

WILKIN COUNTY – MINNESOTA
**ALCOHOL AND DRUG FREE WORKPLACE POLICY &
PROCEDURES**

Objective

The Wilkin County drug and alcohol testing policy shall set forth the following information: a) the employees or job applicants subject to testing under this policy; b) the circumstances under which drug or alcohol testing may be requested or required; c) the right of an employee or job applicant to refuse to undergo drug and alcohol testing and the consequences of refusal; d) any disciplinary or other adverse personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test; e) the right of an employee or job applicant to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest; and
f) any other appeal procedures available.

**Policy
Statement**

Wilkin County recognizes that alcoholism and other drug dependencies are a significant social problem with the potential to cause severe effects in the workplace. Wilkin County recognizes that it has a responsibility to maintain a drug free workplace and intends to comply with the requirements of the federal Drug Free Workplace Act of 1988 (Public Law 100-670), the requirements of the Minnesota Drug and Alcohol Testing in the Workplace Act (Minnesota Statute 181.950 et. seq.) and drug and alcohol testing provisions for those individuals working in safety-sensitive positions as mandated by the Omnibus Transportation Employee Testing Act of 1991.

Scope

This policy shall be applicable to all employees of Wilkin County. This policy shall be applicable to employees covered by a collective bargaining agreement, if language in this policy and in the collective bargaining agreement conflict, then the bargaining agreement language shall control. It is the duty and responsibility of all supervisors and department heads to enforce this policy and to communicate it to their staff. This policy also includes employees required to undergo random testing in accordance with the federal regulations or because they are identified as a “safety-sensitive” position.

Statutory References

Federal Drug Free Workplace Act of 1988 (Public Law 100-670) and the requirements of the Minnesota Drug and Alcohol Testing in the Workplace Act (Minnesota Statute 181.950 et. seq.). Omnibus Transportation Employee Testing Act of 1991 (Public Law 102-143).
Regulation of Adult-Use Cannabis (Minnesota Chapter 342), Nonwork activities; Prohibited Employer Conduct (Minnesota Statute 181.938)

POLICY OVERVIEW

Wilkin County is committed to protecting the safety, health and well-being of all employees and individuals in our work environment. We recognize that alcohol abuse and drug use pose a significant threat to job performance and the safety and security of our operation. We have established a drug and alcohol-free workplace program that balances our respect for individuals with the need to maintain a drug and alcohol-free environment.

DEFINITIONS

Applicant: A person, independent contractor, or person working for an independent contractor who applies to become an employee of an employer, and includes a person who has received a job offer made contingent on the person passing drug or alcohol testing.

Cannabis product: Means any of the following: (1) cannabis concentrate; (2) a product infused with cannabinoids, including but not limited to tetrahydrocannabinol, extracted, or derived from cannabis plants or cannabis flower, or (3) any other product that contains cannabis concentrate. (b) Cannabis product includes adult-use cannabis products and medical cannabinoid products. Cannabis product does not include cannabis flower, synthetically derived cannabinoids, lower-potency hemp edibles, hemp-derived consumer products, or hemp-derived topical products.

Cannabis testing: The analysis of a body component sample according to the standards established under one of the programs listed in section 181.953, subdivision 1, for the purpose of measuring the presence or absence of cannabis flower, as defined in section 342.01, subdivision 15, cannabis products, as defined in section 342.01, subdivision 19, or cannabis metabolites in the sample tested.

Commercial Driver's License (CDL): In accordance with Federal Department of Transportation (DOT), anyone employed by Wilkin County whose job duties require them to possess a CDL and who operates, maintains, or dispatches commercial motor vehicles will be subject to random drug and alcohol testing.

Confirmatory Test/Confirmatory Retest: A drug and alcohol test completed on the sample that was positive on the initial screening test, and that uses a method of analysis allowed under one of the programs as listed in [Minn. Stat. §181.953, subd. 1](#).

Drug: A controlled substance as defined in [Minn. Stat. §152.01, subd. 4](#). For safety sensitive positions, cannabis and its metabolites are considered a drug and subject to the drug and alcohol testing provisions in sections 181.950 to 181.957.

Employee: An employee of Wilkin County in accordance with the Personnel Rules and collective bargaining agreements.

Employees Subject to Random Testing: All employees who are in a "Safety-Sensitive Function or Position" as defined below.

Employer: Wilkin County

Initial Screening Test: A drug, alcohol test or cannabis test that which uses a method of analysis under one of the program listed in section 181.953, subdivision 1.

Positive Test Result: Finding the presence of alcohol or drugs or their metabolites tested in levels at or above the threshold detection levels contained in the standards of one of the programs listed in [Minn. Stat. §181.953, Subd. 1.](#)

Random Testing: An employer may request or require employees to undergo drug and alcohol testing on a random selection basis only if (1) they are employed in safety-sensitive positions.

Reasonable Suspicion: The basis for forming a belief based on specific facts and rational inferences drawn from those facts.

Random Selection Basis: A mechanism for selection of employees that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected; and (2) does not give an employer discretion to waive the selection of any employee selected under the mechanism.

Safety Sensitive function (DOT): All time waiting to be dispatched to drive a commercial motor vehicle; all time inspecting, servicing, or conditioning a commercial motor vehicle; all time driving at the controls of the commercial motor vehicle; all other time in or upon a commercial motor vehicle (except time spent resting in a sleeper berth); all time loading or unloading a commercial motor vehicle, attending the same, giving or receiving receipts for shipments being loaded or unloaded, or remaining in readiness to operate the vehicle; or all time repairing, obtaining assistance, or attending to a disabled commercial motor vehicle.

Safety-Sensitive Position (Non-DOT): Any position, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person pursuant to [Minn. Stat. §181.950, Subd. 13](#). For purposes of this policy, Wilkin County safety-sensitive positions include, but are not limited to Supervisory and Management Positions; the Emergency Manager; the Risk/Safety Specialist; Law enforcement positions including Deputies, Corrections/Bailiff Officers, 911 Dispatchers, Sergeants, Chief Deputy, Corrections Leads, Jail Administrator; and other positions including Public Health Nurses, Social Workers, Facilities Maintenance, Recycling Redemption Operator, Recycling Technician.

NON-DISCRIMINATION

This policy on work-related alcohol and drug use is non-discriminatory in intent and application. However, in accordance with Minnesota Statutes, Chapter 363, disability does not include any condition resulting from alcohol or other drug abuse which prevents a person from performing essential functions of the job or creates a direct threat to property or the safety of any person. An employer may not refuse to hire a job applicant or discipline or discharge an employee because the applicant or employee engages in or has engaged in the use or enjoyment of lawful consumable products, if the use or enjoyment takes place off the premises of the employer during nonworking hours. Cannabis flower and cannabis products are lawful consumable products for the purpose of Minnesota law, regardless of whether federal or other state law considers cannabis use, possession, impairment, sale, or transfer to be unlawful. Nothing in this section shall be construed to limit an employer's ability to discipline or discharge an employee for cannabis flower or cannabis product use, possession, impairment, sale, or transfer during working hours, on work premises, or while operating an employer's vehicle, machinery, or equipment, or if a failure to do so would violate federal or state law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations.

An employer must not request or require a job applicant to undergo cannabis testing solely for the purpose of determining the presence or absence of cannabis as a condition of employment unless otherwise required by state or federal law.

PROHIBITED ACTIVITIES

- › No employee shall report to work or be on call under the influence of alcohol, marijuana, controlled substances, or other drugs which negatively affect the employee's alertness, coordination, reaction, response, judgment, decision-making or safety.
- › DOT Safety-Sensitive Function Employees - No employee may perform safety-sensitive functions within four (4) hours after using alcohol. If an employee has had alcohol within four hours, they are to notify their supervisors before performing any safety-sensitive functions.
- › No employee shall operate, use or drive equipment, machinery or vehicles on the job while under the influence of alcohol, marijuana, cannabis product, controlled substances, or other mood-altering drugs, including any medication taken as prescribed. Such employee is under an affirmative duty to immediately notify the employee's supervisor if the employee is not in appropriate mental or physical condition to operate, use or drive equipment on the job.
- › A safety sensitive identified employee testing positive for the presence of drugs, alcohol, drug or alcohol metabolites, shall be in violation of this policy and subject to discipline. Unless otherwise prohibited by law or department policy, a lawful medical exemption provided by the medical review officer (MRO) will excuse the positive test. The county reserves the right to adjust work activities to minimize potential risk to the public or employees if an employee has a positive test.
- › Any employee tested under the reasonable suspicion provisions, testing positive for the presence of drugs, alcohol, drug or alcohol metabolites, shall be in violation of this policy and subject to discipline.

- › During work hours, while on the County's premises or County vehicles, being compensated by the County such as being at a conference or training or wherever the County's work is being performed, no employee shall manufacture, distribute, dispense, possess, sell, or use any **cannabis product or** controlled substance, except as medically prescribed and directed, with the following exceptions:
 - a) When the prohibited act is performed by a Sheriff's Department employee in accordance with department policy.
 - b) When an employee is taking medically authorized drugs or other substances which may negatively affect job performance, as defined in the definitions above, the employee is under an affirmative duty to notify the appropriate supervisor of the employee's temporary inability or impairment in the ability to perform the job duties. It is the employee's responsibility to seek out written information from his/her physician or pharmacist regarding medication and any job performance impairment and relay that information to his/her supervisor. In the event of such a disclosure, the employee will not be authorized to perform safety-sensitive functions.

- › During an employee's work hours, while on the County's premises, or being compensated by the County, no employee shall use, possess, or transfer alcoholic beverages, with the following exceptions:
 - a) Consumption, possession, sale or purchase of alcohol when authorized under department policy or by the department head.
 - b) Possession of alcohol while in an employee's personal vehicle on the County's premises in compliance with applicable statutory requirements **or at an employee's home or place of remote work.**
 - c) Additionally, employees shall not participate in these activities during rest breaks or during overtime work.

- › Engaging in off-duty sale, purchase, transfer, use or possession of **drugs or** controlled substances may have a negative effect on an employee's ability to perform the job. In such circumstances, the employee may be subject to discipline in employment in addition to any other criminal or other sanctions.

- › Employees are advised that in any situation subsequent to the intake of alcohol where the employee must continue conducting the County's business, any employee whose condition or behavior adversely affects the employee's performance shall be subject to possible discipline, up to and including discharge or the requirement of satisfactory participation in an alcohol assessment or rehabilitation program.

- › Medical Marijuana/Cannabis:
 - a) CDL-DOT Employees: Employees that require a CDL for their position are regulated by federal law and regulation and are supervised by the Federal Department of Transportation. Federal law pre- empts state law related to cannabis. The DOT enforces drug and drug-testing standards against all CDL holders, regardless of state law protections **including cannabis**.
 - b) Non-DOT Employees: In accordance with [Minn. Stat. 152.32](#), unless a failure to do so would violate **state or** federal law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations, an employee cannot be discriminated against for a person’s status as a patient enrolled in the **medical cannabis** registry program, or for a patient’s positive drug test for cannabis components or metabolites, unless a patient used, possessed or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment. An employee who is required to undergo employer drug testing may present verification of enrollment in the patient registry as part of the employee’s explanation. A. State law does not permit an employee to possess, use or be impaired by medical cannabis while at work. **This does not apply to reasonable suspicion testing**.
 - c) Law Enforcement: In addition to this countywide Alcohol and Drug Free Workplace Policy, all law enforcement positions are subject to the Wilkin County Sheriff’s Office Policy, which prohibits possession or use of **cannabis products** or being under the influence of cannabis on- or off-duty.

- › Any employee convicted of any criminal drug statute must notify his or her supervisor and the County’s Human Resources Director in writing of such conviction no later than five days after such conviction. Within 30 days after receiving notice from an employee of a controlled substance-related conviction, the County will take appropriate personnel action against the employee up to and including discharge or require the employee to satisfactorily participate in a controlled substance abuse assistance or rehabilitation program as an alternative to termination. In the event notice is not provided to the supervisor and the employee is deemed to be incapable of working safely, the employee will not be permitted to work and will be subject to disciplinary action, including dismissal from employment. In accordance with the Federal Drug-Free Workplace Act of 1988, if the County is receiving federal grants or contracts of over \$25,000, the County will notify the appropriate federal agency of such conviction within 10 days of receiving notice from the employee.

- › Applicants and Employees in CDL-DOT safety sensitive function positions subject to Federal Motor Carrier Safety Administration rules must consent to queries within the Clearinghouse for drug and alcohol program violations prior to employment and on an annual basis. Queries may be limited or full. Refusal to consent to either query will impact employment status.

EMPLOYEE TRAINING

By this policy, Wilkin County has established an alcohol and drug-free workplace program to inform employees about the dangers of alcohol and drug abuse in the workplace and its policy of maintaining a workplace free of alcohol and drug use.

Each Wilkin County employee shall receive a copy of this policy **or access to it** and will be expected to read it. The department head will provide, upon request, information regarding any available drug counseling, rehabilitation, and assistance programs that an employee may enter through his or her health insurance program. Employees who may have an alcohol or other drug abuse problem are encouraged to seek a professional assessment before the problem affects the employment status. The Human Resource's Office will also maintain information regarding the dangers of drug or alcohol use in the workplace.

CONSEQUENCE OF VIOLATIONS

Violations of this policy may constitute discipline, up to and including discharge, or the requirement of assessment and satisfactory participation in a drug abuse assistance or rehabilitation program **at the expense of the employee**. Each situation will be evaluated on a case-by-case basis depending upon the severity and circumstances involved.

DRUG AND ALCOHOL TESTING

All alcohol or drug testing undertaken by Wilkin County shall be in accordance with [Minn. Stat. §181.950-957](#), the Minnesota Drug and Alcohol Testing in the Workplace Act. All testing shall be conducted by a testing laboratory which meets the licensing, accreditation or certification criteria for drug testing as set forth in Minnesota Statutes Section 181.953, subdivision 1.

PRE-EMPLOYMENT TESTING REQUIREMENT

Job Applicant Testing: A job applicant may be required to undergo drug, alcohol, **or cannabis** testing provided a conditional job offer has been made to the applicant and the same test is required of all job applicants conditionally offered employment in that position. The FMCSA requires that the pre-employment drug test be conducted within 30 days of the hire date. Returning temporary or seasonal employees that are identified as safety-sensitive may need to be tested prior to re-hire to comply with the 30 day requirement.

REASONABLE SUSPICION TESTING

Any employee may be required to undergo **cannabis**, drug, or alcohol testing as set forth under [Minn. Stat. §181. 951, subd. 5](#), if the employer has a reasonable suspicion that the employee:

- › is under the influence of drugs or alcohol; or
- › **as the result of consuming cannabis flower or a cannabis product, does not possess that clearness of intellect and control of self that the employee otherwise would have;**
- › has engaged in the "Prohibited Activities" set forth in this policy; or
- › has sustained a personal injury, as that term is defined in [Minn. Stat. § 176.011, subd. 16](#), or has caused another employee to sustain a personal injury; or
- › has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

Any employee being tested for reasonable suspicion shall be accompanied by a supervisor or person designated by Administration. The employee will be accompanied to the nearest test collection location for this purpose. **The supervisor or person designated shall assist in returning the employee to work or home after testing is completed.** An employee refusing to take a drug and alcohol test under this policy shall not be permitted to perform safety sensitive functions and will be considered **insubordinate** and will be subject to disciplinary action including possible dismissal.

TREATMENT PROGRAM TESTING

An employee may be required to undergo drug and alcohol testing if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

RANDOM TESTING

Employees in positions defined as “Safety-Sensitive Functions or Positions” will be required to undergo random testing. Appendix A sets forth procedure for Non-DOT employees, Sheriff’s Department employees. Appendix B sets forth procedure for employees required to have a CDL as a condition of their employment.

Employees of Wilkin County filling non-DOT safety-sensitive positions as defined above will be subject to drug and alcohol testing on an unannounced and random basis. Drug testing will follow federal DOT 5 panel drug tests. Alcohol testing will follow Federal Highway Administration test rules. A percentage equal to twenty-five (25%) percent of safety-sensitive employees will be tested annually. Each County employee who works in an identified non-DOT safety-sensitive position shall be in a separate pool from which random selection can be made on an annual basis. Each employee in the pool shall have an equal chance of selection and shall remain in the pool, even after the employee has been selected. The pool is operated by the Vault System.

Commercial CDL operators and Federal DOT identified employees meeting the required testing criteria and subject to this policy will be placed in a common selection pool. Names will be randomly selected from this selection pool for unannounced alcohol and drug testing using a computer based random number generator that is matched with an employee’s identifying number. This pool is operated by the Vault System. The Federal Highway Administration rules require Wilkin County to conduct random drug testing on fifty percent (50%) of the average number of employees and random alcohol testing on ten (10%) percent of the average number of employees in the selection pool per year. Tests are conducted during each quarter throughout the year. Alcohol testing will be performed just before, during, or after an employee’s performance of safety-sensitive duties and within two hours of notification. Therefore, employees selected for testing must proceed immediately to the testing site when notified in accordance with the procedures for supervisor notification and work continuation policies established by the department head or manager for this purpose.

The selection of commercial CDL operators and Federal DOT identified employees for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, employee identification numbers, or other comparable identifying numbers. Each employee selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.

COMMERCIAL CDL OPERATOR POST-ACCIDENT TESTING

A post-accident alcohol and drug test is required and will be administered if an employee who is operating a Wilkin County commercial motor vehicle is involved in an accident that results in:

- a. The death of a person or persons regardless of the amount of vehicle property damage; or,
- b. The employee receives a moving traffic violation arising from the accident.

The employee must provide an alcohol test sample as soon as possible after the accident, with any delay beyond two hours documented. After eight hours, attempts to conduct an alcohol test, if not earlier administered, will cease and reasons documented. Test results (negative or positive) and documentation will be forwarded to the Safety/Risk Specialist to be placed in the individual's confidential file. Additionally, employees must provide a urine sample for controlled substances testing as soon as practicable after an accident. After 32 hours, all attempts to conduct the test shall cease and the reasons documented. An employee subject to post-accident drug and alcohol testing must remain available for testing or the employee will be considered to have refused to submit to testing. Employees are prohibited from using alcohol for eight hours (8) following an accident or until they have undergone a post-accident alcohol test, whichever comes first.

In the event that an accident occurs and does not meet the above criteria, an employee may still be compelled to provide a test if reasonable suspicion exists.

RETURN TO DUTY TESTING-FMCSA/DOT

An employee found to have violated this policy will not be allowed to return to work until return-to duty tests have been taken that indicate an alcohol concentration of less than 0.02 and a verified negative result for controlled substances.

The County reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policy and collective bargaining agreements. Except as otherwise required by law, the County is not obligated to reinstate or requalify such drivers for a first positive test result.

Should the County consider reinstatement of a DOT covered driver, the driver must undergo a Substance Abuse Professional ("SAP") evaluation and participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a controlled substance test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP determines if the driver has completed the education/treatment as prescribed.

The employee is responsible for paying for all costs associated with the return-to-duty test. The controlled substance test will be conducted under direct observation.

FOLLOW UP TESTING

Following a determination by a substance abuse professional (SAP) that an employee is in need of assistance in resolving problems with alcohol and/or drug, or controlled substances use/abuse, the employee will be subject to six or more unannounced follow-up alcohol and/or drug tests as directed by the substance abuse professional. Follow-up testing will not exceed 24-months from the date of the employee's return to duty as set forth under [Minn. Stat. §181.951, Subd. 6.](#)

RIGHTS OF EMPLOYEES AND JOB APPLICANTS

Before requesting an employee or job applicant to undergo testing under this policy, the employee or applicant shall be provided with a form (Appendix C) which includes acknowledgment that the employee or applicant has seen this policy.

If an employee or job applicant tests positive for drug use, the employee must be given written notice of the right to explain the positive test and the employer may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.

Within three working days after notice of a positive test result on a confirmatory test, the employee or job applicant may submit information to the employer, in addition to any information already submitted under paragraph (b), to explain that result, or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense.

All applicants, drivers and employees have the right to refuse to undergo drug and alcohol testing. In the event an applicant, driver or employee does in fact refuse to submit to required alcohol and/or controlled substance testing, no test will be conducted. An applicant who refuses to take a drug and alcohol test shall be disqualified from further consideration for the conditionally offered position. Refusal by a driver to submit to controlled substance or alcohol testing will be considered a positive test result, will cause disqualification from performing safety-sensitive functions, and may appear on the driver's permanent record. Drivers who refuse to submit to testing will be subject to discipline, up to and including termination. In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements, beginning January 6, 2020, the County will report a driver's refusal to submit to a DOT test for drug or alcohol use to the Clearinghouse within three business days. If an applicant refuses to submit to pre-employment controlled substance testing, any applicable conditional offer will be withdrawn. Refusal by any other employee to submit to controlled substance and/or alcohol testing in accordance with this policy will be considered a positive test result and will be just cause for disciplinary action.

For purposes of this section, an applicant, driver or employee is considered to have refused to submit to an alcohol or controlled substance test when the driver:

- Fails to provide adequate breath for alcohol testing without a valid medical explanation after he or she has received notice of the requirement for breath testing.
- Fails to provide adequate urine for controlled substance testing without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing.
- Fails to report for testing within a reasonable period of time, as determined by the County.
- Fails to remain at a testing site until testing is complete.
- In the case of directly observed or monitored collection, fails to permit observation or monitoring.
- Fails or declines to take a second test as required by the County and/or collector.
- Fails to undergo a medical examination as directed by the County pursuant to federal law.
- Refuses to complete and sign the alcohol testing form, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in any way that prevents the completion of the testing process.
- Engages in conduct that clearly obstructs the test process.

An employee refusing to take a drug and alcohol test under this policy shall not be permitted to perform safety sensitive functions and will be considered insubordinate and will be subject to disciplinary action including possible dismissal.

An employee or job applicant who, on religious grounds, refuses to undergo drug or alcohol testing of a blood sample will not be considered to have refused testing, unless the employee or job applicant also refuses to undergo drug or alcohol testing of a urine sample.

LIMITATIONS ON EMPLOYEE DISCHARGE, DISCIPLINE, OR DISCRIMINATION

An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

An employer may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test, or cannabis test requested by the employer unless the following conditions have been met:

(1) the employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or, alcohol, or cannabis counseling or rehabilitation program, whichever is more appropriate, as determined by the employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of substance use disorder; and

(2) the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

An employer may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the employer believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.

An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to drug or alcohol or cannabis testing unless the employee was under an affirmative duty to provide the information before, upon, or after hire.

An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process or cannabis testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

An employer may discipline, discharge, or take other adverse personnel action against an employee for cannabis flower or cannabis product use, possession, impairment, sale, or transfer while an employee is working, on the employer's premises, or operating the employer's vehicle, machinery, or equipment as follows:

If, as the result of consuming cannabis flower or a cannabis product, the employee does not possess that clearness of intellect and control of self that the employee otherwise would have;

If cannabis testing that the employer requested pursuant to MN statute 181.951 subd 8, paragraph (d) and (e), verifies the presence of cannabis following a confirmatory test;

As provided in the employer's written work rules for cannabis and cannabis testing, provided that the rules are in writing and in a written policy that contains the minimum information required by section 181.952; or as otherwise authorized under state or federal law.

If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the employer may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test.

NOTICE OF TEST RESULTS

Within three working days after receipt of a test result report from the testing laboratory, an employer shall inform in writing (APPENDIX D) an employee or job applicant who has undergone drug, alcohol or **cannabis** testing of (1) a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test and (2) the right to request and receive from the employer a copy of the test result report on any drug, alcohol, or **cannabis** test. In the case of a positive test result on a confirmatory test, the employer shall also, at the time of this notice, inform the employee or job applicant in writing of the rights provided under "*RIGHTS OF EMPLOYEE AND JOB APPLICANTS*" section.

LABORATORY TESTING AND REPORTING

A testing laboratory shall conduct a confirmatory test on all samples that produced a positive test result on an initial screening test. A laboratory shall disclose to the employer a written test result report for each sample tested within three working days after a negative test result on an initial screening test or, when the initial screening test produced a positive test result, within three working days after a confirmatory test. A test report must indicate the drugs, alcohol, or **cannabis**; or drug, alcohol or **cannabis** metabolites tested for and whether the test produced negative or positive test results. If the confirmatory test does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or applicant.

CONFIRMATORY RETESTS

All applicants and employees subject to this policy may request a confirmatory retest of the original sample at the employee's or applicant's own expense after notice of a positive test result. Any confirmatory retest must be requested in writing by the employee or applicant within five (5) working days after the employee or applicant received notice of the positive test result. If the confirmatory retest

does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or applicant. If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the employer may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test.

The employee and job applicant protections provided under sections 181.950 to 181.956 do not apply to employees and job applicants where the specific work performed requires those employees and job applicants to be subject to drug and alcohol testing pursuant to:

- (1) federal regulations that specifically preempt state regulation of drug and alcohol testing with respect to those employees and job applicants;
- (2) federal regulations or requirements necessary to operate federally regulated facilities;
- (3) federal contracts where the drug and alcohol testing is conducted for security, safety, or protection of sensitive or proprietary data; or
- (4) state agency rules that adopt federal regulations applicable to the interstate component of a federally regulated industry, and the adoption of those rules is for the purpose of conforming the non-federally regulated intrastate component of the industry to identical regulation.

CONFIDENTIALITY OF TEST RESULTS

All alcohol/controlled substances test results and required records are considered private data and shall be protected as such as required by the Minnesota Data Practices Act.

Positive test results from an employer drug or alcohol testing or cannabis testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

COST OF REQUIRED TESTING

The County will pay for the cost of pre-employment, post-accident, random, and reasonable substance and alcohol testing requested or required of all job applicants and employees. The employee must pay for the cost of all requested confirmatory re-tests, return-to-duty, and follow-up testing.

CONTACT PERSON

Wilkin County has designated the Safety/Risk Specialist or designee as the person responsible to coordinate the implementation, direction and administration of the County's alcohol and controlled substance policy.

ADOPTION

This Drug and Alcohol Use policy was adopted by motion of the Wilkin County Board of Commissioners at their regular meeting of _____ and is effective that date. Wilkin County retains the right to modify this policy at any time to address minor provisions such as test collecting or by motion of the Board of Commissioners.

APPENDIX A

PROCEDURE FOR RANDOM TESTING – SAFETY SENSITIVE POSITIONS

Employees covered under this policy are assigned an identification number by the Vault System. Vault operates the random pool from which included employees are chosen.

On a random date during the first and second half of the calendar year, Vault generates a random list of employees that equates to twenty-five (25%) percent of those in the pool. Thirteen (13%) percent during the first half year, twelve (12%) percent during the second half year. Round up or down if number is not whole so 25% is maintained. Of the 25% tested for drugs, 5% will also be tested for alcohol. A list of alternate test employees is also generated in the event of need.

The random list is sent to the Safety/Risk Specialist. The Safety/Risk Specialist notifies the affected employee's supervisor or Sheriff (Sheriff's Office). If the Chief Deputy is selected, the Sheriff is notified. If the Sheriff opts into the policy and is selected, the Human Resources Director is notified.

The Safety/Risk Specialist will assist supervisor's with scheduling a date/time for collection at an identified location. This appointment will be provided to the employee's supervisor along with a form to supply to the employee indicating the date/time of appointment, location, and type of test. Prior to requesting an employee to undergo drug or alcohol testing, the employee shall have signed a form (Appendix C) acknowledging they have seen the employer's drug and alcohol testing policy.

Employees selected for random tests must not be notified more than 24 hours in advance of their scheduled test.

- › If an employee is confirmed to be working, no prior notification is necessary, they can be called from their duty station as soon as feasible.
- › Employees drawn but not working (day off, vacation, leave, etc.) will be notified immediately upon returning to work of the required test.
- › If an employee is on extended leave (medical, military, etc.) and cannot be expected to test before the next random drug test date, the first alternate employee on the list will be selected to test. This procedure continues until the testing is complete.
- › Employees that have to drive to an on-site testing location should be notified in a timely manner so they may be on time for the appointment.
- › Employees shall not leave the test collection location until a test is provided.

Test collection will occur at the following location:

- › Sanford Health
Lab Department
332 2nd Ave N
Wahpeton, ND
58075
701-642-7000

Controlled substances testing is conducted by analyzing an employee's urine specimen. Employees selected for testing will provide a urine sample at a designated collection site. Urine samples will be split in accordance with Federal Highway Administration regulations as follows: The collection site person will pour the urine specimen into two bottles used for "Primary" and "Split", seal both specimens, complete a chain of custody document, and prepare the bottles for shipment to the contracted testing laboratory for analysis.

If the employee is unable to provide the appropriate quantity of urine, the collection site person will instruct the employee to drink not more than 40 ounces of fluids and, after a period of no more than three hours, again attempt to provide a complete sample. If the employee is still unable to provide a complete sample, the testing site person will cease attempts and notify the contracted *Medical Review Officer (MRO)* who will refer the employee for a medical evaluation to determine if the employee's inability to provide a specimen is genuine or constitutes a refusal to test. In such instances where a job applicant is unable to provide the appropriate quantity of urine during pre-employment testing, Wilkin County reserves the right not to refer a job applicant for a follow-up medical evaluation and to revoke the employment offer.

Drug test results are reported directly to the MRO by the testing laboratory. The MRO reports negative results to the Wilkin County Safety/Risk Specialist or designee. The negative report is filed in the individual's confidential file and no further action is necessary. If the test result is confirmed positive, the MRO will first contact the employee directly, on a confidential basis, to determine whether the person wishes to discuss the positive result. The MRO will review any medical records supplied by the employee to determine if a confirmed positive test is the result of the employee having taken legally prescribed medication. When an employee challenges the laboratory test and positive result, the MRO will notify the employee that he/she has 72 hours in which to request a test of the split specimen. Tests of the split specimen are at the employee's expense unless the employee is on an authorized absence, at which time Wilkin County will assume responsibility for the split testing on behalf of the employee and at no expense to the employee. The MRO will report a positive test result to the Wilkin County Safety/Risk Specialist or designee only after determining and documenting that there is no legitimate medical reason for a positive test result as received from the testing laboratory.

If the MRO is unable to contact the individual directly after making reasonable, documented efforts, he/she will contact the Wilkin County Safety/Risk Specialist or designee who will direct the employee to contact the MRO. The Safety/Risk Specialist or designee will inform the MRO about vacationing individuals or individuals absent from work because of other special circumstances and who are therefore unable to undergo testing at the time selected or who otherwise are unable to contact the MRO in a timely manner. If the Safety/Risk Specialist or designee is unable to contact a person who otherwise should be available for testing or contacting a person who otherwise should be available for testing or contacting the MRO, the department head/supervisor will be notified and the employee placed on suspension until the employee undergoes testing or contacts the MRO, as the case may be.

The MRO may verify a positive test without having communicated directly with the employee about the test result under the following circumstances:

- › The employee expressly declines the opportunity to discuss the test results;
- › The employee has not contacted the MRO within five days of being instructed to do so by the Safety/Risk Specialist or designee.

The Federal Highway Administration rules are followed and require breath testing be administered by a *breath alcohol technician (BAT)* using an *evidentiary breath test (EBT)*. Two breath tests are required to determine if a person has a prohibited alcohol concentration. Any result less than 0.02 alcohol concentration or less is considered a negative test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. If an employee attempts and fails to provide an adequate amount of breath, the Safety/Risk Specialist or designee will direct the employee to obtain written evaluation form a licensed physician to determine if the employee's inability to provide a specimen is genuine or constitutes a refusal to test. Alcohol test results are reported directly to the Safety/Risk Specialist or designee.

Reference: [Procedures for Transportation Workplace Drug and Alcohol Testing Programs | US Department of Transportation](#)

APPENDIX B

PROCEDURE FOR RANDOM TESTING – COMMERCIAL DRIVERS LICENSE (DOT)

Employees covered under this policy are assigned an identification number by Vault. Vault operates the random pool from which included employees are chosen from.

At the beginning of each calendar quarter, a random list of selected participants is generated. A random list of alternates is also generated in the event of need. The number of employees selected throughout the year will equate to the federally mandated fifty (50%) percent of the average number of employees for controlled substance testing and ten (10%) percent for alcohol testing. This number is subject to change based on the Federal Motor Carrier Safety Administration (FMCSA) Administrator's decision

The random list is sent to the Safety/Risk Specialist. The Safety/Risk Specialist notifies the affected employee's supervisor and provides an electronic form via email that the supervisor will complete with the location of the scheduled appointment, name of employee, and date/time of scheduled test. The form will be printed for the employee to reference. The notified supervisor is responsible for scheduling the test collection with the collection site.

- › If an employee is confirmed to be working, no prior notification is necessary, they can be called from their duty station
- › Employees drawn but not working (day off, vacation, leave, etc.) will be notified immediately upon returning to work of the required test
- › If an employee is on extended leave (medical, military, etc.) and cannot be expected to test before the next random drug test date, the first alternate employee on the list will be selected to test. This procedure continues until the testing is complete.
- › Employees that have to drive to an on-site testing location should be notified in a timely manner so they may be on time for the appointment.

Controlled substances testing is conducted by analyzing an employee's urine specimen. Employees selected for testing will provide a urine sample at a designated collection site. Urine samples will be split in accordance with Federal Highway Administration regulations as follows: The collection site person will pour the urine specimen into two bottles used for "Primary" and "Split", seal both specimens, complete a chain of custody document, and prepare the bottles for shipment to the contracted testing laboratory for analysis.

If the employee is unable to provide the appropriate quantity of urine, the collection site person will instruct the employee to drink not more than 40 ounces of fluids and, after a period of no more than three hours, again attempt to provide a complete sample. If the employee is still unable to provide a complete sample, the testing site person will cease attempts and notify the contracted *Medical Review Officer (MRO)* who will refer the employee for a medical evaluation to determine if the employee's inability to provide a specimen is genuine or constitutes a refusal to test. In such instances where a job applicant is unable to provide the appropriate quantity of urine during pre-employment testing, Wilkin County reserves the right not to refer a job applicant for a follow-up medical evaluation and to revoke the employment offer.

Drug test results are reported directly to the MRO by the testing laboratory. The MRO reports negative results to the Wilkin County Safety/Risk Specialist or designee. The negative report is filed in the individual's confidential file and no further action is necessary. If the test result is confirmed positive, the MRO will first contact the employee directly, on a confidential basis, to determine whether the person wishes to discuss the positive result. The MRO will review any medical records supplied by the employee to determine if a confirmed positive test is the results to the employee having taken legally

prescribed medication. When an employee challenges the laboratory test and positive result, the MRO will notify the employee that he/she has 72 hours in which to request a test of the split specimen. Tests of the split specimen are at the employee's expense unless the employee is on an authorized absence, at which time Wilkin County will assume responsibility for the split testing on behalf of the employee and at no expense to the employee. The MRO will report a positive test result to the Wilkin County Safety/Risk Specialist or designee only after determining and documenting that there is no legitimate medical reason for a positive test result as received from the testing laboratory.

If the MRO is unable to contact the individual directly after making reasonable, documented efforts, he/she will contact the Wilkin County Safety/Risk Specialist or designee who will direct the employee to contact the MRO. The Safety/Risk Specialist or designee will inform the MRO about vacationing individuals or individuals absent from work because of other special circumstances and who are therefore unable to undergo testing at the time selected or who otherwise are unable to contact the MRO in a timely manner. If the Safety/Risk Specialist or designee is unable to contact a person who otherwise should be available for testing or contacting the MRO, the department head/supervisor will be notified and the employee placed on suspension until the employee undergoes testing or contacts the MRO, as the case may be.

The MRO may verify a positive test without having communicated directly with the employee about the test result under the following circumstances:

- › The employee expressly declines the opportunity to discuss the test results;
- › The employee has not contacted the MRO within five days of being instructed to do so by the Safety/Risk Specialist or designee.

Federal Highway Administration alcohol test rules require breath testing be administered by a *breath alcohol technician (BAT)* using an *evidentiary breath test (EBT)*. Two breath tests are required to determine if a person has a prohibited alcohol concentration. Any result less than 0.02 alcohol concentration or less is considered a negative test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. If an employee attempts and fails to provide an adequate amount of breath, the Safety/Risk Specialist or designee will direct the employee to obtain written evaluation form a licensed physician to determine if the employee's inability to provide a specimen is genuine or constitutes a refusal to test. Alcohol test results are reported directly to the Safety/Risk Specialist or designee.

Reference: [Procedures for Transportation Workplace Drug and Alcohol Testing Programs | US Department of Transportation](#)

APPENDIX C

**POLICY
ACKNOWLEDGMENT**

I, _____, acknowledge receiving and reviewing the Alcohol and Drug Free Workplace Policy & Procedures.

Signature _____

Date _____

APPENDIX D

NOTICE OF TEST RESULTS

To:

From

:

Date:

Subject: Notice of test results and notification of rights

As an employee or job applicant of Wilkin County you have been required to undergo alcohol and/or drug testing in conformance with the Wilkin County alcohol and drug free workplace policy.

Test results

Initial test results were (negative) (positive)

Confirmatory test results were (negative) (positive) (na if initial test is negative)

Notification of rights

- 1) You have the right to request and receive a copy of the test result report.
- 2) You may request a confirmatory retest of the original sample at your own expense after notice of a positive test result on a confirmatory test. To do so, you must notify ___ in writing within five working days after receipt of this notice of your intention to obtain a confirmatory retest and must submit with that request \$_____ to cover the cost. Within three working days after receipt of your written request and payment, the testing laboratory will be notified to conduct the confirmatory retest or to transfer the sample to another licensed laboratory to conduct the retest which must use the same drug and alcohol threshold detection levels as used in the original confirmatory test. If the retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against you as an employee or applicant.
- 3) You may not be discharged, disciplined, discriminated against or required to undergo rehabilitation on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.
- 4) An employee who has a positive test result may not be discharged if this is the first such result for the employee on a test requested by Wilkin County unless the following conditions are met:
 - a) You have first been given an opportunity to participate in, at your own expense or pursuant to coverage under your employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by your employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and

b) You have either refused to participate in the counseling or rehabilitation program or have failed to successfully complete it, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

5) Notwithstanding item 4 above, you may be temporarily suspended, or transferred to another position at the same rate of pay, pending the outcome of the confirmatory test, and if requested, the confirmatory retest, if the employer believes it is reasonably necessary to protect the health or safety of you, other employees, or other persons. If you are suspended without pay you will be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.