



## St. Johns County Administrative Code Section: Personnel

<b>Title: 412 Drug Testing</b>	<b>Issued: Apr 1992</b>
<b>Reference: F.S 440.102 &amp; F.S. 397.311</b>	<b>Revised: Aug 2007</b>

### **412.1 Purpose**

The St. Johns County Board of County Commissioners acknowledges the problem of substance abuse in our society. It is a serious and pervasive problem that threatens the health and safety of our employees, our community and our government. This policy is pursuant to the drug testing amendment to the Florida Worker's Compensation Law, the Worker's Compensation Drug Testing Regulations, Fla. Admin. Code 38F-9, Florida traffic and safety laws for commercial motor vehicles, F.S. 316.302, the Omnibus Transportation Employee Testing Act of 1991, and the Department of Transportation Controlled Substances Testing Regulations, 49 C.F.R. part 382 and part 40 (collectively referred to as "Applicable Law"). The County's primary concern is to protect the health and safety of its employees and the general public. In addition, the County wishes to qualify for the Workers' Compensation premium discount provided under Fla. Stat. 627.0915 and the presumption of intoxication provided under Fla. Stat. 440.09 and 440.101 with respect to employees who test positive for alcohol or illegal drug use following an on-the-job injury.

Unlike many other debilitating and life threatening afflictions, substance abuse usually begins voluntarily. Furthermore, substance abuse, while directly impacting the individual, has a harmful influence on the individual's family, friends, co-workers, employer and the community. In addition to the emotional costs, substance abuse can affect employee safety and robs government of time, productivity and profitability.

This policy is designated to provide employees with information to understand and recognize substance abuse. We believe this is the first step toward eliminating such abuse.

### **412.2 Authorization**

This policy has been promulgated pursuant to the requirements of the Florida Drug Free Workplace Program Section 440.102, Florida Statutes; the Workers' Compensation Drug Testing Rules enacted by the Florida Department of Labor and Employment Security, Division of Workers' Compensation and codified at Florida Administrative Code Chapter 38F-9; the Omnibus Transportation Employee Testing Act of 1991; regulations of the Federal Department of Transportation (DOT) contained in 49 CFR Part 40; regulations of the Federal Highway Administration contained in 49 CFR Parts 382 and 391; and Section 234.091, Florida Statutes.

### **412.3 Applicability**

This policy applies to all St. Johns County employees and job applicants. Upon reading this policy all employees are required to read and sign the form title, "Drug Testing Policy – Certificate of Acknowledgement." Employees covered by a collective bargaining agreement must comply with the provisions of the Policy mandated by State or Federal law regardless of the collective bargaining relationship.

### **412.4 Effective Date**

This Policy was adopted August 1, 1995 and revised August 23, 2007 for all employees not covered by a collective bargaining agreement. Employees covered by a collective bargaining agreement should refer to the agreement for an effective date.



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#### **412.5 Definitions**

For the purpose of construing the St. Johns County Drug and Alcohol Testing Policy, the following definitions apply:

- Accident/Injury - self-injury, unexplained damage to equipment or property, or an accident involving a commercial motor vehicle that results in the loss of human life, or that results in the receipt of a citation under State or Local law for a moving traffic violation arising from the accident.
- Alcohol - the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl isopropyl alcohol.
- Alcohol Use - the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- Collection Site - a place where individuals present themselves for the purpose of providing a specimen to be analyzed for the presence of drugs or alcohol.
- Commercial Driver - any person who operates a commercial motor vehicle and who is required to hold a commercial drivers license. This includes, but is not limited to: full time, regularly employed drivers; casual, intermediate or occasional drivers; leased drivers and independent, owner/operator drivers.
- Commercial Drivers License or “CDL” - a Class A, Class B, or Class C drivers license issued in accordance with the requirements of Chapter 322, Florida Statutes.
- Commercial Motor Vehicle - a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
  - Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
  - Has a gross vehicle weight rating of 26,001 or more pounds.
  - Is designed to transport 16 or more passengers, including the driver.
  - Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials regulations.
- Confirmation Test - for alcohol testing means a second test, following a screening test that provides quantitative data of alcohol concentration. For controlled substances testing confirmation test means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. The confirmation test for controlled substances will generally be gas chromatography/mass spectrometry (GC/MS).
- Controlled Substance - is synonymous with the term “drug” as defined herein.
- Drug - alcohol, including distilled spirit, wine, a malt beverage or an intoxicating liquor, a cannabinoid, marijuana (THC metabolite), cocaine, opiates, amphetamines, phencyclidine (PCP) hallucinogens, methaqualone, barbiturates, benzodiazepines, a synthetic narcotic, a designer drug or a metabolite of any of the substances listed in this paragraph.
- Drug Rehabilitation Program - a service provider that provides confidential, timely, and expert identification, assessment and resolution of employee drug abuse.
- Drug Test - any chemical, biological or physical instrumental analysis in conformity with this Policy, administered for the purpose of determining the presence or absence of a drug or its metabolites.
- Employee - a person employed by St. Johns County who is covered by the requirements of this Policy.
- Employee Assistance Program - an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment



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services, these services shall, in all cases, be provided by service providers pursuant to Section 397.311(28), Florida Statutes.

- Employer refers to St. Johns County.
- GC - gas chromatography. "GC/MS" means gas chromatography/mass spectrometry.
- Initial Drug Test - a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens, using immunoassay procedure or an equivalent, or a more accurate scientifically accepted method approved by the United States Food and Drug Administration or the Agency for Health Care Administration as such more accurate technology becomes available in a cost-effective form.
- Job Applicant - a person who has been offered a position with St. Johns County that is covered by this Policy, conditioned upon meeting the requirements of the Drug and Alcohol Testing Policy.
- Laboratory - a facility, inside or outside the State of Florida, certified by the United States Department of Health and Human Services or licensed and approved by the Agency for Health Care Administration to analyze specimens for the detection of drugs or alcohol as defined herein.
- Medical Review Officer or "MRO" - a licensed physician, employed with or under contract to the employer, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's confirmed positive test result in relation to the employee's medical history and any other relevant bio-medical information.
- Nonprescription Medication - a medication that is authorized pursuant to state or federal law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.
- Prescription Medication - a drug or medication obtained pursuant to a prescription.
- Reasonable Suspicion - an articulable belief that an employee possesses or uses drugs or alcohol in the workplace, or is intoxicated or impaired by drugs or alcohol, based on specific and particularized facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon a report of drug use, provided by a reliable and credible source or information that an employee has been involved in an accident while at work.
- "Refuse to Submit" - to a drug or alcohol test means that an employee: (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of this Policy; (2) fails to provide adequate urine for alcohol and controlled substances testing without a valid medical explanation after he/she has received notice of this Policy; or (3) engages in conduct that clearly obstructs the testing process.
- Safety-Sensitive Function - means a position in which drug impairment constitutes an immediate and direct threat to public health or safety and any of the on-duty functions set forth in 49 CFR Section 395.2, Paragraphs (1) through (7) and Section 440.102 (1)(0), Florida Statutes.
- Screening Test, "Initial Test"- in alcohol testing means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his/her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.
- Specimen - a breath, blood or urine sample of the human body capable of revealing the presence of alcohol or drugs or their metabolites.

#### **412.6 Notice of Implementation**

The implementation of the Drug and Alcohol Testing Policy, contained within the confines of this document, constitutes general notice to all employees of St. Johns County that each employee is required, as a condition of employment or continued employment, to fully comply with the provisions of the Drug and Alcohol Testing Policy, and to fully cooperate with the implementation and enforcement of the Policy, including execution of



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the necessary authorization forms. All employees shall receive a copy of and be asked to read the Drug and Alcohol Testing Policy, and will be required to sign a statement indicating their understanding of the Policy.

All employees will be notified that in compliance with the "Drug Free Workplace Act of 1988" that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace. Furthermore it will be known by all employees that if convicted of a drug statute violation occurring in the workplace, they are to report such to the County in writing no later than five days after such a conviction. All employees must abide by the terms of the Drug Free Workplace policy statement as a condition of employment.

If an employee voluntarily or on request by St. Johns County, prior to an incident, seeks medical treatment or rehabilitation for substance abuse, St. Johns County will grant that employee one time medical leave of absence for treatment. An employee request for medical treatment or rehabilitation will only be considered prior to an incident. Such a request will not be an option once the employee has tested positive for substance abuse. The St. Johns County health insurance, or the Employee Assistance Program, up to Policy limits, will cover such treatment. During such time as an individual is enrolled in a rehabilitation program, St. Johns County shall attempt to maintain a position for that employee upon his/her successful completion of the program. However, St. Johns County in no way guarantees that any employee, upon returning from the successful completion of a drug/alcohol rehabilitation program, shall have any employment position provided to him/her. Moreover, in the event that an employment position is available, St. Johns County does not guarantee that such a position will be the same or equal position, which the employee previously held, or that the rate of pay for that position will be equal to that previously received prior to employee's suspension and enrollment in a rehabilitation program.

#### **412.7 Prohibited Conduct**

St. Johns County strictly prohibits its employees from being on duty and possessing, using, distributing or being under the influence of alcohol or any drug not prescribed for the employee. Further, St. Johns County prohibits its employees from misusing alcohol or possessing, using or distributing drugs off the job to the extent that any off-duty possession, use or distribution impacts upon their effectiveness and ability to perform their employment duties, or adversely affects the interests of the County.

Any employee unable to provide a sample will be deemed to have refused to submit to testing. Upon the recommendation of St. Johns County's certified health care laboratory, the employee will be allowed a two-hour period with eight ounces of water per thirty minutes in order to provide the sample.

Employees violating this policy will be disciplined up to and including termination of employment.

#### **412.8 Job Applicant Testing**

St. Johns County requires all individuals employed by the County to be free of alcohol and controlled substances. All finalists for positions with the County will be offered employment contingent upon satisfactory results of a drug test. No applicant will be tested until after receiving a conditional offer of employment. Applicants who refuse to be tested will not be considered for employment and their conditional offer will be withdrawn.

All job applicants' prospects of employment with St. Johns County will be conditioned upon their being qualified for work. Any job applicant who tests positive for controlled substances, or whose test results indicate an alcohol concentration of 0.04 or greater will not be considered qualified for employment with St. Johns County.



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All employment candidates shall be provided notice of the test and assurance that highly reliable testing procedures will be used. Prior to and after testing, applicants are given an opportunity to confidentially report to a Medical Review Officer the use of any prescription or non-prescription medicines which may alter their test results. Additionally, applicants may consult with a Medical Review Officer for any further technical information regarding such medications.

The results of the laboratory test shall be restricted to whether or not the applicant's specimen tested positive for alcohol and/or controlled substances, the particular substance involved and the amount found within the specimen tested.

#### **412.9 Types of Testing**

St. Johns County reserves the right to conduct the following types of testing:

- Job Applicant Substance Abuse Testing.
- Current Employee Substance Abuse Testing.
- Routine Fitness-for-Duty Testing.
- Reasonable Suspicion Testing.
- Post-Accident/Injury Testing.
- Random Testing.
- Return-to-Duty Testing.
- Follow-up Testing.

#### **Job Applicant Substance Abuse Testing**

Job applicants will submit to a post-offer, pre-employment drug screening and have satisfactory results as a condition of their employment.

#### **Routine Fitness-For Duty Testing**

St. Johns County will require all of its employees to submit to alcohol and drug testing, which is conducted as part of a routinely scheduled employee fitness-for-duty medical examination where the testing is determined to be job-related and consistent with business necessity.

#### **Reasonable Suspicion Testing**

St. Johns County will require all of its employees to submit to a controlled substances or alcohol test whenever there is reasonable suspicion to believe that an employee is under the influence of, or otherwise using alcohol or controlled substances. Reasonable suspicion requires an articulable belief by management that an employee possesses or uses controlled substances or alcohol at the work place and is either intoxicated or impaired by such substances. The employer's determination that reasonable suspicion exists must be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, and speech or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances.

The standard for reasonable suspicion testing does not require an overwhelming burden of proof. Generally, where supervisors can reasonably conclude that there are objective facts indicative of the use of prohibited substances, there is sufficient justification for testing. Among other things, such facts and inferences may be based upon:

Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of drugs. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.



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- A report of drug use, provided by a reliable and credible source.
- Evidence that an individual has tampered with a drug test during his/her employment with St. Johns County.
- Information that an employee has caused, contributed to, or been involved in an accident while at work.
- Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or alcohol while working or while on St. Johns County premises or while operating St. Johns County equipment, vehicles or machinery.

If the employee is a commercial driver, special rules apply with regard to reasonable suspicion testing. The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or County official who is trained in such observations as provided herein. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test, shall not conduct the alcohol test of the employee. With respect to alcohol testing of employees holding commercial drivers licenses, the observations required under this section must be made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with this Policy. An employee holding a commercial drivers license may be required to undergo reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. St. Johns County shall make all reasonable effort to administer an alcohol test to employees holding a commercial drivers license within two (2) hours following the determination of reasonable suspicion, and in no event will an alcohol test under this section be conducted beyond eight (8) hours of the determination of reasonable suspicion. If the alcohol test is not administered within two (2) hours of the above determination, a record stating why the alcohol test was not administered within the time frame will be prepared and maintained. With respect to controlled substances, reasonable suspicion testing of commercial driver's license holders, a written record shall be made of the observations leading to the test, signed by the supervisor or County official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier.

St. Johns County will require employees who are promoted or transferred to or who assume positions within the County requiring the operation of a motor vehicle to submit to drug and alcohol testing prior to the commencement of that position.

St. Johns County has the right to search lockers, handbags, lunch boxes, or other containers at any time provided there is reasonable suspicion to believe that an employee possesses or is under the influence of drugs. An employee's refusal to cooperate with a search will be treated as serious insubordination that warrants immediate discipline including discharge.

#### Post-Accident Testing

St. Johns County requires substance abuse testing for any employee involved in an accident while on duty, whether on or off the County's premises. An accident does not just have to involve a vehicle. It could be an injury to self or unexplained damage to equipment or property.

If an employee possessing a CDL has a vehicular accident while operating one of the County's commercial vehicles, that employee must be tested for alcohol and controlled substances, as soon as practicable, if the accident involves the loss of human life, or if the driver receives a citation under state or local law for a moving traffic violation arising from the accident. No employee shall drive a County vehicle or perform safety-sensitive duties while awaiting drug-screening results.



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Due to the fact that St. Johns County's concern for its workforce is paramount, it may be necessary to administer appropriate medical treatment prior to obtaining specimens for post-accident testing. If the required specimens can be obtained at a medical treatment facility which is not a designated collection site, a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse, certified paramedic, or licensed collection site person may collect the specimen. If such an individual is not present, the injured employee, as soon as is medically permissible, shall be transported to a designated collection site to produce the required specimens.

All employees who are subject to post-accident testing shall remain readily available for such testing unless medically unable to do so. If they do not remain available for such testing, they will be deemed to have refused to submit for testing, as provided herein. As stated above, nothing in this Policy shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

#### Random Testing

St. Johns County reserves the right to conduct random substance abuse testing on any or all of its employees engaged in safety sensitive positions at any time without prior notice. Additionally, St. Johns County employees who hold commercial drivers licenses shall also be subject to random alcohol testing to the extent that a minimum of 50 percent of the average number of commercial driver positions covered by this Policy will be tested on an annual basis. The minimum annual percentage rate for random controlled substance testing shall be 25 percent of the average number of commercial driver positions covered by this Policy. An employee possessing a CDL shall only be tested for alcohol while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions, whereas random drug testing on employees holding a CDL can be performed at any time. By contrast, all other County employees (who do not hold a CDL) in safety-sensitive positions may be randomly tested at any time.

The selection of employees with commercial drivers licenses for random alcohol and controlled substance testing shall be made by a scientifically valid method, such as a random number table of a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each such employee possessing a CDL shall have an equal chance of being tested each time selections are made. All other random testing on employees, who do not hold a CDL, may be performed upon the basis of any selection procedure St. Johns County chooses to implement.

All random tests conducted under this provision will be unannounced. The dates for administering random alcohol and controlled substance tests will be spread reasonably throughout the calendar year.

#### Return-to-Duty Testing

Any covered employee who has engaged in conduct prohibited by Section VII of this Policy, and who has not been terminated from employment as provided herein, shall, before returning to duty, undergo a return-to-duty controlled substance or alcohol test. For employees holding commercial drivers license, the results for any return-to-duty alcohol test must be 0.02 or less for the employee to resume employment. For employees who do not hold commercial drivers licenses, the alcohol test result must be less than 0.04, in order to return to work. For both employees who hold commercial drivers licenses and those who do not, the results of any return-to-duty controlled substance test must be negative in order to resume employment.



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#### **412.10 Specimen Collection and Laboratory Procedures**

St. Johns County is committed to following strict specimen collection and laboratory testing procedures to ensure the quality, integrity and authenticity of the specimen. Employees and job applicants have a right to consult a Medical Review Officer for technical information regarding prescription and non-prescription medication. Further, employees and job applicants will be allowed to confidentially report the use of prescription and non-prescription medications to a Medical Review Officer before and after being tested on forms to be provided.

Collection site security and specimen collection are unequivocally the responsibility of the collection site and its personnel. St. Johns County assumes no responsibility for specimen collection or transmittal errors incurred by the collection site, the laboratory or their respective staffs. St. Johns County will pay the cost of all initial and confirmation substance abuse screening it requires from either its applicants or employees. However, all costs of additional non-required testing and testing incurred during a rehabilitation period or program shall be borne by the employee.

#### **412.11 Common Medications Which May Alter or Affect a Drug or Alcohol Test**

The following list includes the most common medications, by brand name or common name, as well as by chemical name, which may alter or affect a drug test.

- ALCOHOL - All liquid medications containing ethyl alcohol (ethanol). Please read the label for alcohol content. As example, Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contac Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is 26.9% (54 proof).
- AMPHETAMINES - Obetrol, Biphetamine, Desoxyn, Dexedrine, Didrex.
- COCAINE - Cocaine HCl topical solution (Roxanne).
- PHENCYCLIDINE - Not legal by prescription.
- METHAQUALONE - Not legal by prescription.
- THC - Not legal by prescription.
- OPIATES - Paragoric, Parepetolin, Donnagel PG, Morphine, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guaiatuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid (Hydromorphone), M-S Contin and Roxanol (morphine sulphate), Percodan, Vicodin, etc.
- BARBITURATES - Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Butabarbital, Butabital, Phenilin, Triad, etc.
- BENZODIAZEPINES - Ativan, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranexen, Valium, Halcion, Paxipam, Restoril, Centrax.
- METHADONE - Dolophine, Methadose.
- PROPOXYPHENE - Darvocet, Darvon N, Dolene, etc.

#### **412.12 Penalties for Positive Confirmed Test**

St. Johns County reserves the right, at its sole discretion, to terminate or not to employ any employee/person who submits confirmed positive drug or alcohol test results and/or confirmed positive alcohol results which exceed acceptable thresholds. In addition, employees found to have engaged in conduct in violation of Section VII of this Policy, will be removed immediately from the performance of all safety-sensitive functions, and will in no event be allowed to resume the performance of safety-sensitive functions. Further, such an impaired employee forfeits his/her eligibility for medical and indemnity benefits under the Workers' Compensation Act.



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### **412.13 Challenges to Test Results**

Within five (5) working days after receiving written notice of a positive confirmed test result, all employees (with the exception of commercial drivers who are tested for drugs under this Policy) or applicants may contest or explain the result to a Medical Review Officer. If the explanation or challenge of the positive test result is unsatisfactory to the Medical Review Officer, the Medical Review Officer shall report a positive test result back to St. Johns County.

Within five (5) working days after receipt of a positive confirmed test from the Medical Review Officer, St. Johns County will inform the employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. Within five (5) working days after receiving notice of a positive confirmed test result, the employee or applicant may submit written information to St. Johns County explaining or contesting the test result, and explaining why the result does not constitute a violation of St. Johns County Policy. If an employee's or job applicant's explanation or challenge of the test result is unsatisfactory to St. Johns County within fifteen (15) days of receipt of the explanation or challenge, a written explanation as to why the employee's explanation is unsatisfactory, along with the report of positive results, will be provided to the employee or applicant. St. Johns County will keep all such documentation confidential to the extent permitted by law.