



BOISE COUNTY

RESOLUTION #2017-35

A BOISE COUNTY RESOLUTION ADOPTING

THE BOISE COUNTY DRUG & ALCOHOL FREE WORKPLACE POLICY

WHEREAS, the Board of Boise County Commissioners has reviewed the Boise County Drug & Alcohol Free Workplace Policy; and

WHEREAS, a diligent review and discussion of a policy, has been accomplished by the Board of Boise County Commissioners, with Elected Officials and Department Heads; and

WHEREAS, agreement has been reached by the Board of Boise County Commissioners and Department Heads with Elected Officials on the Drug & Alcohol Free Workplace Policy.

WHEREAS, the Board of Boise County Commissioners has the authority to enact certain personnel policies pursuant to Idaho Code 31-801 and 31-802, and as discussed in Hansen v. White, 114 Idaho 907 (1988); Harms v. Jeffries, No. 4:11-CV-00111-EJL-CWD, 2013 U. S. Dist. LEXIS 32662 (D. Idaho Mar. 4, 2013); Idaho Attorney General Opinion 86-10; and

IT IS FURTHER RESOLVED that Resolution #2017-35, known as the Boise County Drug & Alcohol Free Workplace Policy, be effective as of August 11th, 2017.

APPROVED and ADOPTED this 11th day of July, 2017, in Open Session of the Boise County Board of County Commissioners.

BOISE COUNTY BOARD OF COMMISSIONERS

Handwritten signature of Alan D. Ward in blue ink.

ALAN D. WARD, Chairman

Handwritten signature of Roger B. Jackson in blue ink.

ROGER B. JACKSON, Commissioner

Handwritten signature of Laura L. Baker in blue ink.

LAURA L. BAKER, Commissioner

ATTEST:

Handwritten signature of Mary T. Prisco in blue ink.

Mary T. Prisco, Clerk to the Board



BOISE COUNTY DRUG & ALCOHOL-FREE WORKPLACE STATEMENT AND POLICY

1. PURPOSE. The purpose of the Boise County Drug-Free Workplace Policy is to allow Boise County to achieve and maintain a drug-free workplace. By implementing this policy, the County will be promoting a safe and secure work environment for its employees, and the County will fulfill its obligation to provide the citizens of Boise County with safe and efficient public services.

2. DISTRIBUTION OF POLICY. This policy is to be published on the County website, and a copy of this policy is to be provided to each County employee by either email or a hard copy provided in person. If the policy is provided by email, the County employee must click “read receipt” or respond to the email that the employee received the policy. If the policy is provided in hard copy form, the County employee must sign a written statement that the employee received the policy. The record of “read receipt,” the email response, or the signed statement must be put in the employee’s personnel file.

3. APPLICABILITY. This policy applies to all Boise County employees, volunteers, and interns, whether they are temporary, seasonal, part time, or full time employees, or applicants with a conditional offer of employment, including the Boise County Sheriff’s Office, and to employees of the East Boise County Ambulance District who are on the County payroll.¹ This policy will not apply to independent contractors and their employees, or to employees furnished through and paid by temporary staffing service businesses. For purposes of this policy, the term “employee” includes applicants for County positions.

4. REASONABLE ACCOMMODATIONS. The County will make reasonable accommodations to this policy as required by law. Those accommodations will be made on an individualized case-by-case basis by looking at the essential job functions, safety concerns, and the prescription drug at issue in each specific set of circumstances. Employees performing safety sensitive job functions as laid out in Table A in Section 8 and who are taking prescribed medications must inform their supervisors if they believe that (1) they will be impaired; (2) their prescriptions may adversely affect their judgment, coordination, or the ability to perform assigned job duties; (3) their prescription warning label states that the drug interferes with performing the essential function of their position; or (4) they need a reasonable accommodation to this policy. Employees are not required to disclose any underlying medical conditions for which they are taking any prescribed medications. Employees using drugs illegally are not protected by the Americans with Disabilities Act (ADA).

5. PROHIBITED ACTS. (a) Employees must work alcohol- and drug-free in order to perform their jobs in a safe and efficient manner. This policy is designed to prevent alcohol and prohibited drug use, and to encourage employees to seek help for substance abuse problems. Employees are prohibited from doing any following acts:

- (1) Manufacturing, distributing, possessing, consuming, or using alcohol or a prohibited drug while on County property, operating County vehicles or equipment, conducting County business, or in the scope and course of County employment.
- (2) Working with a detectable level of prohibited drugs or alcohol in their system, unless those drugs are specifically prescribed by a licensed physician (or other appropriate healthcare professional) for specific treatment purposes of the employee at the time.

¹ The East Boise County Ambulance District has its own drug testing policy for its volunteers.

- (3) Testing positive for alcohol or a prohibited drug while on County property, operating County vehicles or equipment, conducting County business, or in the scope and course of County employment, unless those drugs are specifically prescribed by a licensed physician (or other appropriate healthcare professional) for specific treatment purposes of the employee at the time.
- (4) Performing any job functions where the consumption of alcohol or the use of doctor-prescribed medication may negatively affect an employee's safety, the safety of others, or the employee's job performance.
- (5) Violating any state or federal laws regarding alcohol or controlled substances.
- (6) Failing to notify a supervisor immediately after an accident in which the employee was operating a County vehicle or County machinery or equipment that resulted in non-negligible damage or injuries that require medical attention.
- (7) Failing to notify a supervisor for being convicted of a criminal drug statute more than five days after the conviction.
- (8) Failing to notify a supervisor for being charged with a violation of a criminal drug or alcohol statute more than five days after the date the charges were filed.

(b) Engaging in any of these prohibited acts constitutes misconduct, and may lead to disciplinary action up to and including termination and referral for criminal prosecution.

6. DRUG & ALCOHOL TESTING. (a) **Substances tested.** The County reserves the right to test for alcohol and any and all controlled substances, which may include the following: Alcohol; Marijuana; Cocaine; Amphetamines; Methamphetamines; Opiates; Phencyclidine (PCP); Barbiturates; Benzodiazepines; Propoxyphene; Methadone; Ecstasy; Codeine 300; Morphine 300; alpha-Pyrrolidinopentiophenone (a.k.a. "flakka"); Hydrocodone including but not limited to Vicodin, Hydromorphone, and Oxycodone (including, but not limited to Oxycontin). For the purposes of this policy, the term "drug" will mean both controlled substances, prohibited drugs, and/or alcohol. The County reserves the right to add additional substances to this list to be tested as it deems necessary. Notice of the additional substances to be tested for will be given as set forth in the Employee Notification section of this policy.

(b) **Reservations.** This policy is not intended to replace or supersede testing, reporting, and procedures mandated by federal law or regulations (i.e. U.S. Department of Transportation regulations). All situations involving alcohol and/or prohibited drug use by a Boise County employee will be handled in accordance with this policy and in consultation with representatives of the County HR Department. Situations not specified by this policy will be referred to and reviewed by the County HR Department in consultation with the employee's elected official, department head or designee. The procedures laid out in 49 CFR Part 382 will control for employees who fall under the scope of those regulations if they vary in any way from this county drug policy.

(c) **Compensation.** Any drug or alcohol testing required by the County of a current employee² shall be deemed work time for purposes of compensation, regardless of whether the tests are scheduled during an employee's normal working hours or not. The costs of drug and alcohol testing for current employees shall be paid by the County.

² The County will not deem time spent by applicants who are undergoing pre-hire drug testing to be compensable hours worked.

7. EMPLOYEE NOTIFICATION. (a) **General notice.** All employees will receive a general notice announcing the County's intent to begin a testing program (program) for drugs no less than sixty (60) days prior to implementation. The notification will inform employees about the major components of the program, explain the rights and responsibilities of the employees under the program, and encourage employees who have a problem to seek help for substance abuse problems. The notification will state that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the County workplace, and that employees engaging in these acts may be subject to disciplinary actions up to and including termination and referral for criminal prosecution. The notification will also state that as a condition of employment with the County, whether funded or not funded by a federal grant, each employee must abide by the terms of the county drug policy, and must notify his/her supervisor if convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

(b) **Notice for random testing.** Employees will be given notice no less than thirty (30) days prior to random testing implementation. The notification will indicate the date random testing will begin, explain the rights and responsibilities of the employee under the program, and encourage employees who have a problem to seek help. Any employees, however, who have been subject to random testing under a random testing program within the employee's department prior to the adoption of this policy will continue to be subject to random testing and will not receive the additional notice with regards to random testing under this policy.

(c) **Employee questions.** Employees who have any questions about this drug policy shall direct their inquiries to the County HR Director.

8. INDIVIDUALS SUBJECT TO TESTING. All County employees are subject to the drug testing methods described in Sections 7(3), 7(5), and 7(6) of this policy. Furthermore, any County employees who perform one or more of the tasks designated in Table A below as part of their job duties are classified as "safety sensitive," and thus are also subject to additional drug testing described in Sections 7(1), 7(2), and 7(4) of this policy. As indicated in Table A below, any employees who operate a commercial motor vehicle for the County and are subject to commercial driver's license requirements of 49 CFR part 383 will be subject to the testing required by the U.S. Department of Transportation (DOT). All other employees will be subject to the non-DOT tests. Employees performing both non-DOT and DOT job functions are subject to DOT testing. The DOT tests test for marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates. The County reserves the right to require other types of drug tests of both DOT and non-DOT employees depending on the circumstances.

Table A: Safety sensitive job functions and testing category

Job Function	Testing Category
Carry firearms	Non-DOT
Perform fire suppression activities	Non-DOT
Be responsible for direct health care, including but not limited to: direct patient contact, performance of diagnostic testing or therapy, or preparation and dissemination of drugs and medicines.	Non-DOT
Supervise employees during performance of critical incident functions which require employees to qualify to carry firearms, perform emergency medical, lifesaving, and/or fire suppression activities.	Non-DOT
Drive a vehicle that does not require a commercial driver's license to operate	Non-DOT

Drive a vehicle that does require a commercial driver's license to operate	DOT
Drive a vehicle which has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater	DOT
Drive a vehicle which has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater	DOT
Drive for the County as part of their job duties a vehicle which is designed to transport 16 or more passengers, including the driver	DOT
Drive for the County as part of their job duties a vehicle which 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 (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)	DOT
Operate, maintain, or inspect emergency vehicles, heavy equipment, or vehicles having a gross combination weight rating of more than 26,000 pounds, or vehicles designed to transport sixteen (16) or more passengers including the driver, or vehicles of any size that are used to transport hazardous materials for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and/or life-saving equipment used for emergency services	DOT
Handle hazardous materials or chemicals and/or operate large equipment and tools, that if mishandled, place the general public at risk of serious injury	DOT
Come into contact with detained or incarcerated individuals	Non-DOT
Have any in <i>loco parentis</i> responsibility for minors, be entrusted with the safety and security of minors, or be in a position to exert influence over a minor by virtue of continuous interaction or supervisions	Non-DOT
Have direct and unsupervised access to prescriptions, controlled substances, or drug evidence	Non-DOT
Receive and transmit law enforcement radio communications, and dispatch law enforcement officers.	Non-DOT

9. TYPES OF TESTING. Applicants and employees of the County may be subject to any or all of the following drug tests:

- (1) **Applicant (Pre-employment) Testing.** Applicants for safety sensitive positions who have been extended a conditional offer of employment will be subject to a drug test, and possibly also an alcohol test as allowed by law. The procedure laid out in 49 CFR 382.301 controls for applicants subject to DOT testing if it varies in any way from this county drug policy.
- (2) **Baseline Testing.** Employees for safety sensitive positions may be subject to this test.
- (3) **Post-Accident Testing.** As a condition of employment, all employees are required to consent to testing of his or her blood, urine, or breath for drugs and/or alcohol following an accident and the release of relevant medical records, which may include whether there were drugs and/or alcohol in the employee's system at the time of the accident. The department head, supervising elected

official or designee should initiate testing when the circumstances of an accident/unsafe act involve any of the following:

- (A) Death or personal injury of any parties involved in the accident/unsafe act, requiring medical treatment at a hospital or medical treatment facility;
- (B) Damage to property (other than a vehicle) belonging to the County or any other owner estimated in excess of \$500.00;
- (C) Non-negligible damage attributable to operator error as determined by the employee's department head or supervising elected official to a County-owned vehicle or County-owned heavy machinery;
- (D) One or more motor vehicles are disabled due to the accident;
- (E) One or more motor vehicles must be towed or otherwise transported from the scene;
- (F) One or more motor vehicles rolled over.

After the incident, the employee must remain readily available for drug-testing. Prior to testing, the employee may not consume any alcohol or drugs, either legal or illegal. The employee will not resume any job duties until the test results are known. If alcohol is suspected, the testing will take place within two (2) hours of the accident/unsafe event where possible, but in no case later than eight (8) hours. If drugs are suspected, the testing will take place within thirty-two (32) hours if drugs are suspected. Compliance with this county policy on drug and alcohol screening must be completed prior to an employee going home. The procedure laid out in 49 CFR 382.303 controls for employees subject to DOT testing if it varies in any way from this county drug policy.

(4) **Random Testing.** Random testing for drugs will be conducted on all employees classified as "safety sensitive" in Section 6 of this policy. The testing will take place within 8 hours of notification. The procedure laid out in 49 CFR 382.305 controls for employees subject to DOT testing if it varies in any way from this county drug policy.

(5) **Reasonable Suspicion Testing.** Any employee may be required to report for immediate drug/alcohol testing for the presence of alcohol or prohibited drugs if there is a reasonable suspicion that such employee, while on duty, is under the influence of drugs. Such a request to report for testing may be made by the employee's elected official, department head or designee. Such reasonable suspicion may be based upon statements made by the employee or any other credible source that would lead a reasonable person to believe that alcohol or prohibited drugs may be present in the employee's body, supported by independent observations made by a supervising employee, including but not limited to the factors laid out in the Observed Behavior-Reasonable Suspicion form (Exhibit A), such as the odor of alcoholic intoxicants, and observations of speech and physical movement consistent with the influence of a prohibited drug or alcohol. The employee to be tested should be immediately relieved of duty and transported to the testing site by either the supervisor or a supervisor of another office or department unless an on-site collection service is used. Supervisors will receive training for signs and symptoms of drug use and identifying factors. Any person who orders that a drug test be performed should immediately prepare an Observed Behavior-Reasonable Suspicion form (Exhibit A) that includes all the relevant statements and details surrounding and giving rise to the testing order, including all information and details which supported the finding of a reasonable suspicion. Such report should be delivered to the elected official, department head or designee within 24 hours of the testing order. The procedure laid out in 49 CFR 382.307 controls for employees subject to DOT testing if it varies in any way from this county drug policy.

- (6) **Return to Duty and Follow-up Testing.** After a verified positive drug test result, an employee must receive a negative test result before returning to work. All employees referred through administrative channels who undergo a counseling or rehabilitation program for alcohol or prohibited drug use through the Employee Assistance Program (EAP) shall be subject to unannounced testing following completion of such a program for a period of up to one year. Only full-time and part-time employees, however, shall be eligible for EAP services – seasonal and intermittent employees are not eligible. Such employees shall be tested at the frequency recommended by the EAP for full-time and part-time employees, and at the frequency set by the supervising elected official(s) for seasonal and intermittent employees. Such testing is distinct from testing which may be imposed as a component of a rehabilitation program. Confirmation of or continuing participation in an alcohol or drug rehabilitation program, as recommended by EAP, is required of an employee returning to duty when such rehabilitation is job-related and consistent with business necessity.³ The EAP will notify the County Human Resources Director when an employee has completed a rehabilitation program. After an employee returns to work, a single positive test result or failure to successfully complete the recommended rehabilitation program will be grounds for disciplinary action up to and including termination and referral for criminal prosecution. The procedures laid out in 49 CFR 382.309 and 382.311 (which refer to 49 CFR Part O) control for employees subject to DOT testing if it varies in any way from this county drug policy.

10. TESTING PROTOCOL. (a) **Third-party administrators.** Minert & Associates (during business hours, 1 800 388 3204; for on-site testing outside business hours, Onsite Idaho (208) 477-4706, Stacey Rich) and other third-party administrators approved by the Board of County Commissioners by resolution shall conduct drug testing, Drug-Free Workplace education, and reporting. The third-party administrator must comply with Idaho Code 72-1701 et seq., especially Idaho Code 72-1704, as well as in its drug testing procedures and activities, and all federal code and regulations when testing DOT employees.

(b) **Record keeping procedures.** All educational/training elements, the chain of custody form, sample collection, reporting, testing (at a SAMHSA certified lab), cut-off levels, record keeping, validity, confidentiality, and security for drug and alcohol tests shall be in accordance with Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), Idaho Code 72-1704, and/or other applicable law.

(c) **Medical review officer.** The County's third-party administrator will designate a Medical Review Officer (MRO), or designee, to interpret, evaluate and monitor the drug testing program and results. The MRO will be a licensed physician with knowledge of drugs, testing methods and drug abuse disorders in accordance with the applicable requirements.

(d) **Result reporting and filing.** All employees who are required to be tested under the conditions of this policy will report to the designated collection site at the requested time with proper identification. If the test or retest is negative, the MRO or designee reviews the chain of custody form for completeness and accuracy, and then the results are reported to the elected official under whose supervision the employee works, except if the employee works for the Board of County Commissioners,

³ If in doubt whether the program is or is not job-related and consistent with business necessity, consult with legal counsel.

then the results are reported to the County HR Director. Any record related to an employee's drug and alcohol tests, including examinations from the Peace Officers and Standards Training council, must be treated as a medical record, and kept separately from the employee's personnel file, especially if the result reveals either the use of a legal prescription drug or disability. Drug and alcohol test results are only permitted to be shared with supervisors of the employee on a need-to-know basis only for necessary job restrictions, accommodations, and implementation of Sections 15 and 16 of this policy.

11. ALCOHOL TESTING. An initial test for the presence of alcohol will be conducted using methods approved by the National Highway Traffic Safety Administration (NHTSA). If the result of the first screening is an alcohol concentration of .02 or greater, a confirmatory test will be conducted. If any DOT employee has an alcohol concentration of .02 or greater but less than .04, that employee will not be allowed to return to work for 24 hours from the time of the test. Any DOT employee who twice has an alcohol concentration of .02 or greater but less than .04 will be treated as having tested positive for alcohol. If a DOT employee has an alcohol concentration of .04 or greater, the employee may not perform any safety-sensitive functions until the employee has been evaluated by a substance abuse professional (SAP) and has passed a return-to-duty test. In the event of a test with an alcohol concentration of .04 or higher, the employee's supervisor must ensure that all of the following personal information is reported to the Commercial Driver's License Drug and Alcohol Clearinghouse:

- (1) A verified positive, adulterated, or substituted drug test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to any test required by subpart C of this part;
- (4) An employer's report of actual knowledge, as defined at § 382.107:
 - (A) On duty alcohol use pursuant to § 382.205;
 - (B) Pre-duty alcohol use pursuant to § 382.207;
 - (C) Alcohol use following an accident pursuant to § 382.209; and
 - (D) Controlled substance use pursuant to § 382.213;
- (5) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (6) A negative return-to-duty test; and
- (7) An employer's report of completion of follow-up testing.

12. DRUG TESTING TECHNIQUE. The third-party administrator will determine the least intrusive drug testing technique. Any employee subject to testing for prohibited drugs under this plan will be permitted to provide urine specimens in private and in a rest room stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the employee tested, however, may observe the employee provide the urine specimen when such personnel have reason to believe the employee may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular employee has or may alter or substitute the specimen when:

- (1) The employee
 - (A) Has previously been found by the County to be a prohibited drug user; or
 - (B) Has previously tampered with a sample; or
- (2) Facts and circumstances suggest that the employee
 - (A) Is a prohibited drug user; or
 - (B) Is under the influence of prohibited drugs at the time or the test; or
 - (C) Has equipment or implements capable of tampering with or altering urine samples; or

- (3) The temperature of the specimen is outside the range of 32-38° Celsius / 90-100° Fahrenheit or shows signs of contaminants.

13. TEST REFUSAL. Employees will be considered to have refused testing if they:

- (1) Refuse to test;
- (2) Fail to report for a required test at the scheduled time;
- (3) Engage in conduct that clearly obstructs the testing process;
- (4) Tamper or attempt to tamper with the test; or
- (5) Alter, substitute, or attempt to substitute the specimen.

Refusing testing is misconduct. Employees who refuse to be tested when so required will be subject to the full range of disciplinary actions up to and including termination and referral for criminal prosecution.

14. DEFERRAL OF TESTING. An employee selected for random drug testing may defer testing if the employee's elected official, department head or designee deems necessary a deferral be allowed on the grounds that the employee is:

- (1) In a leave status (sick, vacation, compensatory, administrative, FMLA leave, leave without pay); or
- (2) In official travel status away from the test site or about to embark on official travel scheduled prior to testing notification.

An employee whose random drug test is deferred will be subject to an unannounced test within 30 days from the date of the employee's return to work or return from travel.

15. POSITIVE TEST RESULT. (a) **Opportunity to respond.** Any employee or prospective employee who tests positive for drugs or alcohol will be given written notice of that test result, including the type of substance involved, by the County. The employee or applicant must be given an opportunity to discuss and explain the positive test result with a medical review officer or other qualified person. Employees will be afforded the opportunity to submit medical documentation of lawful use of an otherwise prohibited drug. Evidence to justify a positive result may include, but is not limited to:

- (1) A valid prescription; or verification from the employee's physician verifying a valid prescription.
- (2) All specimens identified as positive on the initial test will be confirmed using gas chromatography/mass spectrometry (GC/MS) and/or breath alcohol confirmation techniques to ensure reliability and accuracy in accordance with applicable requirements.

(b) **Removal.** Any employee receiving a verified positive test result, may immediately be removed from the work site pending an EAP recommendation and must have a negative test result before returning to work. Supervisors of DOT employees who have received a verified positive drug test result must immediately remove the employee from performing safety-sensitive functions. Supervisors must then follow the procedures laid out in 49 CFR 40.23 to the extent that they are more specific than or differ in any way from this policy.

(c) **Pay during removal.** Employees who are removed from job duties resulting from verified positive test result will only be entitled to pay for hours worked. Use of sick, vacation or other leaves may be authorized upon approval of the elected official, department head or designee.