

CONSTRUCTION INDUSTRY OF BRITISH COLUMBIA
SUBSTANCE ABUSE TESTING
AND
TREATMENT PROGRAM POLICY

DEVELOPED BY:

CONSTRUCTION LABOUR RELATIONS
ASSOCIATION OF BC

AND:

BARGAINING COUNCIL OF BRITISH COLUMBIA
BUILDING TRADES UNIONS

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**CONSTRUCTION INDUSTRY OF BRITISH COLUMBIA
SUBSTANCE ABUSE TESTING & TREATMENT PROGRAM POLICY**

I. POLICY OBJECTIVE

1.01 The objective of this Substance Abuse Testing & Treatment Program Policy (“the Policy”) is to implement a program which:

- (a) Furthers the mutual interests of clients, contractors, unions and workers in achieving a safe, healthy, substance-free work place;
- (b) Provides consistent, fair, and manageable procedures for detecting, eliminating and treating substance use which stands to impair employee work performance;
- (c) Enhances workplace productivity and service quality;
- (d) Enhances the competitiveness of participating contractors by enabling them to provide assurances to their clients with respect to the drug-free character of their work force, thereby increasing union market share;
- (e) Strikes a progressive balance between the various competing interests of clients, contractors, unions and workers, thereby applying a superior and more competitive strategy to the benefit of all participating parties;
- (f) Demonstrates sensitivity to employee privacy and the life-style choices and values of individual employees to the extent that those choices and values do not impair high quality employee work performance, productivity or job safety; and
- (g) Provides employees with substance abuse problems, with appropriate assistance.

II. DEFINITIONS

2.01 As used in this Policy, the terms listed hereafter are defined as follows:

- (a) **“Accident”** – An event resulting in significant injury to a person or significant property damage.
- (b) **“Adulterated Test Result”** – A bodily sample in relation to which the donor has tainted the specimen with a foreign agent, such as bleach, to prevent the detection by a laboratory of a substance.
- (c) **“Alcohol”** – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

- (d) **“Breath Alcohol Technician”** – A person trained to proficiency and certified in the use of an Evidential Breath Testing device (EBT).
- (e) **“Communicator”** – A representative of the employer and/or union designated to preserve the confidentiality of an employee’s personal information in the context of the administration of a substance test.
- (f) **“Company Premises”** – Any and all property, facilities, land, parking lots, structures, and vehicles owned, leased, used or under the control of an employer, and/or any job site to which an employer assigns an employee.
- (g) **“Diluted Test Result”** - A test result where the specific gravity of the specimen is 1.003 or less and the creatinine level is less than 20 mg/dl.
- (h) **“Employee”** – Any individual employed by a signatory employer under the terms and conditions of a collective agreement with a participating union.
- (i) **“Employer”** – A participating contractor employing individuals under the terms and conditions of a collective agreement with a participating union.
- (j) **“Medical Review Officer (MRO)”** - A licensed physician who has knowledge of substance abuse issues and has received the appropriate medical training to interpret and evaluate an individual’s substance test result as it relates to the individual’s medical history and any circumstances.
- (k) **“Medications”** – Ingested or inhaled prescription drugs, non-prescription drugs, or herbal remedies which may impair mental or motor functions so as to affect the performance of job duties;
- (l) **“Near miss”** – A failure in work performance or other occurrence that nearly results in an accident.
- (m) **“Negative Test Result”** - A test result that indicates that an alcohol level is below .04 BAC and/or fails to confirm that the employee was, at the time of testing, under the influence of a substance.
- (n) **“Parties”** – The Parties to this policy are the Bargaining Council of BC Building Trades Union (BCBCBTU) and Construction Labour Relations Association of BC (CLR).

- (o) **“Personal information”** – Personal information as defined in the British Columbia Personal Information Protection Act, including substance test results and medical information.
- (p) **“Positive Test Result”** - A test result which indicates that the alcohol level is .04 BAC or higher and/or a test result which confirms that the employee is under the influence of a substance.
- (q) **“Possession”** – The care, custody, control or ability to immediately access a substance.
- (r) **“Reasonable Suspicion”** – An understanding based on objective and articulated facts sufficient to lead a supervisor to form a reasonable suspicion that drugs or alcohol might be influencing an individual’s work performance.
- (s) **“Safety Sensitive”** - A characteristic of operations where error could result in serious harm to a person, property or the environment.
- (t) **“Substance”** – Alcohol or any substance listed on a schedule of the *Controlled Drugs and Substances Act* or any impairing agent or any medication used by an individual in a manner that is inconsistent with the instructions of the prescribing physician.
- (u) **“Substance Abuse Professional (SAP)” (or Substance Abuse Expert (SAE))** – A licensed physician or certified counselor who has received the appropriate training in substance abuse disorders to provide rehabilitation, assistance and recommendations to individuals who have an addiction or a substance use problem.
- (v) **“Substance Testing”** – The analysis of the biological presence of a substance by means of urine, breath, blood and/or saliva sampling and analysis.
- (w) **“Third Party Administrator” (TPA)** – An independent third party professional organization that will administer testing, collect and store personal information and otherwise implement this Policy.
- (x) **“Union”** – a participating trade union as defined under the Labour Relations Code of British Columbia that is signatory to a collective agreement with a participating employer or employer association.
- (y) **“Unsuitable Test Result”** - A test result that arises when a laboratory determines that the specimen may contain a foreign contaminant or that the individual may have ingested fluids to mask a substance ,but is not at a level to confirm the specimen as an Adulterated Test Result.

- (z) **"Worker Eligibility Status"** – An indicator of the worker's compliance with the terms of this Policy which is available from the approved Dispatch System or through a link to the TPA's Website. The types of status are as follows:

Dispatch System Status

1. **Current:** a status designated to employees who have complied with the terms of this Policy and who are therefore eligible for dispatch without further conditions.
2. **Not Current:** a status designated to employees in relation to whom an unresolved issue has arisen with respect to their compliance with this Policy and who are therefore not eligible for dispatch without further conditions.
3. **Pending Status:** a status designated to employees in relation to whom a specimen has been provided and the testing results have not been finalized.

TPA's Website Status

1. **Current:** a status designated to employees who have complied with the terms of this Policy and who are therefore eligible for dispatch without further conditions.
2. **Not Current:** a status designated to employees in relation to whom an unresolved issue has arisen with respect to their compliance with this Policy and who are therefore not eligible for dispatch without further conditions.
3. **Pending Status:** a status designated to employees in relation to whom a specimen has been provided and the testing results have not been finalized.
4. **Testing Status:** a status designated to employees who have been selected to perform a random test and have not yet been tested.
5. **Reinstate Status:** a status designated to employees who are in violation of this Policy and must complete reinstatement requirements.

III. POLICY STATEMENT

3.01 Under this Policy, the following are prohibited:

- (a) Use of a substance at the work place or during working hours;

- (b) Being under the influence of a substance during working hours;
 - (c) Reporting to work under the influence of a substance; and
 - (d) The unlawful manufacture, distribution, possession, transfer, storage, concealment, transportation, promotion or sale of a substance or substance related paraphernalia at the work place.
- 3.02** Employees who are taking medications of any kind, whether prescribed or self-administered, are responsible for taking steps to ascertain whether the medications are capable of causing any impairment to their ability to carry out their job duties safely and efficiently, and where this is the case, to report without delay to his/her designated Communicator the facts and associated use of the medications."
- 3.03** Upon being informed of an employee's use of medications in accordance with Article 3.02, the Communicator shall consult with the affected employee and his/her physician to determine if a non-disciplinary suspension of duties is appropriate.
- 3.04** Where the Communicator determines, in accordance with Article 3.03, that a non-disciplinary suspension of duties is appropriate, the employer shall attempt to accommodate the employee by making an appropriate reassignment where available. However, if the employer is not able to furnish a temporary reassignment without undue hardship, the employer may place the employee on temporary medical leave until designated as fit for duty by a treating physician.
- 3.05** Where an employee has reason to believe that he/she has a substance abuse problem, whether or not the substance abuse problem results in a violation under Article 3.01, the employee is obligated to report the fact and circumstances of the potential substance abuse problem to his/her designated Communicator.
- 3.06** Upon being informed of an employee's substance abuse problem in accordance with Article 3.05, the Communicator shall, without delay, refer the employee to the Employee Assistance Program under this Policy.
- 3.07** Upon being informed of an employee's substance abuse problem in accordance with Article 3.05, the Communicator shall consult with the affected employee and the Employee Assistance Program to determine if a non-disciplinary suspension of duties is appropriate.
- 3.08** Where the Communicator determines, in accordance with Article 3.07, that a non-disciplinary suspension of duties is appropriate, the employer shall attempt to accommodate the employee by making an appropriate reassignment where available. However, if the employer is not able to furnish a temporary reassignment without undue hardship, the employer may place the employee on temporary medical leave until designated as fit for duty by a treating Substance Abuse Professional.

IV. POLICY ADMINISTRATIVE COMMITTEE

- 4.01** The development, implementation and administrative responsibility for this Policy shall rest with the Policy Administrative Committee (“the Committee”).
- 4.02** The Committee shall consist of a minimum of three union-appointed trustees and three management-appointed trustees as appointed respectively by each Party. The Committee shall:
- (a) Determine operating procedures;
 - (b) Interpret and apply the Policy;
 - (c) Appoint a Third Party Administrator;
 - (d) Carry out any business as necessary for the administration of the Policy, and
 - (e) Recommend changes to the Policy in accordance with the discretion of the Committee.

V. THIRD PARTY ADMINISTRATOR (TPA)

- 5.01** The responsibilities of the TPA shall be to:
- (a) Engage the services of a laboratory for the purpose of analyzing substance test samples under this Policy;
 - (b) Select a Medical Review Officer who is licensed to practice medicine in British Columbia or any such other applicable jurisdiction as agreed to by the parties;
 - (c) Provide chain-of-custody forms and test kits and to establish collection locations and procedures so as to satisfy both chain of custody protocols and respect employee privacy.
 - (d) Keep the Committee informed about new technology related to substance testing.
 - (e) Maintain efficient, secure and confidential systems, databases, records and administrative procedures so as to provide participating employers and unions with accurate and timely information with respect to the eligibility status of any given employee.
 - (f) Administer various substance tests in accordance with the terms of this Policy.
 - (g) Report test results to appropriately designated persons in accordance with the terms of this Policy.

- (h) Provide training to Communicators designated by employers and unions with respect to the Communicators' responsibilities under this Policy;
- (i) Provide training to supervisory and union designated personnel with respect to the identification of facts in relation to the formation of a Reasonable Suspicion.
- (j) Refer individuals who have tested positive for substances to an employee assistance program that the employer has access to.

VI. MEDICAL REVIEW OFFICER (MRO)

6.01 The responsibilities of the MRO shall be to:

- (a) Ensure that proper protocols have been maintained with respect to the chain of custody of test samples.
- (b) Notify employees of their test results.
- (c) Canvass with any employee the circumstances related to a positive substance test.
- (d) Invite employees who have tested positive to have their original sample retested by a certified laboratory of the employee's choice.

VII. RIGHTS OF EMPLOYEES

7.01 The following interests of employees are recognized under this Policy:

- (a) The right to voluntarily elect whether or not to participate in "voluntary testing" as defined by the terms of Article 9.03(b).
- (b) The right to be provided with a copy of this Policy in advance of submitting to any substance test.
- (c) The entitlement to an opportunity to discuss with the MRO any medical conditions or use of medications by the employee or any circumstances associated with a positive substance test result.
- (d) The entitlement to request, within two days of being notified of a positive test result, that the original sample be retested by a certified laboratory of the employee's choice. The cost of the retest is to be the responsibility of the employee, unless the retest result is negative, in which case the employee shall be reimbursed by the employer.
- (e) The right to privacy with respect to their personal information, which shall be collected, used and disclosed only in accordance with

the objectives of this Policy and only to the extent necessary for the reasonable administration of this Policy.

- (f) The right to be accommodated in accordance with prevailing law where an employee has a disability related to substance dependency.

VIII. VOLUNTARY DISCLOSURE

- 8.01** The Policy recognizes that substance abuse and dependency are associated with serious problems for workers and their families. Albeit highly complex problems, they often can be successfully treated.
- 8.02** Each employee is responsible for seeking help in relation to any substance abuse or dependency problem.
- 8.03** Employees are encouraged to contact their Employee Assistance Program for assistance.
- 8.04** A decision by an employee to seek assistance by way of self-referral to a bona fide treatment or assistance program will not in itself be used by his/her employer as the basis for workplace discipline.

IX. SUBSTANCE TESTING PROTOCOLS

The following protocols shall apply to all substance testing under this Policy.

9.01 Disclosure of information:

- a) The personal information of employees shall be collected, used and disclosed only in accordance with the objective of this Policy and only to the extent necessary for the reasonable administration of this Policy.
- b) It is a term of this Policy that records of substance test results shall be kept confidential and are only to be disclosed upon the written consent of the employee to whom such records pertain, with the following exceptions:
- c) The person who is the designated Communicator with respect to an employee who tests positive shall be informed of the employee's status (current / non-current / pending).
- d) Personal information may be disclosed without consent in accordance with the provisions of Section 20 of the Personal Information Protection Act where such provisions are applicable.

9.02 Sample Collections:

Test samples, where collected, shall be collected by appropriately trained persons utilizing Substance Abuse & Mental Health Services Administration (SAMHSA) procedures so as to ensure both proper chain of custody protocols and employee privacy protocols are respected. All samples will be collected with concern for each employee's personal privacy, dignity, and confidentiality. The TPA may provide the following three options for substance test sample collections:

- (a) **Mobile On-Site Collections:** Certified collectors may be available to collect the substance test sample collections at the job site, the employer's office or union hall.
- (b) **Clinical Collections:** The TPA may make arrangements with clinical collection sites for the collection of substance test samples.
- (c) **TPA Office Collections:** The collection of substance test samples may be available at the TPA's office where convenient.

9.03 Types of Testing to be Conducted:

(a) Pre-Access Testing:

As a condition of entering the job site, employees may be subject to the testing requirements of the client / project owner in relation to their employment duties ("pre-access testing"). Employees who volunteer to participate in voluntary testing, in accordance Article 9.03(b) below, will be excused from pre-access testing.

(b) Voluntary Testing

1. As an alternative to pre-access testing, an employee may participate in voluntary testing. To be eligible for voluntary testing, an employee must, by agreement, participate in three types of tests as follows:

- i. Implementation testing;
- ii. Unannounced testing; and
- iii. Periodic testing.

2. Participation in voluntary testing, where elected, shall occur in accordance with the following descriptions and protocols:

i. Implementation Testing:

A substance test by pre-appointment as soon as feasible after the implementation of this Policy.

ii. Unannounced Testing

- a) Employees to be tested will be randomly selected and such selections will be made by use of a computer generated numerical program designed to ensure that no employee can be singled out.
- b) Random selections will be made six times per calendar year.
- c) No more that 20% of an employer's work force shall be subject to unannounced testing in a given year.
- d) The Communicator shall be notified of the selection of an employee for unannounced testing. Within 10 calendar days of being notified of the selection of an employee for unannounced testing, the Communicator shall inform the selected employee of the requirement that he/she report for testing. Selected employees must report for unannounced testing within 24 hours after notification by the Communicator of the requirement to report for testing.

iii. Periodic Testing:

A substance test required of an employee on the basis of the fact that he or she has not been tested over the preceding 36 month period.

3. The provisions in this Policy for voluntary testing are applicable:

- i.** Where pre-access testing is required by a client or project owner; or
- ii.** Where a union and an employer otherwise agree that voluntary testing is applicable.

(c) Post-Accident Testing:

An employee shall be required to take a substance test after:

- 1.** Having been directly and immediately involved in, or after having caused, an accident or a near miss; and

2. The employer has come to a reasonable belief, on the basis of an investigation into all relevant circumstances, that the employee's mental state may be a contributing factor to the accident or near miss.

An employee can be found to have been directly and immediately involved in an accident or near miss only when it can be reasonably determined, on the basis of the employer's investigation into all relevant circumstances, that the actions or omissions of that employee materially contributed to the detrimental outcome of the accident or near miss.

An employee can be found to have caused an accident or near miss only when it could be reasonably determined, on the basis of the employer's investigation into all relevant circumstances that, but for the actions or omissions of that employee, the accident or near miss would not have occurred.

(d) Reasonable Suspicion Testing:

Employees will be subject to substance testing where circumstances give rise to a reasonable suspicion that the employee has violated a prohibition under Article 3.01 of this Policy. A decision to require a reasonable suspicion test shall be based on observations of specific physical, behavioral or performance indicators and such observations must be made and documented by a supervisor who has received training in the detection of possible indicia of impairment by or influence of alcohol and/or a substance.

During the process of establishing reasonable suspicion for testing, the employee has the right to request his/her union representative to be present.

(e) Return To Work, Post Treatment, Rehabilitation Testing:

If an employee tests positive or refuses a test mandated by this Policy, the employee will be assessed by a Substance Abuse Professional (SAP) and prior to a return to duty, the employee must complete whatever requirements are stipulated by the SAP, which may include further assessment, treatment and counseling. In any event, prior to returning to duty, the employee must provide a negative test result.

(f) Probationary Status/Follow-up Testing

Having been the subject of a positive substance test, and having satisfied the reinstatement requirements of this Policy, an employee shall undergo a further test upon his/her return to the job site and shall, thereafter, be subject to random testing for a period

of up to two years at an annual rate of 50% of the random pool of workers.

(g) Transportation

The employer will incur the expense of round trip transportation arrangements for any employee to be tested.

9.04 Specimen Analysis: (SEE ADDENDUM #1)

All samples collected under this Policy will be analyzed by a certified laboratory, and shall include an initial Enzyme Multiplied Immunoassay Screening Test (EMIT) and, when necessary, be confirmed by a Gas Chromatography/Mass Spectrometry (GC/MS) Confirmation Test. Testing shall screen, at a minimum, for the following substances and test results must be below the following levels to result in a negative:

Drugs Tested	(EMIT) Initial Test Cut-off Level (ng/ml)	(GC/MS) Confirmation Test Cut-off Level (ng/ml)
Amphetamines	1000	500
Barbiturates	300	200
Benzodiazepines	300	200
Cannabinoids (Marijuana – THC)	50	15
Cocaine Metabolite	300	150
Methadone	300	200
Opiates	2000	2000
Phencyclidine (PCP)	25	25
Propoxyphene	300	200
Breath/Blood Alcohol Content (BAC)	.04%	.04%

9.05 The Committee shall have the right to change the drugs tested, the cut-off levels and the analysis procedures as new technology in substance abuse testing warrants.

9.06 Employees who provide two subsequent diluted test results under this Policy will be encouraged to seek medical assistance to determine if there is a valid medical reason for the diluted results. If a medical reason cannot be determined or if the employee refuses to seek medical assistance, the third or remaining tests (if necessary) will be at the individual's expense.

9.07 Any employee who provides an unsuitable test result will be required to have subsequent drug tests observed.

9.08 Saliva or breath screen tests are acceptable for alcohol testing. Saliva screening for alcohol will utilize the QED-A150, which gives a quantitative reading (a

range of alcohol from 0 – 150 mg/dl). If the QED-A150 registers any level equal to or greater than 20 md/dl (.04%), then a Breath Alcohol Test will be performed. A confirmed screening level less than 20 md/dl (.04%) is considered negative.

9.09 It is acknowledged that urine tests in no way measure current marijuana impairment because they do not detect the psychoactive ingredient of marijuana, THC. The mere presence in the urine of non-active metabolites of marijuana shall not constitute a positive test result for the purposes of this policy, but shall oblige the employee to submit to the immediate collection of a saliva and/or blood sample so as to facilitate a test for current impairment. Blood and saliva screen tests are acceptable for testing current marijuana impairment.

9.10 Record Keeping:

Hard copy testing results shall be maintained by the TPA for the following specified periods:

Negative test results will be maintained for one (1) year

Positive test results will be maintained for five (5) years

Rehabilitation records will be maintained for five (5) years.

X. POLICY VIOLATIONS

10.01 The following conduct by an employee may be considered a violation of this Policy and may be the basis for an employer to impose progressive discipline in accordance with the legal principle of just cause:

- (a) A violation by an employee of any prohibition under Article 3.01;
- (b) A violation by an employee of any reporting obligation under Articles 3.02 or 3.05;
- (c) Failure to contact the Medical Review Officer as directed;
- (d) Failure to report as directed for testing;
- (e) Switching, adulterating, or attempting to tamper with any sample submitted for drug or alcohol testing, or otherwise interfering or attempting to interfere with the testing process; and
- (f) Refusal to submit a specimen for testing.

10.02 Confirmed Positive Test Results:

(a) Medical Review Officer Notification (MRO)

Within two days of being notified of a positive substance test result, the test subject shall contact the MRO and discuss with the MRO forthwith regarding the test result.

10.03 Reinstatement Requirements:

If a person is the subject of a positive substance test, his/her worker eligibility status immediately becomes “not current” and remains so until all of the following conditions are satisfied:

- (a) The SAP notifies the TPA in writing that the person has met all conditions stipulated by the **SAP** that are required, in the professional opinion of the SAP, for the person to safely return to or commence his/her duties as an employee.
- (b) The person completes return to work testing in accordance with the terms of this Policy to the satisfaction of the TPA.
- (c) The person agrees in writing to continue any treatment, counseling or rehabilitation as prescribed by the SAP.
- (d) The person agrees in writing to be subject to Probationary Status/Follow-up testing for two years at a 50% random selection rate.

XI. GRIEVANCE

11.01 All aspects of this Policy shall be subject to the grievance procedure of the applicable collective bargaining agreement.

XII. COST OF COLLECTION AND TESTING

12.01 The employer will pay the cost of all substance testing under this Policy, unless explicitly excluded in this Policy.

12.02 An initial return-to-work test will be paid for by the Medical Fund or EAP if provided for by these entities. If not so provided, the cost shall be borne by the employee. The costs of the second and all subsequent return-to-work tests will be borne by the employee and must be paid for in advance by the employee to the fund.

12.03 Any employee who loses time from working in order to provide a specimen(s) for drug and alcohol testing will be paid by the employer for such lost time.

XIII. SAFETY

13.01 Nothing in this Policy overrides the employer’s superseding obligation, duty and discretion under Occupational Health and Safety Legislation (OH & S) to provide a safe work site.

XIV. SAVING CLAUSE

14.01 It is assumed by the Parties that each provision of this Policy is in conformity with all applicable laws of the Province of British Columbia. Should it later be determined that it would be a violation of any legally effective Provincial Order or Statute to comply with any provision or provisions of this Policy, the Parties agree to renegotiate such provision or provisions of this Policy for the purpose of making them conform to such Provincial Order or Statute, and the other provisions of this Policy shall not be affected thereby.

DATED this _____ day of _____, 2008.

SIGNED ON BEHALF OF:

CONSTRUCTION LABOUR RELATIONS
ASSOCIATION OF BC

SIGNED ON BEHALF OF:

BARGAINING COUNCIL OF
BRITISH COLUMBIA BUILDING
TRADE UNIONS

ADDENDUM #1

9.04 Specimen Analysis

The Policy Administrative Committee (PAC) has agreed to use Oral Fluid (OF) testing as the primary drug testing methodology effective May 22, 2009, on a 9 panel basis as identified herein:

Immunoanalysis Screening and Confirmation cut-offs

All oral fluid samples collected under this Policy will be analyzed by a certified laboratory, and shall include an initial Enzyme-Linked-Immuno-Sorbent Assay (ELISHA) test and, when necessary, be confirmed by a Liquid Chromatography/Mass Spectrometry/Mass Spectrometry Confirmation Test (LC/MS/MS). Testing shall screen, at a minimum, for the following substances and test results must be below the following levels to result in a negative:

Drugs Tested	(ELISA) Initial Test Cut-off Levels (ng/ml)	(LC/MS/MS) Confirmation Test Cut-off Level (ng/ml)
Amphetamines	50	50
Barbiturates	50	50
Benzodiazepines	10	10
Cannabinoids (Marijuana – THC)	10	10
Cocaine	20	8
Methadone	50	20
Opiates	40	40
Phencyclidine (PCP)	10	10
Propoxyphene	20	10
Breath/Blood Alcohol Content (BAC)	.04%	.04%