treatable illnesses. It also realizes that early intervention and support improve the success of rehabilitation. To support our employees, our drug-free workplace policy:

- Encourages employees to seek help if they are concerned that they or their family members may have a drug and/or alcohol problem.
- Encourages employees to utilize the services of qualified professionals in the community to assess the seriousness of suspected drug or alcohol problems and identify appropriate sources of help.
- Offers all employees and their family assistance with alcohol and drug problems through the Employee Assistance Program (EAP).

12. Confidentiality

All information received by the organization through the drug-free workplace program is confidential communication. Access to this information is limited to those who have a legitimate need to know in compliance with relevant laws and management policies.

13. Communication

Communicating our drug-free workplace policy to both supervisors and employees is critical to our success. To ensure all employees are aware of their role in supporting our drug-free workplace program:

- All employees will receive a written copy of the policy.
- The policy will be reviewed in orientation sessions with new employees.

- Employee education about the dangers of alcohol and drug use and the availability of help will be provided to all employees.

14. Severability

The provisions of this policy are severable. If any provision of this policy or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy which can be given effect without the invalid provisions or application.