

Drug- and Alcohol-Free Workplace

1005.1 PURPOSE AND SCOPE

The purpose of this policy is to establish clear and uniform directives regarding drugs and alcohol in the workplace. The City of Fargo and Fargo Police Department will not accept any risk to safety, quality, or productivity which may be caused by an employee 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 Fargo Police Department's goal, through this policy and City of Fargo policy, to achieve a workplace which is free of drugs and alcohol.

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).

- (a) The possession or use of alcohol, or the sale, purchase, manufacture, possession or transfer of an illegal drug for other than official police business, or being under the influence of alcohol or of an illegal drug, during work time or at any time while on police business, on city property (including the City's employee parking lots), or while operating the City's vehicles, is prohibited. Work time includes meal breaks and other breaks, regardless of where these breaks occur, including while being on City property, on City business, or in a City owned/leased vehicle located on or off City premises.
- (b) The use of alcohol by employees while conducting business, attending a City-sponsored business or social function, or otherwise representing the Fargo Police Department and City of Fargo 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 or appropriate supervisor as soon as the member is aware that he/she 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 supervisor in a timely manner. If the member is adversely affected while on-duty, he/she shall be immediately removed and released from work (see Work Restrictions in this policy).

1005.3.1 USE OF MEDICATIONS

Members should avoid taking 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 his/her immediate supervisor prior to commencing any on-duty status. Any member who is taking medications which may cause drowsiness or

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otherwise adversely affect his/her job performance, coordination, judgment, or fitness for duty is required to notify his/her immediate supervisor of such use as soon as possible, and prior to performing any police functions. The supervisor will 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.

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 his/her abilities, without a written release from his/her physician. If, after conferring with his/her physician, an employee has reason to believe that his/her ability to perform his/her job competently and safely may be adversely affected, the employee should consult with his/her immediate supervisor regarding possible accommodations, including taking sick leave and/or a leave of absence, or temporary reassignment of job duties if possible/appropriate.

The City and the department reserves the right to obtain an independent medical opinion regarding the effects of a prescription or over-the-counter drug on an employee's ability to perform law enforcement functions or other aspects of his/her job, and to place the employee on medical leave pending a decision as to whether the employee may continue to perform his/her regular duties while taking medication.

Possession or consumption of medical marijuana or being under the influence of marijuana on-duty is prohibited and may lead to disciplinary action (N.D.C.C. § 19-24.1-34).

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 prescribed medications or over-the-counter remedies is excluded from this prohibition.

In the event an employee is called to duty outside of his/her normal work schedule, and that employee has recently used alcohol; the employee will be expected to acknowledge such use at the time he/she is called to report for duty. No discipline will be taken against any employee who acknowledges his/her recent use of alcohol prior to a call-in, unless such conduct has the effect of making that employee repeatedly unavailable for on-call/call-in service.

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.

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).

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1005.5 EMPLOYEE ASSISTANCE PROGRAM

There may be available 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. Employees should contact the Department of Human Resources, their insurance providers or the employee assistance program for additional information. It is the responsibility of each employee 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 he/she has 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 his/her physician before continuing to work.

If a supervisor reasonably believes, based upon objective facts, that a member's ability to perform his/her duties safely and efficiently may be impaired by the consumption of alcohol or other drugs, the supervisor may ask the member whether he/she has consumed any alcohol or other drugs and, if so, the amount and type of alcohol or other drugs consumed and the time of consumption, and the name of the 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 ensure that he/she is safely transported away from the Department.

1005.7 REQUESTING SCREENING TESTS

The Shift Commander may request an employee to submit to a screening test if he/she:

- (a) Reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs which are impairing his/her ability to perform duties safely and efficiently.
- (b) The employee discharges a firearm in the performance of his/her duties (excluding training or authorized euthanizing of an animal).
- (c) The employee discharges a firearm issued by the department while off-duty, resulting in injury, death, or substantial damage.
- (d) The employee drives a motor vehicle in the performance of his/her duties and becomes involved in an accident which results in bodily injury, death, or substantial damage to property.
- (e) Informs the employee of the specific facts supporting this belief and prepares a written record of those facts, and:
 - 1. Informs the employee in writing whether the test will be for alcohol or drugs, or both.
 - 2. Informs the employee that the result of the test is not admissible in any criminal proceeding against him/her.

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3. Informs the employee that he/she may refuse the test, but that his/her refusal may result in termination or other disciplinary action.

1005.7.1 ADDITIONAL SCREENING TESTS

The Shift Commander may request an employee to submit to a screening test if the employee:

- (a) Discharges a firearm, other than in training, in the performance of his/her duties.
- (b) During the performance of his/her duties, drives a motor vehicle and becomes involved in a vehicle crash that results in bodily injury to him/herself or another person or substantial damage to property.
- (c) Knowingly or unknowingly, sustained or has caused another employee to sustain a personal injury in the course of employment; or
- (d) 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.

When a supervisor suspects an employee has used drugs or alcohol while on duty, or is under the influence of drugs or alcohol, the supervisor will arrange for the employee to be transported to the collection site for the collection, and back to the employee's home after the collection is completed. The employee will not be permitted to operate a motorized vehicle.

1005.7.2 SCREENING TEST REFUSAL

An employee is subject to disciplinary action if he/she:

- (a) Fails or refuses to submit to a screening test as requested in accordance with this policy or city policy will be considered to have voluntarily resigned (per City Policy 400-008C).
- (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 he/she had taken the substance as directed pursuant to a current and lawful prescription issued in his/her name.

1005.8 EMPLOYMENT STATUS

In accordance with City of Fargo policy 400-008C, Section X, Subsections A-D, an employee who has admitted to being under the influence of alcohol and/or drugs, or whose drug or alcohol test result is positive, will be immediately withdrawn from service by the City, pending further disciplinary action.

The City and the department may place an employee on unpaid leave during the testing process if the City or the department believes it is reasonably necessary to protect the health or safety of the employee, co-workers, or the public. If the result of the confirmatory test or any retest is negative, the employee will be compensated in full for the hours he/she was scheduled to work, but which were missed while he/she was on leave awaiting the results of the test, including

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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 employee will not be compensated for any time during the leave.

An employee who is placed on paid or unpaid leave for safety reasons during the testing process is required to remain available to report for work and must do so within 2 hours of being contacted by the City. If extenuating circumstances prohibit the employee from being contacted directly by phone, the employee must notify the Director of Human Resources, and must be able to return the City's phone call within 2 hours and return to work with 2 hours of returning the call. Failure to return the City's phone call or report to work within the required time will be considered a failure to report for duty and/or other disciplinary action.

1005.9 CONSEQUENCES OF POSITIVE RESULT

Refer to City of Fargo Policy 400-008C, section VII, subsection Consequences of Positive Test Result for guidance on a positive test finding.

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 will take appropriate disciplinary action, up to and including dismissal, 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 employee assistance program are considered confidential medical records and shall be maintained separately from the employee's other personnel files (N.D.C.C. § 44-04-18.1).