

# Warren County Board of Supervisors

## RESOLUTION NO. 138 OF 2019

**RESOLUTION INTRODUCED BY SUPERVISORS LOEB, LEGGETT, SOKOL, HYDE, MAGOWAN, HOGAN, WILD, DRISCOLL AND DICKINSON**

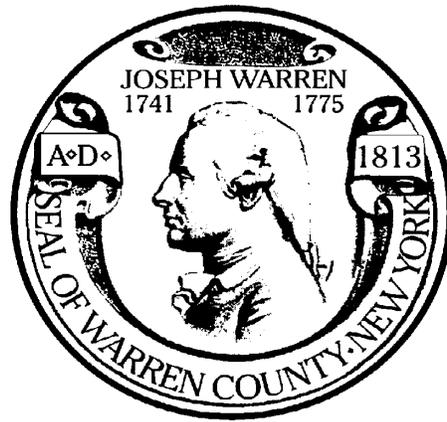
### **ADOPTING REVISED WARREN COUNTY SUBSTANCE ABUSE POLICY FOR EMPLOYEES**

WHEREAS, the Self-Insurance Administrator presented to the Support Services Committee a Substance Abuse Policy for employees which was in place but not previously adopted by resolution, and

WHEREAS, the Support Services Committee has reviewed the Policy presented by the Self-Insurance Administrator and has recommended that the same be advanced to the full Board of Supervisors for consideration, now, therefore, be it

RESOLVED, that the Warren County Substance Abuse Policy for Employees, annexed hereto, be and the same hereby is, adopted as the official Policy for Warren County, and be it further

RESOLVED, that any and all prior Substance Abuse Policies for employees, Resolutions or parts thereof inconsistent with the annexed are hereby repealed effective March 15, 2019.



**Warren County  
Substance Abuse Policy**

For Employees

Adopted: \_\_\_\_\_

**1 STATEMENT OF PURPOSE**

- 1.1 Warren County is firmly committed to ensuring a safe, healthy, productive and efficient work environment for our employees and the public we serve. The County has a vital interest in ensuring a safe, healthy and efficient working environment and in preventing accidents and injuries resulting from the misuse of alcohol or drugs. The unlawful or improper presence or use of drugs or alcohol in the workplace presents a danger to everyone. For these reasons, the County has established the following substance abuse policy.
- 1.2 This policy applies to all County employees, including those in management and supervisory positions. This policy does not apply to driver employees subject to the drug and alcohol testing requirements of the U.S. Department of Transportation, Federal Motor Carrier Safety Administration or to departments who have their own approved substance abuse policy.
- 1.3 The County maintains a policy of non-discrimination and will endeavor to make reasonable accommodations to assist recovering addicts or alcoholics and those having a medical history reflecting treatment for substance abuse conditions. We encourage employees to seek assistance before their drug and alcohol use renders them unable to perform their essential job functions or jeopardizes the health and safety of themselves or others.
- 1.4 Questions regarding the meaning or application of this policy should be directed to the County Human Resources Department.
- 1.5 This policy is not a contract of employment. If an employee fails to comply with this policy, the employee will be subject to disciplinary action, up to and including termination and in accordance with the terms of any collective bargaining agreement and applicable Civil Service law and rules.

**2 PROHIBITED CONDUCT**

- 2.1 Prohibited Conduct Concerning Alcohol And Drugs: Any of the following conduct by an employee is prohibited:
  - a. Engaging in the illegal or unauthorized use of drugs at any time during business hours. This includes (but is not limited to) reporting for work after the illegal or unauthorized use of a drug, or using a drug illegally or in an unauthorized manner during the employee's workday (including meal and other break periods).

EXCEPTION: This prohibition does not apply to medications: (1) that have been legally prescribed to the employee; (2) that are being used in accordance with the prescription; and (3) which the employee has been advised by the employee's physician will not adversely affect the employee's safety at work, or the safety of others in the workplace or encountered in the course of working. If the employee is advised that his or her use of a medication is likely to adversely affect the employee or others at work, the employee has the responsibility to ask whether another medication can be prescribed or, if not, to advise Human Resources that he or she has been prescribed medication which may cause an adverse effect, without disclosing the medication's name or the reason for its use, in order to determine if an accommodation can be made while the employee continues to take the medication.

- b. Reporting for work or remaining on duty after the employee has consumed alcohol in an amount that may adversely affect or does adversely affect the employee's job performance.

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- c. Consuming alcohol by an employee who performs safety-sensitive functions, at any time, during an employee's workday regardless of whether an employee is on or off county premises, including (but not limited to) during an employee's personal meal and other break periods.

This prohibition does not apply to the moderate consumption of alcohol by employees of legal drinking age during non-working hours at social events sponsored by the county.

- d. Driving County vehicles at any time, including during non-business hours, if the employee has consumed any alcoholic beverages.
- e. Serving, consuming or bringing alcoholic beverages on or onto county premises.
- f. Receiving a confirmed positive drug test result, or confirmed alcohol test result of 0.04 or greater, on any test required under this policy.
- g. Engaging in any conduct which constitutes a "refusal to submit to a drug or alcohol test" as defined in Section 2.2 of this policy.
- h. Failing to stay in contact with the County or its Medical Review Officer (MRO) while awaiting the results of a drug test.
- i. Consuming alcohol within the eight-hour period immediately following a work-related accident (as defined in Section 3.1.d) or until the employee has submitted to an alcohol test (refer to Section 3.1.c) whichever occurs first.
- j. Engaging in the unlawful or unauthorized manufacture, distribution, dispensation, solicitation, sale, purchase, transfer or possession of controlled substances or alcohol under any of the following circumstances:
  - i. While an employee is on County-paid time.
  - ii. While an employee is on County property.
  - iii. While an employee is otherwise engaged in activities for or on behalf of the County.
  - iv. An employee's illegal conduct involving drugs or alcohol during non-work times may also result in disciplinary action, up to and including immediate termination.

2.2 Refusal to Submit to a Drug or Alcohol Test: The refusal to submit to any drug or alcohol test required under the County's policy, including tests that employees agree to take in connection with rehabilitation provided under this policy, will result in disciplinary action up to and including termination. An employee who engages in any of the following conduct will be considered to have refused to submit to a drug or alcohol test:

- a. Refusing to provide a urine or breath sample, or failing to provide an adequate amount of urine or breath without a legitimate medical explanation;
- b. Failing to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the County as part of the "shy bladder" procedures, or the insufficient breath procedures;
- c. Refusing to complete the chain-of-custody form or another testing form whose completion is required and necessary to conduct the test;
- d. Refusing or failing to notify the County promptly that the employee was involved in a work-related accident (as defined in Section 3.2) without a valid excuse;

- e. Refusing or failing to report promptly to the site where the test will be conducted after the employee is notified that he or she must submit to the test;
  - f. Failing or declining to take a second drug or alcohol test that the County or collector has directed to be taken;
  - g. Failing to cooperate with any part of the testing process such as by delaying the collection, testing or verification process;
  - h. Adulterating, excessive dilution, or substituting a urine sample, or attempting to adulterate, dilute or substitute a sample;
  - i. Refusing escort to or from the collection site; or
  - j. Otherwise engaging in conduct that clearly obstructs or manipulates, or attempts to obstruct or manipulate the testing process.
- 2.3 Consumption of Food or Food-Products Containing Hemp: The consumption of food and food-products containing hemp, (for example, “Seedy Sweeties” and hemp oil) may cause an employee to test positive for marijuana. Use of such hemp products will not be accepted by the County as a valid explanation for a positive test. A test result that is positive as a result of an employee’s consumption of food or food-products containing or made from hemp or hemp products will be reported as a positive test. (Refer to Section 6.2 of the policy concerning the consequences for testing positive).
- 2.4 Manager Responsibilities: No supervisor or manager who has actual knowledge that an employee has engaged in or is engaging in conduct prohibited under this policy shall permit the employee to work or continue to work under such circumstances and should report the incident to Human Resources.
- 2.5 Compliance with Federal Contract Requirements: The County is subject to the federal Drug-Free Workplace Act (DFWA). The DFWA requires employees who are convicted under a criminal drug statute for a violation that occurs in the workplace to advise the County of their conviction within 5 days of the conviction. Such employees will be subject to disciplinary action, up to and including termination.

**3 REQUIRED TESTS**

Except as otherwise provided in this policy, employees are required to submit to testing under the circumstances described below. Except where conditions otherwise require, all tests will normally be conducted either during or immediately after the regular work period, which includes any period when an employee is working overtime.

3.1 “Reasonable Suspicion” Drug and Alcohol Testing

- a. An employee must submit to a drug and/or alcohol test whenever the County, in accordance with applicable state or local law, has reason to suspect the employee has or may have used drugs or alcohol in violation of the County’s policy.
- b. Except as state or local law may otherwise provide, the County’s “reasonable suspicion” determination will be based on specific, current observations, that can be verbalized, including but not limited to the employee’s appearance, behavior, conduct, speech or body odors. These

observations may also include indications of chronic use of, or the effects of withdrawal from, drugs or alcohol. The determination may be based on a single instance of conduct involving a serious potential risk of harm to the employee or others, or to County property or the property of others, including, but not limited to, the property of the County's customers and suppliers. "Reasonable Suspicion" determinations will be made by, and/or in conjunction with, personnel who have received training on the signs and symptoms of alcohol misuse and drug use.

- c. In addition, whenever an employee causes or is involved in a work-related accident (as defined below) or near miss, and the County has reason to suspect that the employee's use of drugs or alcohol may have caused or contributed to the incident, the employee will be required to submit to a "reasonable suspicion" drug and/or alcohol test.
- d. As used in this policy, "work-related accident" means an accident:
  - i. Which occurs while the employee is on County premises, or is off-site while engaged in activities for or on behalf of the County, or occurs while the employee is operating a vehicle for or on behalf of the County, and
  - ii. The incident results in one or more of the following: (1) a fatality, (2) bodily injury to any individual who, as a result of the accident, requires immediate medical treatment (excluding first aid) at or away from the scene of the accident, (3) property damage to County property or to the property of a others, or (4) in the case of a vehicle accident, one or more vehicles involved in the accident incurs disabling damage as a result of the accident, requiring the vehicle(s) to be transported away from the scene by another vehicle
- e. All "reasonable suspicion" tests (including tests required after an accident) will be administered as soon as possible following the determination.
- f. Except where circumstances do not permit, the County will transport or make arrangements for the transport of the employee to and from the sample collection site.
- g. An employee who is required to submit to a "reasonable suspicion" test (including tests required after an accident) will be suspended with pay after the completion of the drug or alcohol tests. The County also reserves the right to evaluate the employee's conduct that triggered the drug and/or alcohol test to determine if the conduct in and of itself warrants disciplinary action or other administrative action, up to and including termination.

**4 EMPLOYEE SELF-IDENTIFICATION OF SUBSTANCE ABUSE PROBLEM**

- 4.1 Consistent with and subject to the County's policies concerning leaves of absence, employees who voluntarily self-identify themselves as having a drug or alcohol problem and who voluntarily request assistance for such problems will be referred to the Employee Assistance Program for an evaluation and for appropriate counseling, treatment, or a rehabilitation program, if recommended. The cost of the evaluation and any counseling, treatment or rehabilitation is the employee's responsibility. (For further details concerning the employee's payment obligations, employees should refer to their individual medical insurance plan.) Leaves taken under this section may be continuous or intermittent, or a combination of both, depending on the recommendation of the substance abuse professional.
- 4.2 This request must be made before the employee is required to submit to a drug or alcohol test required by this policy or is found to have violated other provisions of this policy. Employees may not use this self-identification provision to avoid taking a test when required under this policy or to avoid being counseled for failing to take such a test or failing to comply.

- 4.3 Once leave commences, periodic recertification that the employee is actively continuing to participate in the program, together with progress reports, shall also be required. As a further condition of taking such leave, the employee will be required to authorize the attending substance abuse professional to communicate directly with the County, including release of the employee's relevant treatment records to the County. All such oral and written communications between the substance abuse professional and the County shall be treated as confidential.
- 4.4 Except where the federal, state or local laws prohibits, all leave time taken for the evaluation, counseling, treatment or rehabilitation will be counted against any paid time off to which the employee may be entitled under County policy.
- 4.5 Consistent with and subject to the County's policies concerning leaves of absence and NYS Civil Service Laws, employees who take extended leave and successfully complete their counseling, treatment or rehabilitation program may be reinstated to their former position or to an equivalent position, provided that there is an available position. However, an employee will be entitled to reinstatement only if he/she would have continued to be employed had medical leave not been taken. An employee is not entitled to reinstatement if, because of layoff, reduction in force, or other reason, the employee would not be employed at the time at which job restoration is sought.

## **5 TESTING PROCEDURES**

The County's drug and alcohol testing procedures comply with applicable state and federal law. Except as otherwise may be required or otherwise permitted by the applicable state or federal law, the County's drug and alcohol test procedures will follow the Federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, in effect on January 18, 2001, and in accordance with revisions to take effect on August 1, 2001 (with the exception of the provisions pertaining to Public Interest Exclusions and related provisions). The county's procedures ensure the integrity, confidentiality and reliability of the testing process, safeguard the validity of the test results and ensure that test results are attributed to the correct individual. These procedures are also intended to minimize the impact upon the privacy and dignity of the employees being tested. A copy of the federal procedures and any applicable state law is available for review from the County Attorney.

## **6 CONSEQUENCES FOR POLICY VIOLATIONS**

Employees who violate the County's policy are subject to the following consequences:

- 6.1 Refusal to Submit: Employees who refuse to submit to a test when requested will be subject to disciplinary action, up to and including termination. Refer to Section 2.2 of this policy for a description of the conduct that will be considered as refusing to submit to a test.
- 6.2 Positive Test Results:
  - a. Temporary suspension with pay: Any employee who is required to submit to a reasonable suspicion-based drug or alcohol test (including a post-accident test) will be temporarily suspended with pay.
  - b. Employees who test positive: Any employee who receives a verified positive drug test, or a confirmed alcohol test of 0.04 BAC or greater, the employee will be subject to disciplinary action, up to and including termination.
- 6.3 Other Policy Violations: The employee will be subject to disciplinary action, up to and including termination.
- 6.4 Fitness-for-Duty Evaluation: Whenever an employee is required to submit to a "reasonable suspicion" test (including a test following an accident or near miss) and receives a positive test caused by the

employee's legal and authorized use of a controlled substance, the County will require the employee to submit to a fitness-for-duty evaluation. An employee who tests negative may also be required to submit to a fitness-for-duty evaluation. The evaluation may include a review of the employee's medical records, a medical examination or both. The purpose of the evaluation is to determine whether the employee poses a significant risk of substantial harm to the health and safety of the employee or others in the workplace, including customers and visitors. Employees will be required to provide the necessary authorization for obtaining medical records and conducting the examination. Depending on the results of

the evaluation, the County will consider whether the safety or health risk can be eliminated or sufficiently reduced by a reasonable accommodation, if applicable.

- 6.5 Potential Forfeiture of Worker's Compensation and/or Unemployment Compensation Benefits: An employee's violation of the County's policy will be considered as gross and willful misconduct. In addition to the disciplinary action and other consequences imposed under this policy, therefore, such employee misconduct may also result in the denial of unemployment compensation under applicable state law. Additionally, employees who are injured as a result of using drug or alcohol in violation of this policy and/or the other County safety rules, also risk forfeiture of workers' compensation benefits under the applicable state law.

## **7 INSPECTIONS**

The County reserves the right to conduct searches of County property. Pursuant to this provision, the County is authorized to search lockers, desks, file cabinets, closets, toolboxes, vehicles, and any other County owned item in which drugs or alcohol may be present while on County property or in a County vehicle. Additionally, the County may search a vehicle owned by the County and used by the employee, regardless of whether the vehicle is located on County property at the time. County management or local authorities may conduct searches. To the extent County management requests the search and the employee is present, the employee may refuse the search; provided however, that such refusal may result in disciplinary action, up to and including termination for refusal to cooperate. The County reserves the right to conduct searches on its property or authorize searches by law enforcement officers on its property without the employee being present.