

County of Gloucester
Human Resources Manual

CHAPTER:	7 – CONDUCT AND PERFORMANCE	ADOPTED: 3/7/06
SECTION:	6 – DRUGS AND ALCOHOL	REVISED: 5/22/24

The County is strongly committed to a workplace free of alcohol and drugs for the safety of its employees and the citizens entrusted to their care. It is the policy of the County to institute the components of the Drug-Free Workplace Act of 1988. As required by federal regulations, this policy is provided to offer guidance to Department Heads/designees and employees in dealing with drug and alcohol abuse. This policy is intended to enhance productivity and safety, and to foster excellence by maintaining a safe and healthy environment for employees.

The County strongly urges employees to use the Employee Assistance Program (EAP) for help with alcohol or drug problems. EAP offers counsel, and if necessary, makes referrals to appropriate treatment resources (please refer to HR 5.10 for more details about the EAP). It is each employee's responsibility to seek assistance from EAP before the problem affects judgment, performance or behavior.

To further this commitment to providing a safe, drug-free and alcohol-free environment, the County has adopted the following policies:

- An employee and supervisor education and training program;
- A drug and alcohol testing program for employees and applicants for employment in, but not limited to, safety-sensitive positions;
- A program for evaluating employees who violate the drug and alcohol abuse policy;
- And administrative procedures for record keeping.

Employee Categories Subject to Testing:

Participation in this drug and alcohol testing program is a condition of employment for, but not limited to, each safety-sensitive employee or volunteer. Applicants for safety-sensitive positions are also subject to this drug and alcohol policy.

Anyone designated in Department of Transportation (DOT) regulations as a safety sensitive employee is subject to DOT drug and alcohol testing. All applicable employees working for the County or applying for a position are covered. This includes employees covered by 49 CFR Part 655, regulations commonly referred to as the Federal Transit Administration (FTA), and 49 CFR Part 382, regulations commonly referred to as the Federal Motor Carrier Safety Administration (FMCSA), when performing safety sensitive functions as defined by the respective regulations.

All employees who have a commercial driver's license (CDL) and/or perform safety-sensitive functions will be included in the drug and alcohol testing program. This

includes, but is not limited to, and is subject to amendment at any time, the following departments: Public Works including Highway and Fleet Management, Transportation Services, and Emergency Response.

Law Enforcement employees that work in the Sheriff's Office, the Prosecutor's Office, and the Department of Corrections are subject to the New Jersey Attorney General's Law Enforcement Drug Testing Policy.

Furthermore, any employee may be tested due to reasonable suspicion (see subsection entitled 'Reasonable Suspicion' for further details).

Prohibited Conduct:

Manufacturing, distributing, dispensing, possessing, or using controlled substances in the workplace is prohibited pursuant to the Drug-Free Workplace Act. It is County policy that any employee who manufactures, distributes, dispenses, processes, sells, attempts to sell, or arranges to sell a controlled substance to any other person while on duty or on County property shall be subject to discipline up to and including discharge. Pursuant to the County policy, any employee who reports for work, performs work, or is on County property with any detectable level of blood alcohol content or any detectable level of a controlled substance in his or her urine shall be subject to disciplinary action up to and including discharge. Employees who perform a safety-sensitive function are strictly prohibited from using or ingesting prohibited drugs in accordance with applicable DOT regulations.

This prohibition also covers all legal or prescription drugs which impair an employee's ability to perform his/her job safely or properly. Employees using prescription drugs that may affect job performance or safety must notify, along with acceptable medical documentation, Human Resources and/or their supervisor or Department Head who is required to maintain the confidentiality of any information regarding an employee's medical condition. A determination will then be made as to whether the employee should be able to perform his/her job safely and properly by Human Resources. Employees who fail to report the use of legal or prescription drugs which may affect performance or safety shall be subject to disciplinary action up to and including discharge.

The ingestion of alcohol for up to four hours before the performance of safety sensitive functions is prohibited regardless of the resulting alcohol concentration level by both FTA and FMCSA. In addition FTA specifically prohibits the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include: (1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function. (2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function. FTA and FMCSA prohibit the ingestion of

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alcohol for up to eight hours following an accident by any employee involved in an accident unless the employee has already performed a post accident alcohol test if required.

As referred to in this policy, **alcohol** means any food, beverage, mixture, or preparation, including any medication, containing ethyl alcohol. **Controlled substance** means a stimulant, hallucinogen, narcotic, cannabinoid, or derivative or combination thereof, or any other substance controlled by the law. The County intends this definition also to apply to any other substance that impairs one's ability to fully and safely perform his or her job. The U.S. Department of Transportation (DOT) regulations currently prohibit the performance of safety-sensitive functions when a prohibited level of any specified drug is detectable in the employee's urine. Testing of safety-sensitive employees for these drugs is therefore performed under the authority of and pursuant to DOT regulations.

Testing-General:

For DOT subject employees all testing will be performed in accordance with the provisions set forth in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

The County will adhere to all required standards of confidentiality. Testing records and results will be released only to those authorized to receive such information.

Typically, administration of breath tests for alcohol will be performed concurrently with urine collections. However, the County reserves the right to administer breath tests separately from urine collections and to administer breath tests and/or urine collections on County premises.

Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

For DOT drug and alcohol tests: Refusal to submit means any circumstance outlined in 49 CFR 40.191 and 49 CFR 40.261 as well as 49 CFR 382 and 49 CFR 655; including:

- Failure to provide a breath or urine sample
- Provide an insufficient volume without valid medical explanation
- Adulterate or substitute a specimen
- Failure to appear within a reasonable time
- Leave the scene of an accident without just cause prior to submitting to a test
- Leave the collection facility prior to test completion

- Failure to permit an observed or monitored collection when required. An observed or monitored collection includes following the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
- Failure to take a second test when required
- Failure to undergo a medical examination when required
- Failure to cooperate with any part of the testing process
- Failure to sign Step 2 of alcohol test form
- Once test is underway, failure to remain at site and provide a specimen
- Verification from the MRO that you provided an adulterated/substituted sample.

For pre-employment tests only, DOT regulations indicate that failure to appear, aborting the collection before the test commences, or failure to remain at the site prior to commencement does not constitute a refusal.

Testing for Controlled Substances:

Drug testing of safety-sensitive employees authorized by DOT regulations is limited to the following substances:

- Marijuana metabolites/THC
- Cocaine metabolites
- Amphetamines, Methamphetamines, MethyleneDioxyMethAmphetamine (MDMA), and Methylenedioxymethamphetamine (MDA)
- Opiate metabolites (including codeine, heroin (6-AM), morphine)
- Phencyclidine (PCP)
- Semi-Synthetic Opioids (hydrocodone, oxycodone, hydromorphone, oxymorphone)

Testing for Alcohol:

FMCSA specifically prohibits any driver tested in accordance with the regulations and who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 from performing or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test. FMCSA regulation prohibits a driver with an alcohol concentration of 0.04 or greater from performing any safety-sensitive functions until he/she has been evaluated by an SAP and has passed a return-to-duty test.

FTA specifically prohibits any covered employee tested in accordance with the regulations and who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until the employee's alcohol concentration measures less than 0.02; or the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

Role of the Medical Review Officer (MRO):

All urinalysis drug results will be communicated by the laboratory to a specially trained physician serving as MRO. The MRO will report all drug test results to the Employer. If the test is positive, the MRO will contact the employee to discuss the test and determine if the positive result is valid. The MRO reports drug test results and medical information learned as part of the verification process to third parties without the employee's consent if determined, in the MRO's reasonable medical judgment, that: (1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; (2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk; or (3) when the drug test results in disciplinary action against the employee which is subject to litigation.

The third parties to whom the MRO is authorized to provide information are the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation or as part of an employer-initiated fitness for duty examination, a SAP evaluating the employee as part of the return to duty process (see §40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.

Role of the Outside Contractor:

The County has engaged a contractor to perform specific services such as arranging collection sites, laboratory testing, chain of custody procedures, etc. The contractor will provide the MRO(s) and BAT(s) in accordance with applicable DOT regulations.

Types of Testing:

The County will perform the following types of drug and alcohol testing:

- Pre-Employment Testing;
- Reasonable Suspicion Testing;
- Post Accident Testing;
- Random Testing;
- Return to Duty Testing;
- Follow-Up Testing;

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For those employees subjected to DOT regulations, alcohol and drug testing will be in accordance with and as specified in applicable regulations.

The County of Gloucester adopts, but is not limited to, the safety sensitive definitions as provided by the Federal Motor Carrier Safety Administration and the Federal Transit Agency.

Under FMCSA, safety sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include but are not limited to:

- Driving a commercial motor vehicle which requires the driver to have a commercial driver's license (CDL)
- Inspecting, servicing, or repairing any commercial motor vehicle
- Waiting to be dispatched to operate a commercial motor vehicle
- Performing all other functions in or upon a commercial motor vehicle
- Loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments being loaded or unloaded
- Performing driver requirements associated with an accident
- Repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle

Under FTA an employee is a safety-sensitive employee if he/she performs any of the following but not limited to:

- Operation of a non-revenue vehicle requiring a CDL
- Contractor employees that stand in the shoes of Transit System employees also have to comply
- Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function.
- A volunteer is a covered employee if: The volunteer is required to hold a commercial driver's license to operate the vehicle; or the volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

Furthermore, the County has designated other employees as "safety sensitive" and therefore, those employees are also subject to testing as set forth in the "Employee Categories Subject to Testing" section of this policy.

Pre-Employment Testing

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All applicants for employment (Post-Offer, Pre-Employment) or employees being transferred into safety-sensitive positions will be informed of the testing requirements and will undergo pre-employment drug tests. The County will not hire an applicant or transfer an employee to a safety-sensitive position unless the applicant or employee passes the pre-employment drug test.

A positive pre-employment test for drugs shall be considered sufficient grounds to disqualify the applicant from employment with the County or to disqualify an incumbent employee's application for transfer into a safety-sensitive position. In addition, an incumbent employee whose test result is positive will be subject to the same procedures as for a positive random test.

The County will not hire an applicant that has failed a drug test or who has refused to take the test. Furthermore, the County will not assign an employee who has failed or refused to take a drug test to a safety-sensitive position. If such an applicant later applies for County employment or if such an employee later applies for a safety-sensitive position, the County may, in its sole discretion, administer another drug test. If the employee or applicant passes the second pre-employment test, the County may, in its sole discretion, hire the applicant or assign the employee to work in a safety-sensitive position.

FMCSA Exception: The driver has participated in a controlled substances testing program that meets the requirements of part 382.301 within the previous 30 days; and while participating in that program, either was tested for controlled substances within the past 6 months (from the date of application), or participated in the random controlled substances testing program for the previous 12 months (from the date of application); and no prior employer of the driver, of whom the County has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

FTA requires that employees who have not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and have not been available to participate in the random selection pool during that time, must take a pre-employment drug test with a verified negative result prior to performance of safety sensitive duties.

The exceptions contained in the FMCSA for pre-employment testing are not applicable to individuals applying for non-FMCSA regulated positions.

Reasonable Suspicion Testing

Reasonable suspicion is established if two trained supervisors reasonably conclude based on their observation that an employee has used drugs or misused alcohol. The determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulate observations concerning the appearance, behavior, speech,

or body odors of the employees. The reasonable suspicion observations of the supervisor or County official must be documented on HR 7.6 Exhibit A titled Reasonable Suspicion Checklist.

An employee who undergoes reasonable suspicion testing will be removed from service pending the test results. If the test results are negative, the employee will be returned to work and paid for any time lost. If the result is positive, the employee will be subject to discipline, up to and including discharge, as determined by the County. If the employee is not discharged, the employee shall, at a minimum, be subject to the same requirements regarding assessment by an SAP, rehabilitation, and return to work drug and alcohol testing as applied to employees following a positive random drug or alcohol test (see below).

The employee will be transported to and from the testing site by a supervisor to reduce the potential danger to the employee and/or others.

- For employees who perform a *safety-sensitive* function, the County will require the employee to submit to a drug or alcohol test when the County has a reasonable suspicion that the employee is under the influence or has impaired judgment during working hours, while on County premises or while using County property. Employees may undergo reasonable suspicion testing for alcohol only 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.

If an alcohol test is not administered within two hours following the determination of reasonable suspicion, written documentation will be prepared and maintained on file. This record will detail the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight hours following the determination, there will be no more attempts to administer an alcohol test. Written documentation detailing the reasons for not administering the test is required. FMCSA regulations state that if no alcohol test is administered, 24 hours must elapse from the time of original determination before performance of safety sensitive functions.

- For an employee whose job responsibilities are *not* safety-sensitive and are not law enforcement, and whose job performance is affected and impairment is suspected, the first step the Department Head or designee should take is to have the employee removed from the job. If this occurs during regular weekday hours, the Department Head/designee should contact Human Resources for further guidance.

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If this occurs (impairment and job performance is affected) on an evening, night or weekend shift, the Department Head/designee should contact Ambassador Medical Services at (856) 810-0242 unless health and safety is a concern in which case the Department Head/designee should call 911. The Employee Assistance Program (EAP) is available to assist management in handling such situations, 24 hours a day, seven days a week (refer to HR 5.10 for the name and phone number of the County's EAP provider).

The Department Head/designee should document the occurrence including notes on employee's behavior, appearance, and speech as well as any other factors that lead to the suspicion of impairment (see HR 7.6 Exhibit M titled Reasonable Suspicion Checklist). The Department Head should contact Human Resources the next weekday day shift immediately following the occurrence for further direction.

Post-Accident Testing

Testing of drivers and those defined as performing safety sensitive functions, is mandatory as required by DOT regulations following an accident as defined in 49 CFR 382.303 and 49 CFR 655.44.

FMCSA requires post accident alcohol testing as soon as practicable. Tests performed after 2 hours are required to have documentation in the file detailing the reasons the test was delayed. After a delay of eight hours or more, no more attempts will be made and written documentation is required.

FMCSA requires post accident drug testing as soon as possible, but within 32 hours following the accident. After 32 hours, no testing will be made and the file will be provided with written documentation regarding the reason.

FMCSA requires drivers subject to post accident testing to remain available for such testing. Failure to do so may be construed as a refusal to submit to testing. This does not include leaving the scene to receive emergency medical care.

The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements provided that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period.

Employees and supervisors should follow the following steps in a post accident situation:

- Treat injuries first;
- Cooperate with local law enforcement officers;
- Explain to employees the need for testing;
- Conduct tests promptly; and
- Collect accident documentation promptly.

Random Testing

Random testing will be conducted for all employees performing a safety-sensitive function at a frequency established by law, the controlling collective bargaining agreement, or County HR policy. Random tests will be spread reasonably throughout the year. There will be no pattern to when random tests will be conducted. Random tests will be unannounced and all employees performing a safety-sensitive function will have an equal chance of being selected for testing from the random pool. Employees shall remain in the pool even after being selected and tested. An employee may therefore be selected for a random test more than once during the year. Employees will be selected anonymously using an identification number having no correlation to actual employee names. The employee must report immediately to the collection site after receiving notification of his/her selection from the random pool.

If the result of a random urinalysis test is positive, the employee will be immediately removed from his or her job. The same applies to a confirmed positive breath test where the employee's BAC is not a level that would warrant immediate discharge without recourse to rehabilitation. The employee may then apply for reinstatement, subject to the Return-to-Duty conditions (described below).

Return-to-Duty Testing

An employee with a verified positive drug test result, an alcohol test result of 0.04 or greater, a refusal to submit to a test or any other activity violating this policy or state or federal law (including DOT regulations) may not return to work until the employee is evaluated by a substance abuse professional and passes a return-to-duty test. The employee must successfully complete the return-to-duty requirements as determined by Part 40. To pass the return-to-duty test, the result must be a verified negative drug test or an alcohol test result of less than 0.02. The substance abuse professional will determine whether the employee needs to participate in a rehabilitation program and whether the employee has followed the recommendations for corrective action.

A return-to-duty test will be performed only after the substance abuse professional has determined that the employee has followed the corrective action recommendations and complied with the recommended treatment and education. The employee must then have a return-to-duty test and the test result must be negative prior to returning to duty.

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This policy is not to be interpreted to mean that the return of an employee to duty after compliance with these provisions is mandatory and/or immediate and any return to duty is subject to any disciplinary action taken against an employee.

Follow-Up Testing

In accordance with DOT requirements, employees permitted to return to duty are subject to unannounced follow-up testing for at least 12 months and not more than 60 months. The County will determine the frequency and duration of the follow-up testing in consultation with the substance abuse professional. A minimum of 6 follow-up tests during the first 12 months after the employee has returned to duty will be performed. This follow-up testing is separate from and in addition to the regular random testing program. Accordingly, employees subject to follow-up testing will remain in the standard random pool and will be tested whenever their names come up for random testing, even if it means being tested twice in the same day, week, or month. All testing will meet the requirements detailed in 49 CFR 40, Subpart O, for employees subject to that regulation.

If an employee is subject to follow-up drug tests, the employee may be required to take one or more follow-up alcohol tests and pass with a result of less than 0.04. As previously noted, an employee with an alcohol concentration of 0.02 or greater but less than 0.04 is prohibited from performing or continuing to perform safety-sensitive functions, until the employee's alcohol concentration measures less than 0.02; or the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

If the employee is subject to alcohol tests, the employee may be required to take one or more follow-up drug tests with a verified negative result.

The County is responsible for ensuring that the employee is tested according to the SAP's follow-up plan. These tests can be for drugs or alcohol or both. Any positive test result for an employee who is subject to follow-up testing (including the positive result of a safety-sensitive job transfer, random, reasonable suspicion, post-accident, or other test) will be grounds for immediate discharge.

Retesting at the Employee's Request:

DOT regulations provide for a "split sample" procedure which requires a portion of each urine specimen to be retained in a separate, sealed container. The employee whose urine test is positive may request that the split sample be tested at a separate laboratory meeting the required Federal certification. Federal regulations require the request to be made within seventy-two (72) hours.

All costs associated with the re-testing or split sample testing must be prepaid by the employee, including shipping and handling, transportation, testing and reporting to the MRO. If the result of the retest or split sample is negative, these costs will be reimbursed to the employee.

Notification of Convictions:

Pursuant to the requirements of the Drug-Free Workplace Act of 1988 employees must promptly notify the County of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

Consequences for Engaging in Drug and Alcohol Related Conduct:

An employee who tests positive for drugs, refuses to submit to a test, or violates any provisions of this policy must immediately be removed from performing a safety-sensitive position. An employee who tests positive for drugs or refuses to submit to a drug test may not perform a safety-sensitive function until the employee has been evaluated by the substance abuse professional, completed all recommended treatment, and been subject to return-to-duty drug test with a verified negative result, as mandated by 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. The County retains the right to terminate an employee who tests positive for drugs or refuses to submit to a drug test.

An employee who has an alcohol concentration of 0.02 or greater but less than 0.04 may not perform a safety-sensitive function until the employee's alcohol concentration measures less than 0.02.

An employee who has an alcohol concentration of 0.04 or greater may not perform a safety-sensitive function until the employee has been seen by a substance abuse professional, completed all recommended treatment, and passed the return-to-duty test with an alcohol concentration of less than 0.02. The County retains the right to terminate an employee who tests positive for alcohol or refuses to submit to an alcohol test.

The County will review the results of a retest in consultation with laboratory staff and the MRO. If the results of the test are negative, the County reserves the right to require the employee to provide a new urine sample for testing. If the County declines to require a new test, or if the results of this new test are negative, the employee will be reinstated with no loss of seniority and paid back for wages lost.

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For DOT subject employees:

- Reports of dilute specimens; dilute positives will be treated as verified positives.
- For dilute negatives, all employees will be required to immediately take another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- Drug tests that are reported as invalid require that the employee immediately provide a new specimen under direct observation.
- Cancelled drug tests results require the immediate provision of another specimen.

Contact Person:

Federal regulations require that a single contact person be identified to answer questions about this policy. For the purposes of this policy, the contact person will be:

**Joann Schneider
County of Gloucester, P.O. Box 337, Woodbury, NJ 08096
856-853-3264**

Copies of relevant regulations are also available at this address.

Effects of Alcohol and Drug Addiction:

The Human Resource Manual will provide information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management. Please refer to HR 5.10 titled Employee Assistance Program as well as HR 7.6 Exhibit B titled Commonly Abused Drugs (Source: National Institute on Drug Abuse; National Institutes of Health; U.S. Department of Health and Human Services).

Education and Training:

For, but not limited to, employees performing a safety-sensitive function, the County will provide educational materials explaining the requirements of the Federal Drug and Alcohol Testing Regulations and its policies and procedures. Employees performing a safety-sensitive function will also be provided with training on the effects and indicators of alcohol and drug use in accordance with federal regulations. Employees will be required to sign a form indicating that they have received a copy of the policies and procedures; the form will be filed in employee personnel files.

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Shared Responsibility:

A safe and productive drug-free workplace is achieved through cooperation and shared responsibility. Both employees and management have important roles to play.

Certificate of Receipt:

Subject employees will be required to sign a statement certifying that he or she has received a copy of these materials described in this section. The County shall maintain the original of the signed certificate.