

**CITY OF WEST WENDOVER
OFFICE OF CITY MANAGER**

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Memo

To: All Employees
From: Chris J. Melville, City Manager/Director HR
CC: File Copy
Date: 1/18/2017
Re: Amendment No. 1, Employee Personnel Manual

● **Comments:**

Attached hereto are changes to the Employee Personnel Policies which were approved by City Council and became effective January 17, 2017 in relation to Section 2.11 Drug and Alcohol-Free Workplace.

Please familiarize yourself with the changes, in particular Sections 2.11.1; 2.11.1.7 through 2.11.1.8 and 2.11.2.5. Place the attached document in the appropriate section of your copy of the Employee Personnel Policy manual for future reference.

If you have any questions, please do not hesitate to contact me.

A handwritten signature in blue ink, appearing to read 'C. J. Melville', is written in a cursive style.

Policy Changes to Section 2.11
Drug and Alcohol-Free Workplace
Approved and Effective
January 17, 2017

coworker, family member, doctor, or other person about the employee's/applicant's disability.

2.10.7.4 Questions that are not likely to elicit information about a disability are not prohibited under the ADA. These types of inquiries include asking employees/applicants about their general well-being, whether they can perform the essential job functions and whether they currently use illegal drugs. The **employer** may also ask an employee, but not a job applicant, about non-disability-related impairments such as how s/he broke his/her arm.

2.10.7.5 A “**medical examination**” is a procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual's physical or mental impairments or health. Medical examinations include, but are not limited to:

- (a) Vision tests conducted and analyzed by an ophthalmologist or optometrist; blood, urine, and breath analyses to check for alcohol use;
- (b) Blood pressure screening and cholesterol testing; nerve conduction tests;
- (c) Range-of-motion tests that measure muscle strength and motor function;
- (d) Pulmonary function tests;
- (e) Psychological tests designed to identify a mental disorder or impairment; and
- (f) Diagnostic procedures such as x-rays, CAT scans, and MRI's.

2.10.7.6 Procedures and tests that employers may require that are generally NOT considered medical examinations include:

- (a) Blood and urine tests to determine the current illegal use of drugs;
- (b) Physical agility and physical fitness tests; and
- (c) Tests that evaluate an employee's/applicant's ability to read labels or distinguish objects as part of a demonstration of the ability to perform actual job functions.

2.10.7.7 Under ADA an “**employee**” is an individual employed by an employer. Generally, an individual is an employee if the employer controls the means and manner of his/her work performance. Where more than one entity controls the means and manner of how an individual's work is done, the individual may be an employee of each entity.

2.11 Drug and Alcohol-Free Workplace

2.11.1 Policy. The **employer** recognizes that substance abuse in our nation and our community exacts staggering costs in both human and economic terms. Substance abuse can be reasonably expected to produce impaired job performance, lost productivity, absenteeism, accidents, wasted materials, lowered morale, rising health care costs, and diminished interpersonal relationship skills. This drug and alcohol free workplace policy applies to volunteers as well as employees.

2.11.1.1 The employer is committed to:

- (a) Maintaining a safe and healthy workplace for all employees;
- (b) Assisting employees who recognize they have a problem with drugs or alcohol in receiving appropriate treatment;
- (c) Periodically providing employees with information about the dangers of workplace drug abuse; and

- (d) When appropriate, taking disciplinary action for failure to comply with this policy.

2.11.1.2 The **employer** strictly prohibits the following behavior:

- (a) The use, sale, attempted sale, manufacture, attempted manufacture, purchase, possession or cultivation, distribution and/or dispensing of illegal drugs by an employee at any time and in any amount. This prohibition includes the use or possession of prescription medicines for which the individual does not have a valid prescription and the inappropriate use of prescribed medicines for which the employee has a valid prescription. In addition, the employer prohibits employees from possessing open containers of alcoholic beverages while on the employer's premises and/or while on duty and from working with a blood-alcohol level of .02 or more at any time.
- (b) Bringing alcohol, illegal drugs, and other substances which may impair the safety or welfare of employees or the public onto the premises controlled by the employer or placing in vehicles or equipment operated on behalf of the employer.
- (c) Law enforcement personnel performing job-related functions which require possession and/or transportation of such substances are exempt from this section.
- (d) Driving an organizational vehicle while on or off duty with a blood alcohol level of .02 or more or under the influence of an illegal drug, regardless of the amount.

2.11.1.3 Reporting Requirements

- (a) A supervisor who receives information or is a witness to any use of drugs or alcohol by an employee which violates **employer's** policies or the law, is required to report this information to his/her Department Head or City Manager immediately. The information reported must include:
 - (1) The persons(s) involved, including all witnesses;
 - (2) Any information gathered, such as actual observation of drug /alcohol use, the presence of paraphernalia, observation of any unusual physical signs or behaviors;
 - (3) A written record of specific conversations held with the accused and any witnesses;
 - (4) All pertinent facts, including date(s), time(s), and locations(s).
- (b) An employee who witnesses or obtains information regarding illegal drug/alcohol use by his/her immediate supervisor is required to report the incident to that individual's supervisor.

2.11.1.4 Specimen collection, drug testing procedures, sample collection, and alcohol testing procedures will comply with all applicable provisions of federal and state law. Designation of the testing facility shall be by the City Council or designee.

2.11.1.5 A positive test result for alcohol or drugs will be grounds for disciplinary action, up to and including termination.

2.11.1.6 Employees in safety-sensitive positions as defined in 49 CFR Part 382, et seq., are subject to the Federal Department of Transportation (DOT) (49 CFR Part 40)

and the Federal Motor Carrier Safety Regulations (FMCSR), as prescribed by the Federal Motor Carrier Safety Administration (FMCSA) (49 CFR Parts 382, 383, 387, 390-397, and 399). Additionally the employer has identified other positions within the organization which are deemed “department safety-sensitive” and follow similar testing criteria as “safety-sensitive” positions defined under 49 CFR Part 382, et seq. These positions are identified under 2.11.2.6 and 2.11.10.2

2.11.1.7 The **employer** receives funding through federal grants and it is therefore subject to the Drug-Free Workplace Act of 1988. Marijuana (including medical marijuana), cocaine, opiates, amphetamines (including methamphetamines), phencyclidine (PCP), MDMA are considered illegal Schedule I or II drugs through the federal government. All employees must comply with the Drug-Free Workplace Act of 1988 and may not have any detectable level of Schedule I or II drugs in their system while at work. Failure to comply will result in disciplinary action, up to and including termination.

2.11.1.8 As provided in NRS 453A, and per the Drug-Free Workplace Act of 1988 the **employer** is not required to provide reasonable accommodation for the medical use of marijuana for:

- (a) Attorneys, investigators, special investigators or other employees acting in his/her professional or occupational capacity within the District Attorney’s Office, and
- (b) Peace Officers or other employees acting in his/her professional or occupational capacity in a law enforcement agency
- (c) Safety Sensitive Positions per 2.11.1.6

2.11.2 Employee Responsibilities

2.11.2.1 Each employee is responsible for reviewing and complying with the **employer’s** Drug and Alcohol-Free Workplace Policy.

2.11.2.2 Each employee is responsible for meeting standards for work performance and safe on-the-job conduct.

2.11.2.3 Employees shall not report to work under the influence of alcohol, illegal drugs, or misused prescription or over-the-counter drugs.

2.11.2.4 Employees who suspect they may have a substance abuse problem are encouraged to seek counseling and rehabilitation from a substance abuse professional or other treatment provider. The **employer’s** medical insurance policy may provide for payment of some or all of the treatment costs.

2.11.2.5 Each employee must report the facts and circumstances of any criminal drug or alcohol conviction that occurred while on duty or which may impact the employee’s ability to perform the duties of his/her job. If duties involve driving a vehicle, the employee must report to his/her supervisor a conviction for driving under the influence (DUI), and/or revocation or suspension of the driver’s license pending adjudication. Notification to **employer** must occur before resuming work duties or immediately after the conviction or revocation/suspension. Failure to notify **employer** will result in disciplinary action, up to and including possible termination. The supervisor shall immediately forward the notification to notify the **City Manager**.

It is the employee's responsibility and obligation (both safety sensitive and non-safety sensitive positions) to determine, by consulting a physician if necessary, whether or not a legal drug he/she is taking may or will affect his/her ability to safely and efficiently perform his/her job duties. An employee whose impairment may affect job performance must contact his/her supervisor and attempt to find an appropriate alternative assignment. If none is available, the employee may take sick leave or be placed on a medical leave of absence (if available and the employee otherwise qualifies) or take other steps consistent with the advice of a physician. If an employee reports to work under the influence of prescription medication and, as a result, endangers him/her or others, the employee will be disciplined, up to and including termination.

Regarding certain employment positions the City has determined that an employee's inability or impaired ability to perform essential job functions will result in a direct threat to the employee or others. These employment positions (hereafter "safety sensitive positions") are further defined in Sections 2.11.1.6, 2.11.2.6 and 2.11.10.2 and include but may not be limited to: Police and Animal Control Officers, Police Dispatchers, Fire Department Personnel and certain identified positions within the Public Works/ Utilities Department. An employee in a safety sensitive position who is taking a prescription medication drug(s) which may affect his/her ability to perform essential job functions, shall provide a fitness for duty report to the City Manager/Director Human Resources by an appropriate health care professional that must be based on an individualized assessment of the employee's present ability to safely perform the essential job functions. Said report must be provided within ninety-six (96) hours of the first instance of ingesting such drug(s) and shall be required to be updated at least every six (6) months thereafter during the use of such drug. This process shall be known as the Drug Fitness for Duty Program (DFDP). Without limitation, the City hereby advises the safety sensitive position employees that medications which have an adverse effect or side effect which can or does result in incapacitation, limited incapacitation, impaired judgement, adverse impacts concerning the ability to accurately perceive surroundings and events, dizziness, light headedness, lack of alertness, sleepiness, lack of attention to detail or focus, loss of balance, visual impairment and/or hearing impairment to a degree which could affect his/her ability to safety and efficiently perform his/her job duties triggers this requirement of the DFDP. Lack of compliance with the DFDP can result in discipline up to and including termination. Further, the requirements of the DFDP are separate from any other drug testing policies of the City and shall not impede a supervisor's duties for enforcing any other drug or alcohol related policies.

2.11.2.6 Employees in department safety-sensitive positions identified by the **employer** are subject to random drug and alcohol testing as provided in this policy.

2.11.2.7 Employees must act as responsible representatives of the **employer** and as law-abiding citizens. It is every employee's responsibility to report violations of this policy to his/her immediate supervisor or to the City Manager. Such reporting is critical in preventing serious injuries or damage to the **employer's** property.