

Drug and Alcohol Policy

Purpose

Powhatan County prioritizes establishing and maintaining a safe and healthy drug- and alcohol-free workplace for its employees.

The County is committed to assisting employees who may be experiencing problems with drugs or alcohol. Employees with such problems are encouraged to seek counseling or other treatment before disciplinary action is taken. The County's desire to assist employees does not relieve the County of its responsibility to maintain a drug- and alcohol-free workplace.

To encompass the entire work environment, the term “workplace” includes any place where employees are on duty, on call, on or off County property in an official capacity, or while operating a County vehicle. The manufacture, distribution, dispensation, possession, or use of drugs, controlled substances, or alcohol is prohibited in any County workplace. A “controlled substance” means any drug or substance listed in the Controlled Substances Act (21 U.S.C. § 812), including marijuana. “Drugs” includes cannabis oil or products made with cannabis oil. Employees shall not be involved with any activities involving the unlawful application, possession, market, or transfer of alcohol, drugs, or controlled substances.

All employees have the right to report any violation of this policy without fear of reprisal or retaliation. All department directors shall take such steps as may be necessary to ensure maximum employee awareness of and compliance with County policy and rules, and state and federal laws.

The use of alcohol, marijuana, illegal drugs, or the misuse of prescription drugs is not acceptable in the County workplace and violates this policy. Such behavior seriously affects job performance and can create a danger to the public and coworkers. In addition, the use of illegal drugs is not acceptable at any time or place. For this policy, the term marijuana is inclusive of marijuana products, and the term cannabis is inclusive of cannabis oil and cannabis products, any part of a plant of the genus *Cannabis*, whether growing or not, its seeds or resin, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, its resin, or any extract containing tetrahydrocannabinol (THC) that may be smoked, the, or ingested.

Code of Virginia Section 40.1-27.4 effective July 1, 2021, prohibits employers from discharging, disciplining, or discriminating against their employees for their lawful use of cannabis oil pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee’s diagnosed condition or disease. The law does not restrict the County’s ability to take any adverse action for any impairment caused by using cannabis oil or prohibit possession during work hours or require the County to commit any act that would cause the County to be in violation of federal law or that would result in the loss of a federal contract or federal funding.

This Policy applies to applicants and all classified and unclassified employees regardless of service, position, or appointment status.

Note: This law does not impact those employees and applicants who are subject to the U.S. Department of Transportation (DOT) regulations. It remains unacceptable for employees and applicants subject to the U.S. DOT regulations to use alcohol or drugs, including marijuana and cannabis oil.

Policy and Regulations

1. The County of Powhatan maintains a drug- and alcohol-free workplace for all its employees.
2. Under the Federal Drug-Free Workplace Act, no employee shall unlawfully manufacture, distribute, dispense, possess, or use on or in the workplace a controlled substance, as defined in Schedules 1-V of Part B of the Controlled Substances Act (21 U.S.C. §812).
3. As a condition of employment, each employee must notify his supervisor of his conviction of any criminal drug law no later than five days after such conviction.
4. An employee shall notify their supervisor of any prescription for any narcotic, marijuana, or cannabis oil, as well as provide a note from the prescribing physician or practitioner indicating that the employee is able to perform all job duties. And provide within five (5) days of request a legally valid prescription consistent with the Controlled Substances Act (CSA) for any drug found to be in their possession.
5. Employees who are subject to random drug tests and who are prescribed marijuana, cannabis, any cannabis-based product, or any other controlled substance that may impair the employee's ability to safely perform an essential job function, must notify Human Resources (HR). Upon notification, HR will engage in an interactive process with the employee and may require the employee to provide a prescription and documentation from the employee's health care provider. The ability to work while taking such prescriptions is at the discretion of Human Resources and the appropriate agency head.
6. The possession or consumption of alcohol, marijuana, cannabis oil, or illegal drugs in the workplace is prohibited. This prohibition covers the entire period between the time when the employee initially reports to work and the time when the employee finally leaves work at the end of his shift, inclusive of all breaks and meals, without regard to whether the break/meal is taken in or outside of the workplace.
7. Reporting to work under the influence of alcohol, marijuana, cannabis oil, or illegal drugs is prohibited. For purposes of this policy, an employee is considered to be "under the influence" when, if tested, the employee receives a positive test result.
8. Employees who have separated from County employment because of a positive drug and/or alcohol test will not be eligible for re-employment, except in certain circumstances as determined by Human Resources in conjunction with the appropriate agency head.
9. Violation of this policy will result in appropriate disciplinary action, up to and including termination.
10. For purposes of maintaining a workplace free of drugs and alcohol, the County of Powhatan reserves the right to search all County workplaces for drugs, controlled substances, and alcohol, without employee consent, at all County workplaces and property in which it maintains either joint control with the employee or full control, including all county vehicles.
11. All employees are subject to reasonable suspicion drug and alcohol testing.

Testing

Unless otherwise noted, employees must report for testing immediately after being notified of such test. If the test is a Reasonable Suspicion test, they must be driven to the test immediately after supervisor verification.

The County reserves the right to test all applicants and employees, regardless of position, for the presence of drugs, controlled substances, and/or alcohol in the following situations:

1. A pre-employment drug test may be administered to the applicant before the start of their employment or within the first three days of hire. Employment is contingent upon negative results. Applicants who fail a drug test will be denied employment and may be excluded from future job opportunities with the County.
2. When an employee in a position critical to the safety and security of employees and/or the public has been selected for a random drug test by a computer-based program. The percentage of employees to be randomly tested and the computer-based program employed will be determined by Human Resources in conjunction with the appropriate agency head. The positions that can be randomly tested are as follows:
 - a. Any employee required to possess a Commercial Driver's License

- b. Firefighters & EMTs
 - c. All Sworn Supervisory Fire Personnel
 - d. Public Safety Communications Officers and Supervisory Personnel
 - e. Sheriff Deputies
 - f. All Sworn Supervisory Sheriff's Office Personnel
3. When there is reasonable suspicion that a County employee, regardless of position, is under the influence of illegal drugs/alcohol.
 4. When a County employee has been authorized to return to work at the recommendation of the employee's physician after testing positive for illegal drugs and/or alcohol, after referral to the Employee Assistance Program.
 5. Post-accident testing: all employees shall be tested for drugs and alcohol immediately after a motor vehicle accident that occurred while they were operating a County vehicle or certain equipment. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the supervisor or Department representative of their location if they leave the scene of the accident prior to submission to such test, shall be deemed by the County to have refused to submit to testing.

Commercial Driver's License Holders: As required by the Omnibus Transportation Employee Testing Act of 1991 and implementing regulations of the Office of Drug & Alcohol Policy & Compliance and the Federal Highway Administration {49 CFR, Parts 40 and 382, et. al.}, all employees and applicants who hold or are offered a position that requires a Commercial Driver's License {CDL}, as a condition of employment and continued employment, will be tested for drugs under the following conditions:

- a. Pre-employment (Drug Test Only)
- b. Random
- c. Post-accident {when driving a County vehicle): The employee should be promptly tested for drugs as soon as practicable when:
 - d. There is a fatality as a result of the accident.
 - e. The driver receives a citation within eight (8) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - f. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - g. One or more vehicles are towed, due to incurred disabling damage as a result of the accident.
 - h. Reasonable suspicion.

General Procedures

Drug Tests- The County's drug testing program will be administered by applicable law and will be conducted confidentially. Urinalysis will be used for the detection of controlled substances. All employees tested will be required to sign an authorization and consent form, releasing the information to the employer. The testing of the sample will be performed by a laboratory approved by the National Institute on Drug Abuse (NIDA), including a NIDA panel screening with gas chromatography/mass spectrometry (GC/MS) confirmation on all positive tests. The panel includes but is not limited to, screening for amphetamines, barbiturates, benzodiazepines, marijuana (THC), cocaine, opiates, and phencyclidine (PCP). The cutoff level for each substance tested will be consistent with those specified by applicable law. The cost for all drug tests ordered will be borne by the County. Any employee subject to testing under this policy will be permitted to provide urine specimens in a manner such that the employee is not observed while providing the specimen. If there is reason to believe that the employee has altered or substituted the urine specimen provided, then a second sample will be obtained under the direct observation of a same-gender collection site person.

Alcohol Tests- An alcohol test will not be required to support a finding that an employee has used alcohol in violation of this policy. Such a finding may be based on other observed facts and conditions. If a test is

administered, it will be of a type consistent with those used by the Sheriff's Office to test persons suspected of driving under the influence. All employees tested will be required to sign an authorization and consent form, releasing the information to the employer. The cost for all alcohol tests ordered will be borne by the County.

Refusals- Refusal to submit to any testing, including failure to appear for testing without prior notice acceptable to the County or failure to complete and sign an authorization and consent form, will be considered a positive test result and subject the employee to the full range of disciplinary action, up to and including termination, or in the case of an applicant, the withdrawal of a conditional offer of employment.

Positive Test Results

- At its discretion, Human Resources may offer the tested employee an opportunity to provide a Medical Review Officer information to demonstrate that the confirmed positive test result is from a legally prescribed medication. Once the Medical Review Officer determines the legitimacy of a positive result, the result will then be considered a verified positive test result. The employee may submit a written request for a retest of the original specimen within 72 hours of being notified by the Medical Review Officer. The retest will be at the employee's expense.
- If the result of an employee's alcohol test indicates the presence of alcohol, the employee will be immediately suspended from duty and promptly transported home, pending disciplinary action.
- A confirmed positive test result for marijuana (THC) will be treated in the same way as a confirmed positive test result for an illegal drug/controlled substance.

Guidelines for Reasonable Suspicion Testing for Drugs and Alcohol

All employees are subject to drug and/or alcohol testing under reasonable suspicion. Positive test results under reasonable suspicion testing will be handled in the same manner as random drug or alcohol tests. An employee will be required to submit to drug and/or alcohol tests when there is a reasonable suspicion to believe the employee has used or is under the influence of drugs and/or alcohol. A supervisor will make this decision based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, and/or body odors of the employee. When a supervisor, in their judgment, has reason to believe that an employee has used or is under the influence of drugs or alcohol, the supervisor should ask another supervisor to corroborate the observations. The following examples, alone or in combination, may comprise reasonable suspicion. This list is intended to be illustrative and is not all-inclusive:

- Unexplained inability to perform normal job functions.
- Slurred speech.
- Smell of alcohol or drugs on breath/person.
- Any unusual lack of physical coordination or loss of equilibrium.
- Unexplained hyperactivity or depression and withdrawal.
- Unexplained inability to think or reason at the employee's normal level.
- Unusual or bizarre behavior.
- Possession of alcohol or illegal drugs or the presence of alcohol, alcohol containers, illegal drugs, or drug paraphernalia in an area subject to an employee's control.
- Information obtained from a reliable person with personal knowledge.

If reasonable suspicion is determined, the supervisor must contact the Human Resources Manager or Agency Head to discuss the observations and to determine the appropriate course of action. If the employee is to be tested, arrangements will be made with the County's designated collection center for the necessary drug and/or alcohol tests. The employee will be transported to the testing site. A written report of the observations leading to the reasonable suspicion test should be done within 24 hours of the observed behavior. All records should immediately be sent to Human Resources. If the employee refuses to be tested, the test will be considered a positive result. The employee must be immediately suspended from duty and promptly transported home, pending disciplinary action, up to and including termination.

Discipline

1. Positive drug/alcohol test results for County positions determined to be critical to the safety and security of employees and/or the public, for purposes of this policy will be grounds for immediate termination.
2. Positive drug/alcohol test results for all CDL holders in positions requiring or using a CDL will be grounds for immediate termination.
3. Positive drug/alcohol test results for all supervisory personnel will be grounds for immediate termination.
4. Positive drug/alcohol test results for probationary employees will be grounds for immediate
5. termination.
6. Positive drug/alcohol test results for applicants will result in withdrawal of conditional offer of employment.
7. Positive drug/alcohol test results for all employees not covered above will result in disciplinary action, up to and including termination, and any other measures deemed necessary, including but not limited to EAP referral.

Substance Abuse Referral / Return to Work

Before being allowed to return to work, an eligible employee must follow all instructions provided by Human Resources, including but not limited to the following:

- Received an evaluation from a substance abuse professional
- Stopped using illegal drugs
- Successfully participated in an approved rehabilitation program required by a substance abuse professional
- Taken a return-to-duty drug and alcohol test with a negative result
- Upon release to return to work, the employee will be subject to a minimum of six (6) unannounced re tests in the first 12 months and continued testing for 60 months

Failure to comply with any of the above will be the basis for discipline, up to and including termination.

Confidentiality

All drug testing information specifically relating to employees and applicants is confidential and should be treated as such by anyone authorized to review such information. Human Resources will maintain all relevant records per applicable regulations, acts, and codes.

All records and information of any personnel actions involving an employee with positive test results will be maintained in confidential and secured files in Human Resources and disseminated only to authorized individuals on a confirmed need-to-know basis, as determined by the Human Resources Manager per applicable regulations, acts, and codes.