Drug and Alcohol-Free Workplace

1005.1 PURPOSE AND SCOPE

The purpose of this policy is to establish clear and uniform guidelines regarding drugs and alcohol in the workplace (41 USC § 8103). The Fargo Police Department will not accept any risk to safety, quality, or productivity which may be caused by a member who uses drugs and/or misuses alcohol. Even a small amount of such substances may be capable of impairing the user to some degree. It is the Department's goal, through this policy to achieve a workplace which is free of drugs and alcohol. Members should also reference applicable portions of City of Fargo policy 400-008 for additional guidance.

1005.2 POLICY

It is the policy of this department to provide a drug and alcohol-free workplace for all members.

1005.3 GENERAL PROVISIONS

Alcohol and drug use in the workplace or on department time can endanger the health and safety of department members and the public. Such use shall not be tolerated (41 USC § 8103).

The possession or use of alcohol, or the sale, purchase, manufacture, possession or transfer of an illegal drug for other than official business, or being under the influence of alcohol or of an illegal drug, during work time or at any time while on official business, on department or other city property or while operating department or city vehicles, is prohibited. Work time includes meal breaks and other breaks, regardless of where these breaks occur.

The use of alcohol by members while conducting official business, attending a department or city-sponsored business or social function, or otherwise representing the Fargo Police Department offsite is permitted only to the extent that it does not lead to impairment, inappropriate behavior, endanger the safety of an individual, or violate applicable law.

Members who have consumed an amount of an alcoholic beverage or taken any medication, or combination thereof, that would tend to adversely affect their mental or physical abilities shall not report for duty. Affected members shall notify the Shift Commander as soon as the member is aware that the member will not be able to report to work. If the member is unable to make the notification, every effort should be made to have a representative contact the Shift Commander in a timely manner. If a member is adversely affected while on-duty, the member shall be immediately removed from active duty as noted in this policy.

1005.3.1 USE OF MEDICATIONS

Members should not use any medications that will impair their ability to safely and completely perform their duties. Any member who is medically required or has a need to take any such medication shall report that need to the Shift Commander prior to commencing any on-duty status.

Any member who is taking medications which may cause drowsiness or otherwise adversely affect their job performance, coordination, judgment, or fitness for duty is required to notify the Shift

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Commander of such use as soon as possible, and prior to performing any police functions. The Shift Commander shall then take steps to investigate whether the member's job assignment should be temporarily changed during the treatment, or whether other accommodations may be appropriate. This should include a referral to the City of Fargo Employee Health (COFEH).

No member shall be permitted to work or drive a vehicle owned or leased by the Department while taking any medication that has the potential to impair their abilities, without a written release from a physician and review by employee health. If, after conferring with a physician, a member has reason to believe that their ability to perform their job duties competently and safely may be adversely affected, the member shall consult with the Shift Commander regarding possible accommodations, including taking sick leave, a leave of absence or temporary reassignment of job duties as deemed appropriate by the Shift Commander.

Pursuant to the Fitness for Duty policy (1015), the Department reserves the right to obtain an independent medical opinion regarding the effects of a prescription or over-the-counter drug on a member's ability to perform law enforcement functions or other aspects of their job, and may place the member on administrative leave pending a decision as to whether the member may continue to perform their regular duties while taking medication.

1005.3.2 MEDICAL CANNABIS

Possession of marijuana is federally illegal and also precludes a member's ability to possess a firearm, as well as the Department's ability to receive federal grants. As such, possession, use, or being under the influence of medical cannabis on or off-duty is prohibited and may lead to disciplinary action (N.D.C.C. § 19-24.1-34), (21 USC, § 844) and North Dakota Peace Officer Standards and Training (POST) Administrative Rules (109-02-05).

1005.4 MEMBER RESPONSIBILITIES

Members shall report for work in an appropriate mental and physical condition. Members are prohibited from purchasing, manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol on department premises or on department time (41 USC § 8103). The lawful possession or use of prescription medications or over-the-counter remedies is excluded from this prohibition.

In the event a member is called to duty outside of their normal work schedule, and that member has recently used alcohol or prescription medication that may cause impairment, the member shall acknowledge such use at the time they are called to report for duty. No discipline will be taken against any member who acknowledges recent use of alcohol or prescription medication that may cause impairment prior to a call-in, unless such conduct has the effect of making that member repeatedly unavailable for duty or call-in response.

Members who are authorized to consume alcohol as part of a special assignment shall not do so to the extent of impairing on-duty performance.

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Members shall notify a supervisor immediately if they observe behavior or other evidence that they believe demonstrates that a fellow member poses a risk to the health and safety of the member or others due to drug or alcohol use.

Members are required to notify their immediate supervisor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction (41 USC § 8103).

1005.5 EMPLOYEE ASSISTANCE PROGRAM

The City of Fargo may provide a voluntary employee assistance program to assist those who wish to seek help for alcohol and drug problems (41 USC § 8103). Insurance coverage that provides treatment for drug and alcohol abuse also may be available. Members should contact the City human resources department, their insurance providers or the employee assistance program for additional information. It is the responsibility of each member to seek assistance before alcohol or drug problems lead to performance problems. For additional EAP information, employees should consult City of Fargo Policy 400-007.

1005.6 WORK RESTRICTIONS

If a member informs a supervisor that they have consumed any alcohol, drug or medication which could interfere with a safe and efficient job performance, the member may be required to obtain clearance from a physician and COFEH before continuing to work.

If a supervisor reasonably believes, based upon objective facts, that a member's ability to perform their duties safely and efficiently may be impaired by the consumption of alcohol or other drugs, the supervisor should ask the member whether they have consumed any alcohol or other drugs and, if so, the amount and type of alcohol or other drugs consumed, the time of consumption, and the name of the licensed person who prescribed the controlled substance.

If the supervisor reasonably believes, based on objective facts, that a member is impaired by the consumption of alcohol or other drugs, the supervisor shall prevent the member from continuing work and shall notify the Shift Commander. The Shift Commander shall confer with the supervisor and confirm the observations if possible. The Shift Commander shall then notify the Professional Standards Division (PSD) commander for guidance in conformity with the Personnel Investigations policy (1009) and the Fitness for Duty policy (1015). The PSD commander shall consult with the Assistant Chief to determine appropriate action. If no immediate action is deemed necessary, the supervisor shall ensure the member is safely transported away from the Department.

If a screening test is directed subsequent to consultation with the PSD commander, the supervisor shall arrange for the member to be transported to the Department approved collection site and then to the member's home after the collection is completed.The member shall not be permitted to operate a motorized vehicle.

1005.7 REQUESTING SCREENING TESTS

The Shift Commander may request a member to submit to a screening test if:

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(a) The Shift Commander reasonably believes, based upon objective facts, that the member is under the influence of alcohol or drugs which are impairing the member's ability to perform duties safely and efficiently.

(b) The member discharges a firearm in the performance of their official duties (excluding training or authorized euthanizing of an animal).

(c) The member discharges a firearm while off-duty, but acting in their official capacity, resulting in injury, death, property damage or law violation.

(d) The member drives a motor vehicle in the performance of their duties and becomes involved in an accident which results in bodily injury, death, or substantial damage to property.

(e) The Shift Commander informs the member of the specific facts supporting their belief of alcohol or drug impairment and prepares a written record of those facts, and:

1. Informs the member in writing whether the test will be for alcohol or drugs, or both.
2. Informs the member that the result of the test is not admissible in any criminal proceeding against them.
3. Informs the member that the test may be refused, but refusal may result in disciplinary action up to and including termination

(f) The member knowingly or unknowingly, caused or contributed to a work-related accident or was helping to operate machinery, equipment, or vehicles involved in a work-related accident.

(g) The member knowingly or unknowingly, sustained or has caused another member to sustain a personal injury in the course of employment.

1005.7.1 SCREENING TEST REFUSAL

A member is subject to disciplinary action if:

(a) The member fails or refuses to submit to a screening test as directed in accordance with this policy.

(b) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested, that theytook the substance as directed and pursuant to a current and lawful prescription issued in their name.

1005.8 EMPLOYMENT STATUS

A member who has admitted to being under the influence of alcohol and/or drugs, or whose drug or alcohol test result is positive, shall be immediately relieved from active duty, pending further investigation and disciplinary action pursuant to the Personnel Complaints policy (1009).

The Department may place a member on unpaid administrative leave during the testing process if the Department believes it is reasonably necessary to protect the health or safety of the member, co-workers, or the public. If a member is placed on unpaid administrative leave and the result of the confirmatory test or any retest is negative, the member shall be compensated in full for the hours he/she was scheduled to work, but which were missed while he/she was on leave

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awaiting the results of the test, including the additional time required for the retest, if a retest was requested. If a confirmatory test is positive and a retest is also positive or is not requested, the member shall not be compensated for any time during the leave.

A member who is placed on paid or unpaid administrative leave for safety reasons during the testing process is required to remain available to report for work and must do so within two (2) hours of being contacted by the Department unless extenuating circumstances prohibit the member from being contacted directly by phone or reporting for duty. Failure to return the Department's phone call or report to work within the required time may be considered a failure to report for duty and may result in disciplinary action.

1005.9 CONSEQUENCES OF POSITIVE RESULT

Refer to City of Fargo Policy 400-008C, Section VII, Subsection B, (Consequences of Positive Test Result) for guidance on a positive test finding. A positive test result may result in discipline up to and including termination in conformity with the Personnel Complaints policy (1009).

1005.10 COMPLIANCE WITH THE DRUG-FREE WORKPLACE ACT

No later than 30 days following notice of any drug statute conviction for a violation occurring in the workplace involving a member, the Department shall take appropriate disciplinary action, up to and including termination, and/or requiring the member to satisfactorily participate in a drug abuse assistance or rehabilitation program (41 USC § 8104).

1005.11 CONFIDENTIALITY

The Department recognizes the confidentiality and privacy due to its members. Disclosure of any information relating to substance abuse, except on a need-to-know basis, shall only be with the express written consent of the member involved or pursuant to lawful process.

The written results of any screening tests and all documents generated by the member assistance program are considered confidential medical records and shall be maintained in the member's confidential medical file in accordance with the Personnel Files policy (1012), (N.D.C.C. § 44-04-18.1).

1005.12 REVISION DATE 09/03/2024

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