2.06 Milwaukee County Substance Abuse Procedure

Procedure Number:	2.06
Procedure Title:	Milwaukee County Substance Abuse Procedure
Original Issue Date:	01/22/2016
Revision Date:	None
Appendices:	Testing procedures for Reasonable Suspicion and Post-Accident Testing
Forms:	Reasonable Suspicion Determination
Statutory References:	None
Ordinance References:	None
Dept. Responsible for Updates:	Department of Human Resources
Scheduled procedure review:	01/01/2017

1. OBJECTIVE

Milwaukee County is committed to the safety and well-being of employees and the public. It is the procedure of Milwaukee County that the use, abuse, or dependency on illegal drugs, alcohol, and/or controlled substances represent a threat to personal and public safety and property, and is in contradiction with Milwaukee County's commitment to the citizens of the County.

Employees may not report to work with alcohol or illegal drugs in their systems or in their possession, or be impaired by or under the influence of alcohol or controlled substances during working hours, or while on work premises. Any employee found using, possessing, selling, distributing or under the influence of an illegal controlled substance, and/or alcohol, or impaired by a controlled substance during working hours or on County property, including buildings, parking lots, and vehicles, will be subject to appropriate disciplinary action, up to and including termination.

Milwaukee County management in departments that require staff to participate in substance abuse testing are required to enforce this procedure. They will receive instruction on determining reasonable cause, testing procedures, Milwaukee County's testing procedure, and how employees may receive help with alcohol/substance abuse problems.

All Milwaukee County employees are expected to become familiar with and to comply with this procedure. If assistance is needed with personal problems, including alcohol/substance abuse, employees may contact the Employee Assistance Program at 800-622-7276 or their personal physician for further information on seeking help.

2. DEFINITIONS

A. Alcohol Use - The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

B. Controlled Substances - Are marijuana (THC), cocaine, opiates, phencyclidine (PCP), and amphetamines. In this document the use of the terms "drugs" and "controlled substances" are interchangeable and have the same meaning.

C. Licensed Medical Practitioner - A person who is licensed, certified, and/or registered in accordance with applicable Federal, State, Local or Foreign laws and regulations, to prescribe controlled substances and other drugs.

D. Refusal to take a required test means that an employee:

   i. Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer; or

   ii. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing; or

   iii. Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for testing; or

   iv. Fails or declines to take a second test the employer or collector has directed the employee to take; or

   v. Fails to undergo a medical examination or evaluation, as directed by the Medical Review Officer as part of the verification process, or as directed by the designated employer representative; or

   vi. Engages in any conduct that clearly obstructs the testing process. This includes such behaviors as:

      - failure to sign any required forms
      - failure to remain at the test site for a minimum of 3 hours and drinking 40 ounces of water after inability to provide an adequate urine specimen
      - substitution or adulteration of a specimen.

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

F. Medical Review Officer (MRO) - A licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

3. PROCEDURE

I. Applicability

This procedure applies to all Milwaukee County employees. This procedure may be revised as necessary.

II. Prohibited Conduct

Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance, illegally used drug, drug paraphernalia, or alcohol on County property,

on County business, in County supplied vehicles, or in vehicles being used for County business, or during working hours.

A. Alcohol

1. No employee shall report for duty or remain on duty while having an alcohol concentration of 0.04% BAC or greater. No supervisor having actual knowledge that an employee has an alcohol concentration of 0.04% BAC or greater shall permit the employee to perform or continue to perform job duties. An employee who tests between .02% and .039% BAC may not work for at least 24 hours.

2. No employee shall use alcohol while at work. No supervisor having actual knowledge that an employee is using alcohol while at work shall permit the employee to perform or continue to remain at work.

3. No employee shall report to work within 4 hours after using alcohol.

4. No supervisor having actual knowledge that an employee has used alcohol within 4 hours shall permit an employee to report to work. An employee who is called in to work and has consumed alcohol within 4 hours of being called to duty must notify the supervisor of such consumption. The supervisor may not allow such an employee to report to work.

5. No employee required to take a post-accident test shall use alcohol for 8 hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever comes first.

B. Controlled Substances

1. No employee shall report for duty or remain on duty when that employee uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised that the substance does not adversely affect the employee's ability to safely perform job duties. No supervisor having actual knowledge that an employee has used a controlled substance (except as herein provided) shall permit that employee to perform or continue to perform job duties.

2. An employee who is taking a prescribed medication is required to ask the licensed medical practitioner whether the medication will affect his or her ability to perform his or her job duties. If the medication will affect the ability to perform the duties of the job, the employee is required to notify the supervisor of such by providing a statement from the licensed medical practitioner prior to reporting to work. The notification must state that the medication will adversely affect the employee's ability to work, and also must state how long the employee will be taking the medication. Milwaukee County will try to make a reasonable accommodation for an employee who is prevented from performing his or her job while taking prescription medications that affect the ability to perform job duties. If reasonable accommodation is not possible, an employee will be required to take paid or unpaid leave until such time as the employee has completed his or her course of medication.

3. No employee shall report for duty, or remain on duty if the employee tests positive for controlled substances. No supervisor having actual knowledge that an employee has tested positive for controlled substances shall permit the employee to perform or continue to perform job duties.

C. Refusal to Take a Required Test

1. An employee covered by this procedure is prohibited from refusing to submit to a required alcohol or drug test. The consequences are the same as for a positive test result.

2. Employees who refuse a pre-employment test or a return to duty test will not be hired or returned to duty and their names will be removed from all eligible lists for classifications subject to substance abuse testing.

3. Failure to provide an adequate specimen without a valid medical reason, conduct that obstructs the testing process (including adulteration or substitution of a specimen), failure to sign any testing form required by the laboratory or breath alcohol technician, or obstructing the testing process in any way, will be considered the same as a positive test result.

4. It is the procedure of Milwaukee County, that any attempt to adulterate a specimen, substitute a specimen, or otherwise interfere with a specimen or the collection process, or refusing to cooperate with a reasonable suspicion determination, will be considered the same as a positive test result.

III. Required Tests

Alcohol and controlled substances tests will be administered by properly certified technicians. Initial or screening tests will be confirmed, and in the case of controlled substances tests, will be certified as positive or negative by a Medical Review Officer. Milwaukee County reserves the right to conduct tests for additional substances, or to require a medical examination(s) when employees fail to provide adequate specimens. Law enforcement or public safety officials under separate authority may administer drug or alcohol tests, and Milwaukee County will consider the results of those tests.

An employee shall remain readily available for testing or he or she will be deemed to have refused such testing even if it requires an extended workday. Failure to remain available for testing will result in disciplinary action.

A. Pre-employment

The Director, Department of Human Resources, will work with County departments to determine the pre-employment drug testing requirements for each position. All applicants, after a conditional offer of employment, will be directed to report for pre-employment drug testing at authorized testing facilities.

If an applicant has a positive pre-employment drug test result, refuses to be tested, or in any way obstructs the testing process, the applicant's name will be removed from the eligible lists for all classifications subject to substance abuse testing and he or she will not be hired.

Active employees will be required to participate in pre-employment drug testing upon transfer, promotion or demotion into positions for which state or federal law, rule or regulation, mandates drug and/or alcohol testing at hire.

B. Mandatory Post-vehicle accident Testing

1. An employee who has been involved in a vehicle accident that meets any of the following criteria must be tested for alcohol and controlled substances as soon as possible after the accident:

   - loss of human life
   - employee received a citation under State or local law
   - any party at the scene claims injury as a result of the accident
   - one or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

2. Every employee who is involved in a vehicle accident must notify his or her supervisor of the accident as soon as possible. If the accident meets any of the criteria for mandatory testing, the supervisor will be responsible for promptly notifying an authorized on-site specimen collection agency to arrange an on-site specimen collection by a properly certified technician. Employees are strictly prohibited from using alcohol for 8 hours (or until post-accident testing has been completed, whichever is sooner) following an accident that would trigger post-accident testing. The alcohol test must be administered as soon as possible following an accident. Drug testing should be performed within 32 hours of an accident and breath alcohol within 8 hours. If not done within those timeframes, efforts for testing stop and there must be documentation stating why a test could not be performed. If the required tests have not been administered within these time frames, Milwaukee County will cease attempts to administer the tests and the manager or supervisor will document why Milwaukee County was not able to administer the tests. These records shall be submitted to DHR. Testing may only be delayed when an employee must leave the scene of the accident to secure help for a medical emergency.

3. If a post-vehicle accident drug and/or alcohol test is conducted by authorized Federal, State or Local officials prior to or in addition to the tests conducted by Milwaukee County's authorized testing agent, Milwaukee County will consider those results provided that such tests conform to applicable Federal, State or local requirements.

4. An employee may leave the scene of a vehicle accident before being tested only to secure necessary medical assistance for the employee or other injured persons, or for the period necessary to obtain assistance in responding to the accident. An employee who leaves the scene of the accident for any other reason before being tested will be considered to have refused the test.

5. A supervisor shall provide employees with the necessary post-accident information, procedures and instructions.

6. Milwaukee County reserves the right to conduct drug testing on non-vehicle related accidents, incidents, or injuries.

C. Random Testing

1. The Director of the Department of Human Resources, in accordance with applicable state and federal rules and laws, will determine which positions are subject to random drug and alcohol testing. The minimum annual alcohol and drug testing rate will be in accordance with applicable state or federal law, rule or regulation.

2. The names of employees to be subject to random tests will be generated by an objective third party in order to eliminate the possibility of unfairness in the selection process. Milwaukee County will ensure that each employee in the random testing pool has an equal chance of actually being tested each time random testing is conducted. Names will be selected through a scientifically valid method and spread reasonably and unpredictably throughout the year.

3. Random tests will be conducted on work time. The supervisor must ensure that the employee ceases work and proceeds to site as soon as possible after notification of selection for random testing. Supervisors and managers may not delay a test based upon work demands. They are expected to notify and direct employees to undergo testing as soon as possible after a selection is made.

4. When an employee is off work for an indeterminate or extended period of time, such as extended illness or injury leave, and his or her name is selected for random testing during that time period, the employee must be sent for a random test upon return from leave. Milwaukee County will not notify an employee to submit to a test while the employee is off work due to leave periods.

5. When an employee is off work for a determined or short period of time, such as vacation or sick leave, and his or her name is selected for random testing, he or she will be tested upon return from leave.

D. Reasonable Suspicion Testing

1. A supervisor or supervisors may initiate the reasonable suspicion process as described in this section based on observations made immediately prior to, during, or after an employee performs work functions. The supervisor must not, under any circumstances, allow an employee to perform job duties once a reasonable suspicion determination has been made until negative test results are received.

   Once the reasonable suspicion process is initiated, the employee must cooperate with the process. Any failure to do so will be considered a refusal to be tested, which will be treated the same as a positive test result. No disciplinary action shall be taken against an employee based solely upon the employee's behavior and appearance in the absence of test results, unless such behavior or appearance violates other work rules.

2. A reasonable suspicion determination for alcohol or controlled substances requires two trained supervisors, when feasible. If only one supervisor is available, he or she shall attempt to have a second supervisor, potentially from a different department, corroborate the observation before making such a determination. Documentation of the grounds to conduct a reasonable suspicion test must be made on the Reasonable

3. Suspicion Documentation form and signed by the supervisors within 24 hours of the observed behavior or before the test results are released, whichever is later. Factors such as abuse of sick time or frequent tardiness may not be used to trigger reasonable suspicion testing.
4. The determination that reasonable suspicion exists must be documented on the Reasonable Suspicion Documentation form issued by Human Resources and must be based on specific, contemporaneous, articulable observations such as the employee's appearance, behavior, speech, or odor, and will not be made based on hearsay information. The grounds for a reasonable suspicion determination will be documented on the prescribed form by the person(s) who made the determination, and forwarded in a communication marked "CONFIDENTIAL" to DHR for filing. The employee may also receive a copy of the reasonable suspicion form.
5. If the required tests have not been administered within allowable time frames, Milwaukee County will cease attempts to administer the tests and the manager or supervisor will document why Milwaukee County was not able to administer the tests. These records shall be submitted to DHR.
6. If a supervisor has reasonable suspicion but it is impossible to conduct a test in a timely manner, the employee will be prohibited from performing duties for a minimum of 24 hours.

E. Return to Duty and follow-up testing

1. An employee who produces a validated non-negative test under this procedure may be subject to discipline up to and including discharge. Under no circumstances will an employee be permitted to return to his or her assigned duties if the test finding results in the employee losing a license or qualification that is a pre-requisite for his or her assigned position.
2. An employee who produces a validated non-negative test result under this procedure may be permitted to return to work provided the employee retains proper licensing or qualifications as defined in sub (1) above, and that a sufficient amount of time has elapsed since the positive test, as defined in this procedure. An employee who has produced a validated non-negative test under this procedure will be subject to random drug and alcohol testing as described in section C above for a period not less than one year. A subsequent non-negative test result may result in discipline up to and including termination.

   Milwaukee County reserves the right to determine whether or not to return the employee to their positon.

4. FORMS

The following attached forms are to be used in compliance with this procedure:

Form #	Form Title
2.06(a)	Reasonable Suspicion Determination

2.06 Appendix 1

Testing procedures for Reasonable Suspicion and Post-Accident Testing

These procedures are intended for supervisors in the event an employee on duty is suspected of being under the influence of drugs or alcohol, or in the event an employee is involved in an accident as defined in the Milwaukee County Substance Abuse Procedure. Specific policies and requirements related to reasonable suspicion and post-accident drug and alcohol testing can be found in Section III of the Substance Abuse procedure posted in the Milwaukee County Administrative Manual.

Process

Reasonable Suspicion

A reasonable suspicion determination for alcohol or controlled substances requires two trained supervisors, when feasible. If only one supervisor is available, he or she shall attempt to have a second supervisor, potentially from a different department, corroborate the observation before making such a determination.

Documentation of the grounds to conduct a reasonable suspicion test must be made on the Reasonable Suspicion Documentation form and signed by the supervisors within 24 hours of the observed behavior or before the test results are released, whichever is later. Factors such as abuse of sick time or frequent tardiness may not be used to trigger reasonable suspicion testing.

Supervisors may initiate the reasonable suspicion process as described in this section based on observations made immediately prior to, during, or after an employee performs work functions. If a supervisor has reason to believe an employee is impaired under Substance Abuse Procedure, the supervisor must:

1. Immediately direct the employee to cease all work-related functions.
2. Direct the employee to a vacant or inconspicuous location and instruct the employee to wait for further instructions.
3. Contact **Express Drugs at 414-259-5121** and request a rapid 10-panel screen and breath alcohol test. **For after-hours services**, call Express Drugs at the above number and press 0 to connect with after-hours support.
4. Provide all information requested from Express Drug, including the name and phone number (preferably cell) of the supervisor initiating the call and the location of the employee. Be prepared to allow Express Drugs personnel to access the building and/or work area.
5. Immediately complete, sign and date the Reasonable Suspicion Documentation form that is attached to this administrative procedure and forward a copy to your Human Resources representative.
6. When Express Drugs arrives, allow them to meet with the employee and inform them of an appropriate collection site.

7. After the collection, Express Drugs personnel will inform the supervisor of the test results as either negative or non-negative. If the test results are negative, the employee should be permitted to return to normal work functions.
8. If the result is non-negative, direct the employee to arrange for personal transportation off the work site or to take public transportation. Inform the employee that they are not to perform work-related functions until further notice.
9. If the test result is non-negative, the employee must be sent home without pay, either through arranged or public transportation but not in the employee's personal vehicle. County employees are not to drive the employee home or to any other destination.
10. Non-negative results will be sent by Express Drug for lab validation. Validated results will be returned to Human Resources staff who will notify appropriate department personnel.
11. The department's Human Resources representative will advise the department on appropriate disciplinary actions.

Post-Accident

An employee who has been involved in a vehicle accident that meets any of the following criteria must be tested for alcohol and controlled substances as soon as possible after the accident:

- loss of human life
- employee received a citation under State or local law
- any party at the scene claims injury as a result of the accident
- one or more motor vehicles incurred disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle

Employees are required to notify their immediate supervisor or another manager immediately following any accident that meets the criteria above.

When a supervisor learns of an accident under this procedure, the supervisor must:

1. Determine if there has been bodily injury or if there is the potential for an injury. If there is an injury, the supervisor should contact emergency services (911) to respond to the scene.
2. Direct the employee to remain at the scene to await the supervisor's arrival. If the employee is injured and requires medical assistance, contact emergency services (911).
3. **Contact Express Drugs at 414-259-5121** and request a rapid 10-panel screen and breath alcohol test. **For after-hours services**, call Express Drugs at the above number and press 0 to connect with after-hours support.
4. Provide all information requested from Express Drug, including the name and cell phone number of the supervisor initiating the call and the location of the employee. Be prepared to allow Express Drugs personnel to access the building and/or work area.
5. When Express Drugs arrives, allow them to meet with the employee and inform them of an appropriate collection site.
6. Document the circumstances of the accident as thoroughly as possible. Your department may have forms to use for this purpose.
7. After the collection, Express Drugs personnel will inform the supervisor of the test results as either negative or non-negative. If the test results are negative, the employee should be permitted to return to normal work functions if possible.

8. If the result is non-negative, direct the employee to arrange for personal transportation off the work site or to take public transportation. Inform the employee that he or she is not to perform work-related functions until further notice.
9. If the test result is non-negative, the employee must be sent home without pay, either through arranged or public transportation but not in the employee's personal vehicle. County employees are not to drive the employee home or to any other destination.
10. Non-negative results will be sent by Express Drug for lab validation. Validated results will be returned to Human Resources staff who will notify appropriate department personnel.
11. The department's Human Resources representative will advise the department on appropriate disciplinary actions.

Training

Training on this process is in development and will be offered through online training materials in the Learning Management System and in-person training. All employees in the position of supervising or managing employees are required to complete training.

For further information on these processes, please contact your Human Resources representative.