

**DRUG AND ALCOHOL TESTING MEMORANDUM OF AGREEMENT**  
(Units 02, 03, 04, 09 and 13)

This MEMORANDUM OF AGREEMENT is entered into this 14<sup>th</sup> day of February, 2003, by and between the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO, hereinafter called the Union, and the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, the County of Kauai, the Judiciary, the Hawaii Health Systems Corporation, hereinafter called the Employer, on behalf of Employees in bargaining units 02, 03, 04, 09 and 13.

The Union and the Employer agree that an agreement was reached on a new Article covering the subject of drug and alcohol testing. One part of the Article pertains to random testing while the other part is for testing based on reasonable suspicion, post accident and other events. Also, the new Article is part of the arbitrated collective bargaining agreements for units 02, 03, 04, 09 and 13 in effect from July 1, 1999 to June 30, 2003.


The Union and the Employer further agree that such new Article was modified by the parties to reflect a "two strikes and you're out" drug and alcohol testing procedure. The modified drug and alcohol testing procedure is attached hereto.

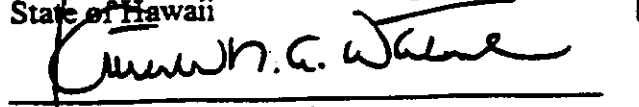
The Drug and Alcohol Testing Article for the aforementioned bargaining units will be numbered as follows:

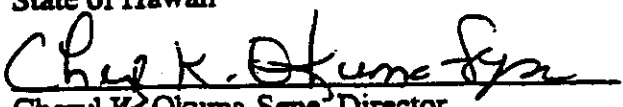
Unit 02	-	Article 50
Unit 03	-	Article 52
Unit 04	-	Article 50
Unit 09	-	Article 55
Unit 13	-	Article 50

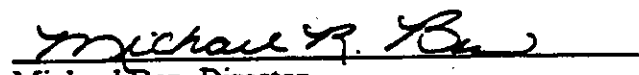
IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this MEMORANDUM OF AGREEMENT.

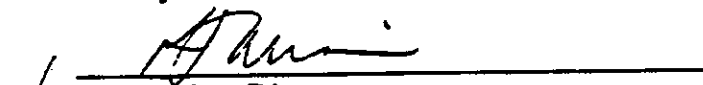
FOR THE EMPLOYER:


  
Ted Hong, Chief Negotiator  
State of Hawaii

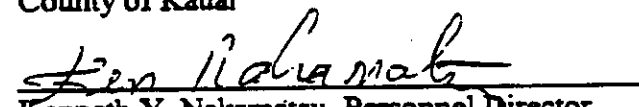
  
Kathleen Watanabe, Director  
Department of Human Resources Development  
State of Hawaii


  
Cheryl K. Okuma-Sepe, Director  
Department of Human Resources  
City and County of Honolulu

  
Michael Ben, Director  
Department of Civil Service  
County of Hawaii

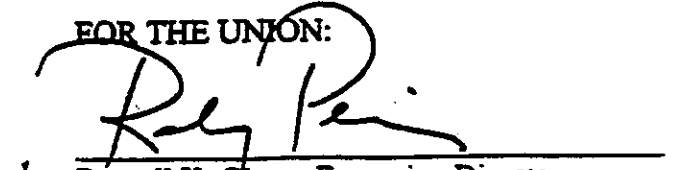
  
Lynn Krieg, Director  
Department of Personnel Services  
County of Maui

  
Malcolm Fernandez, Director  
Department of Personnel Services  
County of Kauai

  
Kenneth Y. Nakamatsu, Personnel Director  
The Judiciary

  
Janice Wakatsuki, Vice-President  
Director of Human Resources  
Hawaii Health Systems Corporation

FOR THE UNION:

  
for Russell K. Okata, Executive Director  
Hawaii Government Employees Association  
AFSCME, Local 152, AFL-CIO

## **DRUG AND ALCOHOL TESTING AGREEMENT (DTA)**

### **Part I. REASONABLE SUSPICION ALCOHOL AND CONTROLLED SUBSTANCE TESTING**

#### **I. STATEMENT OF PURPOSE.**

**A. This Drug Testing Agreement (DTA) is intended to keep the workplace free from the hazards of the use of alcohol and controlled substances by adopting a drug and alcohol-testing program as specified herein.**

**B. Employees are expected to report to work in a physical and mental condition consistent with this Agreement, which enables them to perform their duties in a safe and productive manner.**

**C. Employees subject to alcohol and controlled substance tests and who are subject to disciplinary actions under this DTA shall be afforded "due process" as provided in this DTA and applicable provisions of the respective collective bargaining agreements.**

#### **II. DEFINITIONS.**

##### **A. ACCIDENT.**

**An occurrence involving an Employer's vehicle operating on a public road which results in: a fatality; bodily injury to a person requiring immediate medical treatment away from the accident; or one or more vehicles is disabled and must be towed from the scene. Note: Post-accident testing is only required when there is a fatality or when the employee has been cited for a moving vehicle violation as a result of an accident.**

##### **B. ALCOHOL.**

**The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl alcohol and isopropyl alcohol.**

##### **C. ALCOHOL CONCENTRATION.**

**The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath. The 210 liters represents the volume of breath tested for alcohol. (A reading of 0.02 represents 0.02 grams of alcohol per 210 liters of breath.)**

##### **D. ALCOHOL USE.**

**The consumption of any beverage, mixture, or preparation, including any**

medication containing alcohol.

**E. CONTROLLED SUBSTANCE.**

Substance other than alcohol such as marijuana, cocaine, opiates, amphetamines, and phencyclidine. Other substances under the Controlled Substance Act (21 U.S.C. 802) may be added after consultation and mutual agreement with the union.

**F. EMPLOYEE.**

All employees whose positions are included in bargaining units 2, 3, 4, 9, or 13.

**G. U.S. DOT RULES.**

For the purpose of this DTA, "U.S. DOT Rules" shall mean the use of procedures and standards which are similar to the extent possible to that which is found in the U.S. Department of Transportation Rules on Drug and Alcohol Testing for drivers of Commercial Motor Vehicles (Part 382). The State Department of Health Rules on Substance Abuse Testing shall prevail if there is any conflict between the State Rules and the federal regulations.

**H. EMPLOYER.**

The State of Hawaii (including Judiciary and Hawai'i Health Systems Corporation), City and County of Honolulu, County of Hawaii, County of Maui and County of Kauai.

**I. REFUSAL TO TEST.**

A refusal to test is when an employee 1) fails to provide adequate breath for alcohol testing as required by this Agreement, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with this Agreement; 2) fails to provide an adequate urine sample for controlled substances testing as required by this Agreement, 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 in accordance with the provisions of this Agreement, or 3) engages in conduct that clearly obstructs the testing process. Examples of what constitutes a refusal include, but are not limited, to the following:

1. Refusal to take a test either by statement or action;
2. Refusal to sign appropriate forms as required;
3. Failure to report for a scheduled appointment to provide a specimen;

4. Failure to report to the collection site in the time allotted;
5. Tampering with or attempting to adulterate the specimen or collection procedure;
6. Failure to cooperate or comply with the collection site person, Breath Alcohol Technician, Substance Abuse Professional (SAP), or Medical Review Officer (MRO);
7. Failure to provide adequate breath or urine specimen within a reasonable time period without a valid medical explanation;
8. Engaging in conduct that clearly obstructs the testing process;
9. Leaving the scene of an accident without a valid reason or without authorization from a supervisor.

**J. SUBSTANCE ABUSE PROFESSIONAL**

A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

**K. SUPERVISOR.**

The Employer designee who has passed requirements as provided in Section VIII.a.

**L. WORK.**

Work means from the time the employee reports to work until the time the employee ends work or when the employee is required to be in readiness for work (stand-by).

**III. VOLUNTARY ADMISSION**

A. Employees are encouraged to voluntarily admit to the Employer an alcohol and/or controlled substance problem before they are required to take an alcohol and/or controlled substance test and before they have engaged in conduct which would warrant disciplinary action.

The provisions of this Section are available only to covered employees who

voluntarily admit to having an alcohol and/or controlled substance abuse problem before they are notified to take an alcohol or controlled substances test pursuant to this DTA and/or before they have engaged in behavior which is prohibited under this DTA.

B. An employee who voluntarily admits to the Employer to having an alcohol and/or controlled substance problem as provided in Section III.a. shall be immediately removed from the job and placed on sick leave, vacation leave, or authorized leave without pay as determined by the employee and required to comply with the following:

1. Mandatory participation in an Employer approved SAP evaluation, SAP recommended rehabilitation program and completion of such program.

2. Mandatory return to work testing and unannounced follow-up testing as determined by the SAP.

a. NUMBER OF TESTS.

1) The number of follow-up alcohol and controlled substance tests shall be set by a SAP and consist of at least six (6) tests in the first twelve (12) months following the employee's return to work.

2) Follow-up tests shall not exceed sixty (60) months from the date of the employee's return to work.

3) The SAP may terminate the requirement for follow up tests at any time after the first six (6) tests have been administered if the SAP determines that tests are no longer necessary.

C. The Employer shall select the SAP, provided that the SAP shall not be an employee of the Employer.

D. The employee shall be allowed to use sick leave, vacation leave, or authorized leave without pay during the period of the SAP recommended rehabilitation program. The employee must satisfactorily complete such rehabilitation program.

E. Cost

1. The cost of the SAP services shall be borne by the Employer.

2. The cost of testing required by the Employer including follow-up testing as required by the SAP shall be borne by the Employer.

3. The cost of the rehabilitation program and treatment required by the program shall be borne by the employee.

4. The cost of testing required by the rehabilitation program shall be borne by the employee.

F. The time spent in completing any tests required as a result of a rehabilitation program or return to work test, including travel time, shall not be considered as time worked.

G. An employee who refuses to comply with the provisions of this Section (III), who refuses to take a controlled substance or alcohol test (section IV. a.7 and IV. b. 4., including adulterating or substituting a specimen) or who refuses to comply with the SAP requirements, including failure to follow or to complete the rehabilitation program within a time frame deemed reasonable by the SAP, shall be discharged.

H. An employee who tests positive for alcohol or controlled substance during return to duty or follow-up testing shall be subject to the schedule of discipline in this DTA.

#### IV. PROHIBITIONS.

##### A. ALCOHOL.

Employees shall not:

1. Except for health, safety and public trust (HSPT) employees and those subject to post accident testing, report to work or continue working while having an alcohol concentration of 0.04 or higher. HSPT employees and those who are subject to post accident testing shall not report to work or continue working while having an alcohol concentration of 0.02 or higher.

2. Possess alcohol while working except when the employee is required to handle alcohol or products containing alcohol as part of the employee's job duties.

3. Consume alcohol while working.

4. Work within four (4) hours after using alcohol.

5. Use alcohol for eight (8) hours after an accident, or until the employee completes an alcohol test, whichever is sooner.

6. Work after voluntarily admitting to having an alcohol problem pursuant to Section III until a return to work test is administered and results in a negative test.

7. Refuse to submit to a required alcohol test.

##### B. CONTROLLED SUBSTANCE.

**Employees shall not:**

1. Report to work or continue working with a controlled substance in their system, or use controlled substances while working, except when the controlled substance is prescribed by a physician for the employee and is used in accordance with the physician's instructions. Note: If the employee is subject to testing under Part II of this Agreement which covers employees in HGEA bargaining units who are in HSPT positions in addition to the above, the physician must have advised the employee that the substance does not adversely affect the employee's ability to work. If not, the prohibition above applies.

2. Possess controlled substance while working except when the employee is required to handle a controlled substance(s) as part of the employee's job duties or when prescribed by a physician who has advised the employee that the substance does not adversely affect the ability to work.

3. Work after voluntarily admitting to having a controlled substance problem pursuant to Section III or testing positive until a return to work test is administered and results in a negative test.

4. Refuse to submit to a required controlled substance test.

Note: A valid prescription for the employee for marinol is the only reason the MRO will consider in determining if a positive test result for marijuana should be declared negative. The use of hemp products, including hemp seed oil, shall not be considered reasons to declare a test negative. Employees are cautioned that the prohibitions not only require that the employee have a valid prescription, but that the physician has advised the employee that the substance does not adversely affect the ability to work.

**V. TEST.**

**A. PRE-DUTY TEST.**

Prior to being placed on the temporary assignment list for a position in which the employee will be subject to testing under Part II of this Agreement which covers employees in HGEA bargaining units who are in HSPT positions, the employee shall be subject to a controlled substance test.

**B. ALCOHOL TESTING.**

There shall be no pre-duty alcohol testing.

**C. PROMOTIONS, TEMPORARY ASSIGNMENTS, OR OTHER**



## **PERSONNEL CHANGES.**

After compliance with Section V. a., a covered employee as provided in Section II. f. shall not be subject to alcohol and controlled substance tests as a condition for receiving a promotion, temporary assignment or other personnel changes, unless required by other laws, rules or policies.

## **VI. POST-ACCIDENT TESTS.**

### **A. REQUIRED TESTS**

Following an accident as defined in Section II. a., employees involved shall submit to an alcohol and controlled substance test if the employee is driving an Employer's vehicle and the employee is a "regular driver" and if required by the Employer. If the accident involved a loss of human life, the employee who was driving the vehicle shall be tested. If no fatality occurs but a driver receives a citation for a moving traffic violation, the driver shall be tested if one of the following occurs: 1) a person involved in the accident requires treatment away from the scene of the accident, or 2) one or more of the vehicles involved in the accident is disabled and must be towed from the scene.

For the purposes of this section, a "regular driver" shall mean an employee who the Employer has determined drives an average of 120 round trips in a twelve-month period (October 1 to September 30 of the preceding year)—multiple trips in a single day shall count as one trip. The 120 trip requirement shall be reduced if a driver is unavailable for duty due to leaves with or without pay or temporary assignment or temporary reallocation to another job. The reduction shall be calculated as follows: 120 days - (days unavailable x 50%). The determination will be made annually and all regular drivers shall be notified by January 1 of each year of the determination. If a regular driver's duties change significantly, the driver may request a review of the determination.

### **B. ALCOHOL.**

An alcohol test required by Section VI. a. shall be administered within two hours but no later than eight (8) hours following the accident. If the test is not administered within eight (8) hours following the accident, the Employer shall cease attempts to administer an alcohol test.

### **C. CONTROLLED SUBSTANCE.**

A controlled substance test required by Section VI. a. shall be administered within thirty two (32) hours following the accident. If the test is not administered within thirty two (32) hours following the accident, the Employer shall cease attempts to administer a controlled substance test.

#### **D. MEDICAL ATTENTION AND CARE.**

Nothing in Section VI. shall be construed to require the delay of necessary medical attention for injured persons following an accident or to prohibit an employee 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.

#### **VII. RANDOM TEST.**

Employees shall be subject to random testing in accordance with Part II of the Drug and Alcohol Testing Agreement which covers employees in HSPT positions.

#### **VIII. REASONABLE SUSPICION TEST.**

##### **A. TRAINING OF SUPERVISORS.**

1. Supervisors designated to determine whether reasonable suspicion exists must receive at least sixty (60) minutes of training on alcohol misuse, at least sixty (60) minutes of training on controlled substance use and indicators of probable use and misuse.

2. Supervisors shall be subject to training once every five (5) years.

3. The Employer shall provide to the Union a list of trained supervisors, their names, positions, extent and nature of training, date of the last training and the jurisdiction. A current list will be provided when there are changes to the original list.

##### **B. AUTHORITY.**

1. Supervisors who have received the training as provided in Section VIII. a. may direct an employee to submit to an alcohol and/or controlled substance test when that supervisor has reasonable suspicion to believe an employee has violated any of the prohibitions in Section IV. a. 1., 2., 3., 4. and 6. or Section IV. b. 1., 2., and 3. (with respect to the positive test), except as otherwise provided in the U.S. DOT Rules.

The supervisor shall have another witness observe the employee before directing the employee to submit to an alcohol and/or controlled substances test. For the purposes of this section, a witness may be any person working for the Employer.

2. The reasonable suspicion must be based on a specific, contemporaneous, articulable observation made by the supervisor making the reasonable suspicion determination concerning the appearance, behavior, speech, or body odor of the employee.

### **C. CONFLICTS.**

The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the employee.

### **D. DOCUMENTATION OF REASONABLE SUSPICION.**

1. A written record shall be made of the observation leading to an alcohol or a controlled substance reasonable suspicion test, and signed by the supervisor who made the observation and approved by the Employer within twenty four (24) hours of the observed behavior or in the case of a controlled substance, before the results of a controlled substance test is released, whichever is earlier.

2. A copy of the record of facts and observations shall be given to the employee.

3. The behavior giving rise to reasonable suspicion must be a recognized symptom of impairment of alcohol or controlled substance use and is not reasonably explained as the result of other causes.

### **E. COMPLIANCE.**

A test which is not valid as provided in the U.S. DOT Rules or violates the employee's rights, shall not be used for discipline.

## **IX. RETURN TO WORK TEST.**

### **A. RETURN TO WORK - ALCOHOL TEST.**

1. An employee who is a HSPT employee or who is subject to post accident testing who has committed a prohibited act described in Section IV. a. 1., 3., 4. and 5. who is not separated from service and who has been cleared by the SAP to return to work shall be subject to a return to work alcohol test with a result indicating an alcohol concentration of less than 0.02.

An employee who is not a HSPT employee and who is not subject to post accident testing who has committed a prohibited act described in Section. IV. a. 1., 3., 4. and 5. who is not separated from service and who has been cleared by the SAP to return to work shall be subject to a return to work alcohol test with a result indicating an alcohol concentration of less than 0.04.

2. The employee shall also be subject to a return to work controlled substance test if the SAP recommends the test.

### **B. RETURN TO WORK CONTROLLED SUBSTANCE TEST.**

1. An employee who has committed a prohibition as described in Section, IV. b. 1., and 3. who is not separated from service and who has been cleared by the SAP to return to work shall be subject to a return to work controlled substance test with a verified negative test for controlled substance.

2. The employee shall also be subject to a return to work alcohol test if the SAP recommends the test.

#### X. FOLLOW UP TEST.

##### A. EVALUATION.

1. An employee who committed a prohibited act described in Section IV. a. 1., 3., 4., 5., and 6. or Section IV. b. 1., and 3. shall be evaluated by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and/or controlled substance use.

2. After the employee returns to work, the employee shall be subject to unannounced follow up alcohol and controlled substance tests as determined by the SAP.

##### B. NUMBER OF TESTS.

1. The number of follow up alcohol and controlled substance tests referred to in Section X. a. shall be set by a SAP and consist of at least six (6) tests in the first twelve (12) months following the employee's return to work.

2. Follow up tests shall not exceed sixty (60) months from the date of the employee's return to work.

3. The SAP may terminate the requirement for follow up tests at any time after the first six (6) tests have been administered, if the SAP determines that tests are no longer necessary.

##### C. CHOICE OF SAP.

The SAP shall not be an employee of an Employer.

#### XI. TEST.

Alcohol or controlled substance tests shall be as provided in the U.S. DOT Rules, State Department of Health Rules or this DTA as applicable.

#### XII. ALCOHOL TEST PROCEDURES.

**A. STANDARDS.**

1. Test procedures and practices shall comply with U.S. DOT rules (as defined).
2. Test procedures shall protect the privacy of the employee and ensure that the tests are attributable to the correct employee.

**B. TEST DEVICE.**

1. Alcohol tests shall be conducted by a Breath Alcohol Technician (BAT) using an Evidential Breath Test Device (EBT) that is approved by the National Highway Traffic Safety Administration (NHTSA) and Placed on its Conforming Products Lists of Breath Measurement Devices.

2. Other tests which meet the requirements of the State Department of Health or U.S. Department of Transportation may be used in lieu of the above after consultation and mutual agreement with the union.

**C. CONFIRMATORY TEST.**

An employee who tests positive on an alcohol test shall be subject to a confirmation test which shall be administered as provided in the U.S. DOT Rules.

**D. COMPLIANCE.**

A test which is not valid as provided in the U.S. DOT Rules or violates the employee's rights shall not be used for discipline.

**XIII. CONTROLLED SUBSTANCE TEST PROCEDURES.**

**A. STANDARDS.**

1. Test procedures and practices shall comply with U.S. DOT Rules.
2. Test procedures shall protect the privacy and dignity of the individual, ensure the integrity of the test process, safeguard the validity of the test through confirmatory test, and ensure that the tests are attributable to the correct employee.

**B. TEST DEVICE.** Controlled substance tests will be by urinalysis and shall be performed by laboratories certified by the State Department of Health.

**C. CHOICE OF MEDICAL REVIEW OFFICER.** The MRO shall not be an employee of the employer.

**D. MEDICAL EXPLANATION.** Prior to making a final decision to verify or report a positive test, the MRO shall give the employee an opportunity to discuss the test. If the MRO determines there is a legitimate medical explanation for the positive test, the MRO shall take no further action and report the test as negative.

**E. RETESTING CONFIRMED POSITIVE SPECIMENS SPLIT SAMPLE.**

1. An employee may request an analysis of the split sample within seventy two (72) hours of having been informed of a verified positive test.

The employee may instruct the MRO to have the analysis be at another laboratory certified by the State Department of Health and approved by the Employer for analysis.

The employee shall pay for the cost of the test analysis of the split sample, however, the employee shall be reimbursed if the results of the test is negative.

**F. COMPLIANCE.**

A test which is not valid as provided in the U.S. DOT Rules or violates the employee's rights shall not be used for discipline.

**XIV. EVALUATION, REFERRAL, AND REHABILITATION.**

**A. NOTICE TO EMPLOYEE.**

An employee who has engaged in conduct prohibited by Section IV. a. 1., 2., 3., 4. and 6. or Section IV. b. 1., 2., 3., (with respect to the positive test), and 4. shall be advised by the Employer of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substance including the names, address, and telephone numbers of SAP's and counseling and rehabilitation programs.

**B. EVALUATION AND REFERRAL.**

An employee who is engaged in conduct prohibited by Section IV. a. 1., 3., 4., 5. and 6. or Section IV. b. 1., and 3., shall be referred to a SAP for evaluation.

**C. COST.**

The cost for the SAP services shall be borne by the Employer.

**D. REHABILITATION.**

The employee will be responsible for the cost of the rehabilitation program and treatment required by the program.

**XV. ADMINISTRATIVE AND CORRECTIVE ACTIONS.**

**A. COVERAGE.**

1. When tests are required by the Employer, the Employer shall pay for the cost of the tests.
2. Except where otherwise provided, the time spent in completing the testing, including travel time, shall be considered as time worked.
3. When tests are required as the result of a rehabilitation program, or the return to work test, the time spent in completing the tests, including travel time, shall not be considered as time worked.

**B. CALL BACK NOTICE.**

1. An employee on non-work status who is a HSPT employee or who is subject to post accident testing and who is called back to work shall report to the Employer the consumption of alcohol within the previous four (4) hours or have reason to believe that the alcohol concentration level would be 0.02 or greater.

An employee on non work status who is not an HSPT employee and who is not subject to post accident testing and who is called back to work shall report to the Employer the consumption of alcohol within the previous four (4) hours or have reason to believe that the alcohol concentration level would be 0.04 or greater.

2. The employee shall not be offered work and shall not be required to submit to an alcohol test or be subject to disciplinary action.

**C. COSTS.**

Except as otherwise provided in this DTA, the cost of the alcohol and controlled substance tests shall be borne by the Employer.

**D. REMOVAL FROM WORK FOR A POSITIVE TEST RESULT.**

1. An employee with a positive alcohol test of 0.04 or greater or a positive controlled substance test shall be removed immediately from work.
2. The employee shall be scheduled for an immediate evaluation by a SAP.
3. The SAP shall complete the evaluation within a reasonable period of time

after the employee has been removed from work.

4. Before returning to work, the employee shall be subject to the SAP's recommended rehabilitation program and take a return to work test as provided in Section IX.

5. An employee with a positive test shall be immediately placed on sick leave, vacation leave, compensatory time or authorized leave without pay as determined by the employee.

#### **E. REMOVAL FROM WORK—BAC 0.02<0.04**

An employee in a HSPT position or an employee covered by post accident testing who has an alcohol test result of 0.02 or greater, but less than 0.04, shall be removed immediately from work and prohibited from work for at least twenty four (24) hours.

All other employees covered by this Agreement who have an alcohol test result of 0.02 or greater, but less than 0.04, shall be removed immediately from work and prohibited from work for at least twenty four (24) hours. However, the employee will be allowed to return to work for the remainder of the employee's shift, if any, provided that four hours have passed since the positive test and the employee takes another test and has a test result of 0.02 or less.

### **XVI. DISCIPLINE, RESIGNATION AND LAST CHANCE RESIGNATIONS.**

#### **A. NOTICE OF TEST RESULTS.**

An employee who tests positive for alcohol and/or controlled substance shall be given written notice of the test with a copy of the documents to verify the chain of custody.

#### **B. FIRST POSITIVE CONTROLLED SUBSTANCE TEST.**

1. An employee who has a first positive controlled substance test as provided in Section V., VII., VIII., IX. and X. except for first positive controlled substance test as provided in Section R-V.b.1 (Random Testing DTA) shall be discharged unless the employee agrees to sign the Exhibit A, Last Chance Agreement, whereby the employee agree to resign from employment in the event of a second positive controlled substance test occurring within two (2) years of the first positive controlled substance tests exclusive of time from the date the employee has been removed from work and time spent in evaluation and treatment, until the date the employee has returned to work following a negative return to work test(s).



2. When the employee signs Exhibit A, Last Chance Agreement, the employee shall be suspended for twenty (20) working days instead of being discharged.

3. The employee will be referred to the SAP and must comply with the SAP's recommended rehabilitation program.

**C. SECOND POSITIVE CONTROLLED SUBSTANCE TEST.**

An employee who tests positive for a controlled substance for a second time within two (2) years of the first positive controlled substance test exclusive of time from the date the employee has been removed from work and time spent in evaluation and treatment, until the date the employee has returned to work following a negative return to work test(s) shall be deemed to have resigned as provided in Exhibit A, Last Chance Agreement.

**D. FIRST POSITIVE ALCOHOL TEST.**

1. An employee who has a first positive alcohol test as provided in Section V., VII., VIII., IX. and X. except for first positive controlled substance test as provided in Section R-V.b.1 (Random Testing DTA), shall be discharged unless the employee agrees to sign Exhibit B, Last Chance Agreement, whereby the employee agrees to resign from employment in the event of a second positive alcohol test.

2. When the employee signs Exhibit B, Last Chance Agreement, the employee shall be suspended for twenty (20) working days.

**E. SECOND POSITIVE ALCOHOL TEST.**

An employee who tests positive for alcohol for a second time within two (2) years of the first positive alcohol test results exclusive of time from the date the employee has been removed from work and time spent in evaluation and treatment, until the date the employee has returned to work following a negative return to work test(s) shall be deemed to have resigned as provided in Exhibit B. Last Chance Agreement.

**F. REHABILITATION PROGRAM TEST.**

Positive alcohol and controlled substance tests that occur during the SAP's recommended rehabilitation program shall not be used to make a determination as provided in Section XVI.

**G. REFUSAL TO TEST.**

1. An employee who refuses to submit to a required alcohol or controlled substance test in violation of Section IV. a. 7. or Section IV. b. 4. shall be discharged.

2. An employee who provides a "specimen adulterated" or "specimen substituted" as interpreted by the U.S. Department of Transportation, for a controlled substance test shall constitute a refusal to test in violation of Section IV. b. 4. shall be discharged.

**H. FAILURE TO FOLLOW OR COMPLETE THE REHABILITATION PROGRAM.**

An employee who fails to follow or complete the SAP's recommended rehabilitation program shall be discharged.

**I. POST - ACCIDENT TEST.**

An employee who is required to submit to an alcohol and controlled substance test as provided in Section VI. a. and tests positive for alcohol or controlled substance may be disciplined as provided in the applicable collective bargaining agreement.

**J. POSSESSION OF CONTROLLED SUBSTANCE.**

Any employee in possession of a controlled substance(s) (with the exception noted in the prohibitions) which is non-manifested nor prescribed for the employee by a physician shall be subject to disciplinary action, up to and including termination based on just cause principles.

**K. POSSESSION OF ALCOHOL.**

Any employee in possession of alcohol (with the exception noted in the prohibitions) shall be subject to disciplinary action, up to and including termination based on just cause principles.

**L. NEGATIVE RESULTS.**

If an employee is tested based on reasonable suspicion and the test results in a negative finding, appropriate disciplinary action may still be warranted on the basis that there is just cause for such action based on the employee's conduct while on duty which gave rise to the supervisor's reasonable suspicion.

**M. POSITIVE TEST RESULTS UNDER PART II OF THE AGREEMENT WHICH COVERS HEALTH, SAFETY AND PUBLIC TRUST POSITIONS**

Positive test results from testing conducted under Part II of this Agreement covering employees in HGEA bargaining units who are in HSPT positions shall be included when determining appropriate disciplinary action under this Section. For example, if an HSPT employee has a positive random test result and then has a

**positive reasonable suspicion test result, the reasonable suspicion test result would be treated as a second positive test result for the purposes of determining disciplinary action.**

## **XVII. NOTICE AND INFORMATION.**

### **A. EDUCATIONAL MATERIALS.**

**The Employer shall provide detailed educational materials to a covered employee that explains this DTA. At a minimum, the materials shall include the following:**

- 1. The categories of employees who are subject to this DTA.**
- 2. Specific information on conduct that is prohibited.**
- 3. The circumstances under which an employee may be subject to an alcohol and controlled substance test.**
- 4. The procedures that will be used to test for alcohol or controlled substance.**
- 5. The requirement that an employee submit to a test.**
- 6. An explanation of what constitutes a refusal to submit to a test.**
- 7. The consequences for an employee found to have violated this DTA.**
- 8. Information on the effects of alcohol and controlled substance.**
- 9. The Employer designee to be contacted for questions or additional information.**

### **B. SIGNED STATEMENT.**

**The Employer shall obtain a signed statement from each covered employee that indicates that each covered employee has been advised of the requirements of this DTA and has received educational materials as provided in Section XVII. a. prior to the beginning of the testing program.**

### **C. INFORMATION.**

**The Employer shall transmit annually to the Union, without cost, by the end of March of each year, the following:**

1. A list showing a statistical account of the alcohol and controlled substance test results conducted as provided in this DTA, which shall indicate the number of negative and positive tests and the dates and numbers of employees tested in the previous one (1) year period for each form of test.

2. The names and addresses of the Laboratories hired to do alcohol and controlled substance tests.

3. The names and addresses of the Substance Abuse Professionals (SAP) and a copy of the certification.

4. The names and addresses of the MRO and a copy of the certification.

5. The names of the supervisors who are authorized to recommend a reasonable suspicion test.

6. The names of the Employer designee to provide information to the employees as provided in this DTA.

7. A list of employees, positions, and department.

#### **XVIII. INFORMATION AND RECORDS.**

##### **A. CONFIDENTIALITY.**

1. The Employer and the Union shall comply with the confidentiality provisions of the State Department of Health rules on Substance Abuse Testing.

2. Information and records pertaining to the employee shall be released after receipt of a written request for information from the employee as provided in the State Department of Health Rules.

##### **B. MAINTENANCE AND DESTRUCTION.**

Information and records maintained pertaining to the employee shall be maintained in a secure location except as otherwise provided by the U.S. DOT Rules.

The information and records shall be destroyed as provided in the U.S. DOT Rules:

##### **C. SUBPOENAS.**

The Employer shall make every reasonable effort to notify the employee and the Union of the receipt of a subpoena for information concerning an employee's alcohol and/or controlled substance tests.

**XIX. INDEMNIFICATION AND DEFENSE.**

**A. The Employer shall be responsible for defending all statutory and constitutional challenges to the enforceability of this DTA.**

**B. The Employer shall defend the Union against any claim or action arising out of the Employer's administration or implementation of the Drug and Alcohol Testing Agreement.**

**C. Subject to the recommendation of the Employer and the express approval of the appropriate legislative body, the Employer shall pay all damages awarded against the Union because of a claim or action.**

**XX. SAVINGS CLAUSE**

**Should any part of this Agreement, including the attachments, be rendered or declared invalid by reason of any legislation, State DOH rules or by a decree of a court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.**

**EXHIBIT A**

**LAST CHANCE AGREEMENT- DRUG**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between the employee \_\_\_\_\_ and the Employer.

1. The employee has tested positive for controlled substance as provided in this DTA for the first time.
2. The employee agrees to sign Exhibit A instead of being discharged and whereby the employee agrees to resign from employment in the event of a second positive controlled substance test occurring within two (2) years of the first positive test.
3. The employee agrees that when the employee signs Exhibit A, the employee shall be suspended for twenty (20) working days instead of being discharged.
4. The employee agrees to have resigned from employment on a no-fault basis when the employee tests positive for controlled substance for a second time within two (2) years of the first positive controlled substance test exclusive of time from the date the employee has been removed from work and time spent in evaluation and treatment, until the date the employee has returned to work following a negative return to work test. Employee initials \_\_\_\_\_.
5. The employee agrees that Exhibit A has been carefully read and voluntarily accepts Exhibit A with full knowledge and understanding of its contents and meaning.
6. The employee agrees that a resignation from employment deprives the employee of the right to grieve as provided in the grievance section of the applicable bargaining unit agreement or challenge the resignation.
7. The Employer agrees that the employee's resignation from employment as provided in this DTA shall be reported in the employee's personnel file as a resignation without fault.
8. Exhibit A shall be confidential, except as may be necessary to ensure compliance with its terms.

\_\_\_\_\_  
Employee (Print Name):

\_\_\_\_\_  
Employer (Print Name)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Employer Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**LAST CHANCE AGREEMENT- ALCOHOL**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_  
by and between the employee \_\_\_\_\_ and the  
Employer.

1. The employee has tested positive for alcohol as provided in this DTA for the first time.
2. The employee agrees to sign Exhibit B instead of being discharged and whereby the employee agrees to resign from employment in the event of a second positive alcohol test occurring within two (2) years of the first positive test.
3. The employee agrees that when the employee signs Exhibit B, the employee shall be suspended for twenty (20) working days instead of being discharged.
4. The employee agrees to have resigned from employment on a no-fault basis when the employee tests positive for alcohol for a second time within two (2) years of the first positive alcohol test exclusive of time from the date the employee has been removed from work and time spent in evaluation and treatment, until the date the employee has returned to work following a negative return to work test. Employee initials \_\_\_\_\_.
5. The employee agrees that Exhibit B has been carefully read and voluntarily accepts Exhibit B with full knowledge and understanding of its contents and meaning.
6. The employee agrees that a resignation from employment deprives the employee of the right to grieve as provided in the grievance section of the applicable bargaining unit agreement or challenge the resignation.
7. The Employer agrees that the employee's resignation from employment as provided in this DTA shall be reported in the employee's personnel file as a resignation without fault.
8. Exhibit B shall be confidential, except as may be necessary to ensure compliance with its terms.

\_\_\_\_\_  
Employee (Print Name):

\_\_\_\_\_  
Employer (Print Name)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Employer Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_