CITY OF ALBUQUERQUE

February 8, 2011



ADMINISTRATIVE INSTRUCTION NO. __7-1-2 (Amended 2/17/11)

SUBJECT: Amended Supplement to Substance Abuse Policy (2/7/06)

This Administrative Instruction is to clarify the current Substance Abuse Policy being applied by the City of Albuquerque for its employees. The City enacted a Substance Abuse Policy in 1999. The City revised the Substance Abuse Policy in February 6, 2006 (retroactively effective as of January 1, 2006). The Second Judicial District Court invalidated the discipline provisions of the 2006 Substance Abuse Policy. Until a new Substance Abuse Policy is enacted, the City will apply the 2006 policy but will apply the discipline procedures in the 1999 policy.

The initial Version of this supplement contained an error in transcription which has been corrected in this amended supplement to Administrative Instruction 7-1-2 (Revised).

For non-public safety employees,

The 2006 Policy at Q states:

A positive drug and/or alcohol test or refusal to test will result in disciplinary action as specified herein. ... (5) Refusal to test shall be considered a positive test result and a direct act of insubordination and shall result in termination. (6) The first instance of a positive test result or a refusal to test from a breath and/or urine sample submitted as a result of a reasonable suspicion, post accident, random, return-to-duty, or follow-up drug and/or alcohol test shall result in termination from City employment.

The provisions applicable to non-public safety employees shall be amended to read:

- (5) Refusal to test shall be considered a positive test result and a direct act of insubordination and shall result in termination.
- (6) Unless the employee has a prior record as provided in Q(9) below for the first instance of a verified positive test from a sample submitted as the result of a random, post-accident, or reasonable suspicion drug/alcohol test, disciplinary action against the employee shall include:
 - (a) A twenty (20) work day suspension without pay; and
 - (b) Mandatory referral to a Substance Abuse Professional (SAP) for assessment, formulation of a treatment plan, and execution of a return-to-work agreement.
 - (c) Failure to execute, or remain compliant with, the return-to-work agreement shall result in termination from City employment.
 - (d) Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy.

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- (e) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall result in termination.
- (f) Submitting to a periodic unannounced follow-up drug/alcohol test the result of which is a verified positive shall result in termination from City employment.
- (7) A verified positive post-accident drug and/or alcohol test shall result in termination.
- (8) The cost of any treatment or rehabilitation services will be paid directly by the employee or the employee's insurance provider. If the SAP has not released the employee to return to duty at the completion of the 20 day suspension, the employee will be permitted to take accrued leave to participate in the SAP prescribed treatment program. If insufficient, the employee shall be placed on leave without pay in accordance with the Personnel Rules and Regulations. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.
- (9) For an employee who has in his/her employment record one of the following, the first instance of a verified positive test shall result in termination from City employment:
 - (a) a total of six days of suspension in the preceding two years; or,
 - (b) in the preceding year has received a notice of over utilization of sick leave as provided in the Personnel Rules and Regulations; or,
 - (c) in the preceding year has received a suspension for tardiness or absenteeism.
- (10) The second instance of a verified positive test result from a sample submitted under the random, reasonable suspicion, return-to-duty, or follow-up drug/alcohol test provisions herein shall result in termination from City employment.
- (11) A Voluntary Referral or participation in the City Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City.
- (12) Failure of an employee to report within five days a conviction pursuant to a criminal drug statute for a violation occurring in the workplace shall result in disciplinary action, up to and including termination.

This supplemental provision is retroactive to November 3, 2009.

David S. Campbell

Chief Administrative Officer

Date: