HUMAN RESOURCES POLICY BULLETIN NO.: 3-16   Date: December 9, 2016

REGULATION REFERENCE NO.: 3.1.2 ELIGIBILITY DETERMINATION

INDEX REFERENCE: CONTROLLED SUBSTANCE AND ALCOHOL TESTING POLICIES AND PROGRAMS FOR EMPLOYEES WHO HOLD COMMERCIAL DRIVERS LICENSES

APPROVED:                     
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A. INTRODUCTION

The City University of New York ("CUNY") is dedicated to providing safe and efficient service to our students and our community and a safe workplace for our employees.

In order to meet this goal and adhere to U.S. Department of Transportation ("DOT") (49 CFR Part 40) and Federal Highway (40 CFR Part 382) Regulations, CUNY will oversee and enforce mandatory drug and alcohol testing for certain employees with jobs that require them to hold a commercial driver’s license ("CDL") and drive a commercial motor vehicle. The use of alcohol and the illegal use or abuse of drugs will not be tolerated and those employees who violate this policy will be subject to disciplinary action up to and including suspension or dismissal. In addition, covered employees who fail to comply with this policy by refusing to submit to drug or alcohol testing or training or tampering with a specimen or test, likewise, will be subject to disciplinary action, up to and including termination of employment.

Questions or concerns regarding CUNY’s controlled substance and alcohol testing policies and programs can be addressed to the University Director of Classified Staff/Office of Human Resources Management, who is the Designated Employer Representative for CUNY’s drug and alcohol program (the "DER").

B. COVERED EMPLOYEES SUBJECT TO ALCOHOL AND DRUG TESTING

The Federal Highway Administration of the DOT requires certain employees to undergo drug and alcohol testing. The employees who must be tested are those required to have a CDL and who operate a commercial motor vehicle for CUNY. A commercial motor vehicle is one that (a) weighs more than 26,000 pounds; (b) is designed to transport 16 or more people, including the driver; or (c) is used to transport hazardous material that require the vehicle to be placarded under the hazardous material regulations (49 CFR Part 383.5).

Employees not covered by this policy shall not be permitted to drive a commercial motor vehicle for
C. CDL-RELATED SAFETY-SENSITIVE FUNCTIONS

According to applicable regulations, a covered employee is considered to be performing a safety-sensitive function during any period when he or she is (a) actually performing, (b) ready to perform, or (c) immediately available to perform any safety-sensitive functions. Safety sensitive functions include: (a) time at CUNY or any public property waiting to be dispatched; (b) inspecting, servicing or conditioning a commercial motor vehicle or equipment; (c) driving; (d) time in or upon a commercial motor vehicle; (e) loading, unloading or assisting with loading and unloading of a commercial motor vehicle; (f) repairing or remaining with a disabled commercial motor vehicle. At CUNY, because of the nature of the job for employees who are required to have a CDL and who operate a commercial motor vehicle, generally all job responsibilities while on duty are safety-sensitive functions.

D. REQUIRED CONDUCT FOR COVERED EMPLOYEES

All covered employees are required to immediately notify their supervisor of any drug prescribed by a physician that may impair their ability to perform a safety-sensitive function, including but not limited to, driving a commercial motor vehicle. Failure to do so may result in disciplinary action up to and including termination of employment.

E. PROHIBITED CONDUCT FOR COVERED EMPLOYEES

A covered employee shall not use alcohol while on duty or report to duty within eight hours of using alcohol; CUNY recognizes, however, that evidence of alcohol use may remain for longer than eight hours after consumption, and covered employees who test positive for alcohol outside of this eight-hour limit will be subject to discipline. A covered employee shall not report for, or remain on, duty if he or she has been using drugs or has tested positive for drug use (except for those drugs that are used appropriately as prescribed by, and under the care of, a doctor, and that will not impair or have an adverse effect on a covered employee’s ability to drive safely).

A covered employee shall not:

- Use or possess alcohol while on-duty;
- Report for duty within eight hours of consuming alcohol;
- Report to work or remain on duty while having a blood alcohol concentration of 0.02 or greater;
- Use alcohol for eight hours following an accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first;
- Report for duty while using illegal controlled substances or abusing doctor-prescribed controlled substances;
- Refuse to submit to a required alcohol or drug test involving post-accident, random, reasonable suspicion, or follow-up testing; or
• Refuse to undergo mandatory training.

F. WHEN A COVERED EMPLOYEE MUST BE TESTED

Six types of drug and alcohol tests are required under federal regulations: (1) pre-employment, (2) reasonable suspicion, (3) random, (4) return-to-duty, (5) post-accident, and (6) follow-up.

Pursuant to federal regulations, CUNY will perform pre-employment and return-to-duty tests prior to an employee’s reporting for duty. CUNY will conduct other tests during working hours. When a covered employee is notified that he or she must submit to testing, he or she must go immediately to the collection site.

Employees are encouraged to consider their drug and alcohol use outside of work when such use may affect their ability to perform assigned safety-sensitive functions at work and/or the outcome of a drug or alcohol test.

G. TESTING PROCEDURES

1. Drug Testing Procedures

CUNY will conduct testing for five drug types: (1) marijuana, (2) cocaine, (3) opiates, (4) amphetamines, and (5) phencyclidine (PCP).

All drug testing shall be performed on urine specimens collected under highly-controlled conditions. CUNY employs certified collection centers and laboratories for its testing.

Urine collected for a drug test shall be split into two containers. The primary specimen will be used for the required testing. The second specimen, called the “split specimen”, shall be reserved in the case that an employee who tested positive requests that the specimen be retested.

Both the primary and split specimens shall be sent to the laboratory for testing. If the result of the test on the primary specimen is negative, the testing laboratory will inform the Medical Review Officer (“MRO”) at the testing center that the drug test was negative.

If the primary test is positive, a second test, known as a “confirmation test” is done on the primary specimen. Only specimens that are confirmed positive on the second test are reported as positive to the MRO. After receiving a report of a positive test from the laboratory, the MRO will contact the employee, using the telephone number provided on the drug test form, to notify the employee of a positive test and to provide the employee with an opportunity to explain the circumstances that may have led to a positive test. If no legitimate explanation for the positive test is determined, the MRO will report the test as positive. If there is a valid explanation for the positive test other than illegal drug use, the MRO will report the test as negative. A test showing the presence of a medication that
the employee has used in accordance with a valid prescription will be considered a negative test.

In the event of a positive test, the employee may request, within 72 hours of being advised of the positive test result of the primary specimen, the MRO to send the split specimen to a different certified lab for testing. If the result of the split specimen test is negative, the MRO shall cancel the test. Where the test is being conducted in connection with pre-employment or return-to-duty testing, another test must be administered.

If the employee is unable to provide a sufficient urine sample, the collector will urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. If after three hours, the individual still is unable to provide a specimen, the MRO will so notify the DER. The DER, in consultation with the MRO, will direct the employee to obtain, within five days, an evaluation from a licensed physician acceptable to the MRO, who has expertise in medical issues raised by the employee’s failure to provide a sufficient specimen. The MRO may perform the evaluation if the MRO has appropriate expertise.

If, after reviewing the evaluation, the MRO determines that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, the MRO will cancel the test. If the MRO determines that there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, the MRO will deem the employee to have refused to submit to testing and will so notify the DER.

CUNY will maintain records showing the type of test; date of collection; location of collection; entity performing the collection; name of the lab; name of the MRO; and test results. These records will remain confidential and used exclusively for determining an employee’s fitness for performing safety-sensitive functions at CUNY or in accordance with other applicable law.

2. Alcohol Testing Procedures

Alcohol testing is done by testing breath using a devise called an Evidential Breath Testing Device (an “EBT”). The alcohol testing will be performed at a site that affords privacy to the employees being tested. The employee will be asked to blow into a mouthpiece for at least six seconds, or until the EBT indicates that an adequate amount of breath has been obtained. The test results of the EBT will immediately be read and a copy of the results provided to the driver.

If the test shows a result less than 0.02, the test is considered negative. A test result of 0.02 or greater is considered positive. If the alcohol concentration is 0.02 or greater, a confirmation test must be conducted. The confirmation test will be performed fifteen minutes after the initial test and the results of this test will determine what actions will be taken by CUNY. When the confirmation
result is different from the initial test, the lower of the two results will be used to determine the actions taken by CUNY. A breath alcohol testing form will be prepared with a copy for the tested driver.

H. TESTING PROGRAMS

1. Pre-Employment Testing

All applicants for employment at CUNY or one of its constituent units in a position that requires the employee to have a CDL and drive a commercial motor vehicle must be tested for drug use prior to employment. In addition, CUNY will test all current employees who are transferring from a non-safety sensitive function to a safety-sensitive job for the first time. All applicants must provide CUNY with a list of all previous and current employers within the last three years and provide written consent for CUNY to check the applicant’s DOT drug and alcohol testing history from those employers. Failure to provide the information and consent will be grounds for disqualification from employment. Applicants with a record of a violation of an alcohol or drug policy within the last six months will be disqualified from employment.

2. Reasonable Suspicion Testing

Reasonable suspicion means that based on reliable information, CUNY believes that the employee’s appearance or conduct may be indicative of the use of alcohol and/or drugs. The actions or observations of the employee must occur while the employee is on duty or just preceding the work period. The conduct, appearance, behavior, speech or smell of the driver must be observed by a supervisor or other CUNY employee who has received training in detection of probable alcohol and/or drug use. Whenever possible, a second manager, supervisor, or other witness (who may or may not have received training) should confirm the reasonable suspicion determination.

In the case of suspected drug use, the covered employee shall be taken immediately to a collection site and a urine sample will be obtained. A covered employee cannot return to duty until the results of the drug test are reported as negative to CUNY.

In the case of suspected alcohol use, the test must be done as soon as possible. If the reasonable suspicion test is not administered within two hours following the observations, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. If the test is not administered within eight hours, the employer shall cease attempts to have the test administered and shall prepare and maintain a record stating the reasons why the test was not administered. The covered employee cannot return to duty until he or she passes an alcohol test or after 24 hours, whichever is earlier.

During the time period when the employee is awaiting testing results, the employee will be suspended
with pay. Employees who must undergo reasonable suspicion testing outside of their regular work schedule will be eligible for overtime pay at the expense of his or her relevant CUNY campus.

The supervisor who makes the determination that reasonable suspicion exists shall not conduct the test on the covered employee. Within 24 hours of witnessing such behavior, the trained CUNY employee who witnessed the suspicious behavior, as well as the second witness who confirmed the determination, shall prepare and sign a written statement documenting the facts underlying the reasonable suspicion.

3. Random Testing

Throughout the year, covered employees are subject to unannounced testing on a random basis. The total number of random drug tests per year will equal or exceed 50 percent of the yearly average number of commercial motor vehicle employee positions for which testing is required. The minimum alcohol-testing rate per year will be 10 percent of the yearly average number of commercial motor vehicle employee positions for which testing is required. Since covered employees are chosen at random throughout the year, each individual employee may not be tested or may be tested once, twice or more in a given year.

4. Post-Accident Testing

A covered employee must supply a urine specimen for drug testing or a breath test for alcohol testing following certain types of accidents. A covered employee will be tested for alcohol and drugs as soon as possible after an accident that involves a fatality, bodily injury to a person that requires immediate medical attention, one of the involved vehicles being towed from the scene, or where the employee receives a citation for a moving traffic violation related to the accident or otherwise is reasonably suspected of alcohol or illegal drug use. The alcohol test should be performed within two, but may be performed up to eight, hours following the accident. The drug test will be performed within 32 hours of the accident. The supervisor, with consultation from the DER, or a designee, shall be responsible for determining when testing is necessary. Any employee required to be tested, but who needs medical assistance, must procure the medical assistance prior to submitting to testing. If the testing cannot happen within the required time, the supervisor shall document the reasons why testing did not take place. The covered employee shall not return to duty until the test has been administered.

5. Return-to-Duty Testing

If a covered employee who was found to have violated this policy is allowed to return to duty, an observed drug test, pursuant to 49 CFR Part 40 of the DOT regulations, will be conducted prior to the performance of a safety-sensitive function. The results of such test must be negative for the covered employee to return to duty. In addition, the employee will be subject to unannounced observed follow-up testing. The frequency of such tests will be prescribed by a substance abuse professional
and will consist of a minimum of six tests in the first 12 months following the employee's return to duty.

6. Follow-up Testing

After returning to duty following a positive drug test and/or alcohol test, the covered employee will be subject to random unannounced follow-up alcohol and/or drug testing as directed by the substance abuse professional. A minimum of six tests will be administered within the first year after returning to duty, as directed by the substance abuse professional. Follow-up testing may extend up to five years.

I. CONSEQUENCES OF A POSITIVE TEST

1. Applicants for employment who test positive for alcohol or drugs will be disqualified from employment.

2. If a covered employee tests positive for alcohol and the test result is between 0.02 and 0.04, the covered employee shall be removed from duty, suspended without pay for 24 hours and referred to a substance abuse professional for clearance. The employee must undergo an alcohol test with a negative result before returning to duty. Thus, the employee will be tested before his or her next scheduled shift that occurs at least 24 hours after the original positive test. If the test is negative, and the employee has received clearance from a substance abuse professional (as outlined below in paragraph I(5)), then the employee shall be allowed to return to work, but shall be subject to six random alcohol tests over a six month period. If the test is positive (i.e., a test result of 0.02 or above), then the employee will be immediately suspended without pay and subject to the disciplinary action outlined below in paragraph I(3).

3. Any permanent, provisional or labor class employee entitled to disciplinary rights, who tests positive for alcohol at a level of 0.04 or higher (or who tests positive for alcohol at a level between 0.02 and 0.04 when retested after an original positive test as specified in paragraph I(2) above) or who tests positive for drugs will immediately be removed from service and suspended without pay for up to 30 days pending a Step I hearing pursuant to the disciplinary procedures outlined in the collective bargaining agreement between CUNY and the employee's union. A Step I decision will be issued within 14 working days from the conclusion of the Step I hearing. Any adverse decision issued may be appealed in accordance with the procedures specified in the collective bargaining agreement. A positive test in this circumstance is grounds for discipline up to and including termination of employment. Employees who test positive and do not have any collective bargaining disciplinary right entitlement will be subject to immediate termination of employment.

4. Any covered employee who refuses to submit to, fails to cooperate with any part of, or tampers with, a drug or alcohol test will be deemed to have tested positive and subject to the
disciplinary action set forth in paragraph I(3) above. Any covered employee who fails to appear for a mandated test within a reasonable time will be subject to the disciplinary action set forth in paragraph I(3) above.

5. Any covered employee who receives an opportunity to return to work in a DOT safety-sensitive position following a violation of this policy must show that he or she has received an evaluation by a substance abuse professional and has successfully complied with the substance abuse professional’s recommendations. CUNY may communicate with the substance abuse professional about the employee’s testing without permission.

J. TRAINING

CUNY shall provide mandatory education and training for covered employees and their supervisors concerning controlled substances and alcohol. The training program covers the manifestations and behavioral changes that may indicate alcohol and controlled substance use and abuse and the effects of alcohol and controlled substance use on personal health, safety and the work environment. CUNY maintains records of training sessions and attendance.