

### **NOTICE TO EMPLOYERS**

The sample Post-Accident/Injury Drug and Alcohol Testing Policy attached hereto is being provided by LUBA Workers' Comp as a courtesy. It is recommended and advised that all employers consult their human resource professionals and/or employment counsel prior to enacting and utilizing any Drug and Alcohol Testing Policy. While LUBA Workers' Comp believes the sample Post-Accident/Injury Drug and Alcohol Testing Policy satisfies the requirements of the workers' compensation laws of Mississippi and the Occupational Health and Safety Administration with regard to post-accident/injury drug testing, all employers should consult with their human resource professionals and/or employment counsel.

**Additionally, while the sample Post-Accident/Injury Drug and Alcohol Testing Policy is being provided as a courtesy, it is the Employer's responsibility to ensure that the application and administration of the Post-Accident/Injury Drug and Alcohol Testing Policy complies with various state and federal regulations including, but not limited to, Occupational Safety and Health Administration. Non-governmental employers are hereby advised that any post accident/injury drug and/or alcohol testing or screening may only be performed on a case by case basis and only if the employee's drug or alcohol use is likely to have contributed to the accident, injury or illness or if there is a reasonable possibility drugs or alcohol may have been a contributing factor. Mandatory testing on all accidents, injuries or illnesses is prohibited. Drug and Alcohol testing or screening cannot be used to deter or discourage the reporting of workplace accidents, injuries or illnesses.**

**\* For further information regarding drug testing policies under Mississippi law, please see §§ 71-7-1, et seq., of the Mississippi Code of 1972, as amended.**

### Post-Accident/Injury Drug and Alcohol Testing Policy

You are hereby advised that (Insert name of employer here) has implemented a drug and alcohol policy and conducts a testing program, pursuant to Sections 71- 7-1, et seq., of the Mississippi Code of 1972, as amended (hereinafter referred to as "the Act"), and you are hereby advised of the existence of said Act.

#### Policy Statement

The unlawful manufacture, sale, distribution, solicitation, possession with intent to distribute, or use of alcohol or other drugs is prohibited while on the job or on the Employer's premises and will result in the employee's immediate termination. Any illegal substances will be turned over to the appropriate law enforcement agency and may result in criminal prosecution.

This policy pertains to illegal, controlled and unauthorized drugs, alcohol, chemical substances, and employee assistance programs. For the purposes of the policy, the term "Employer's premises" includes all property, offices, facilities, land, buildings, structures, fixtures, installations, automobiles, trucks and all other vehicles and equipment whether owned, leased, rented or used. Also this policy includes all public properties, any other work locations, or mode of transportation to and from those locations while in the course and scope of employment or pay status.

#### Post-Accident/Injury Drug Testing

Any employee involved in a workplace accident, injury or illness **may** be required to submit to post accident urine drug and/or blood, breath and/or alcohol testing or screening. Post-accident drug and alcohol testing or screening is **not** mandatory and will **not** be required after all reported accidents, injuries or illnesses. However, such post accident drug testing and screening **may** be required if employee's drug or alcohol use is likely to have contributed to the accident, injury or illness and for which drug and alcohol testing can accurately identify impairment caused by drug and/or alcohol use. Further, drug and alcohol testing/screening **may** be required following an accident, injury or illness if there is a reasonable possibility that drug or alcohol use may have been a contributing factor to the accident, injury or illness. This policy herein is not intended to discriminate or retaliate against employees who report workplace accidents, injuries or illnesses. Any employee found to be in violation of this policy **may** be subject to forfeiture of workers' compensation benefits.

Employer reserves the right to test for all prescription or non-prescription medications, illegal drugs, legal drugs, prescription drugs, look-alike drugs, prohibited drugs, controlled drugs, and alcohol. This includes, but is not limited to testing for such controlled substances as amphetamines, barbiturates, cocaine, marijuana, phencyclidine, opiates and other substances if an appropriate federal agency has established an approved protocol and positive threshold for each substance.

An employee or job applicant to be tested shall be given (1) a medication disclosure form to permit the employee or job applicant to disclose any nonprescription or prescription medications that have been taken within forty-five (45) days prior to being tested, and (2) a statement that the form shall be submitted directly to the employer's designated Medical Review Officer, ensuring that no person or entity has access to the information disclosed on the form other than the Medical Review Officer.

### Disciplinary Action

All employees are subject to the following maximum disciplinary action:

- |    |  |             |
|----|--|-------------|
| a. | Refusal to provide a urine, blood, breath or saliva sample | Termination |
| b. | Assessment & Evaluation refusal                            | Termination |
| c. | Positive Test Results                                      | Termination |

NOTE: A positive onsite or offsite initial test may result in the employee being temporarily suspended or transferred. However, any employee may not be discharged, disciplined, refused to hire, discriminated against, or requested or required rehabilitation on the basis of an initial positive test result until it has been verified by a confirmation test. Upon receipt of the confirmation test, the employer reserves the right to impose lesser discipline than termination, including requiring rehabilitation and/or participation in an Employee Assistance Program in the sole discretion of the employer.

### Positive Test Results

Any employee who receives a positive confirmed drug or alcohol test result may contest the accuracy of the result or explain the result in accordance with Section 71-9-9 of the Act.

### Confidentiality

All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by **(Insert name of employer here)** through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the Act and these regulations. Any information obtained by **(Insert name of employer here)** pursuant to the Act and these regulations shall be the property of the employer. **(Insert name of employer here)** shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by **(Insert name of employer here)** on a need to know basis, information related to drug and alcohol test results unless: (a) The employee or job applicant has expressly, in writing, granted permission for **(Insert name of employer here)** to release such information; it is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or there is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information. The confidentiality provisions provided for by the Act shall not apply to other parts of an employee's or job

applicant's personnel or medical files. If an employee refuses to sign a written consent form for release of information to persons as permitted in the Act, **(Insert name of employer here)** shall not be barred from discharging or disciplining the employee.

#### Acknowledgements

Nothing in this policy shall be construed to guarantee or promise to any employee employment or continued employment with Employer.

Nothing in this policy shall be interpreted as constituting any waiver of or limitation on the employer's responsibility to maintain a safe and health workplace, or invoke disciplinary measures as herein provided.

An employee with a confirmed positive drug or alcohol test will not be considered "handicapped" by virtue of that test result and anyone discharged because of a positive test result will be considered to have been discharged for willful misconduct.

This policy may be amended as necessary to meet requirements of applicable laws, statutes or regulations as deemed appropriate by the employer, and, to the extent applicable, shall be immediately amended so as to comply at all times with all applicable laws, statutes, or regulations, including but not limited to the Mississippi Code Annotated Sections 71-71-1, et seq., and the regulations of the Mississippi State Department of Health.

Copies of this policy are available for inspection during regular business hours by all employees of Employer.

Attached to this policy and marked as Exhibits 1 and 2 are forms to be executed by the employee. The terms contained in the documents attached hereto are incorporated by reference herein and are made a part in parcel of this policy.

**EXHIBIT 1**

**ACKNOWLEDGMENT OF**

**POST-ACCIDENT/INJURY DRUG AND ALCOHOL TESTING POLICY**

**OF**

\_\_\_\_\_ (“Employer”) strives to provide a safe work environment and encourages personal health. In this regard, this company considers the abuse of drugs on the job to be unsafe counterproductive work practices. Furthermore, the company views substance abuse as a serious threat to its staff and its customers. Therefore, this acknowledges that Employer has implemented a Post-Accident/Injury Drug and Alcohol Testing Policy.

By my signature, I, \_\_\_\_\_, hereby acknowledge that Employer, has implemented a Post-Accident/Injury Drug and Alcohol Testing Policy and conducts a testing program pursuant to Sections 71-7-1, et seq. of the Mississippi of 1972, annotated, hereinafter referred to as "the Act" and I have been advised of the existence of said Act.

I hereby acknowledge that I have read and understood the Post-Accident/Injury Drug and Alcohol Testing Policy implemented by Employer which outlines the policy and testing program conducted by Employer regarding the use or possession of drugs, alcohol and controlled substances as more particularly described in the Act.

I further acknowledge that I have been provided a copy of the Post-Accident/Injury Drug and Alcohol Testing Policy of Employer and that additional copies of the Policy are available for inspection during regular business hours by all employees of Employer.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**EXHIBIT 2**

**EMPLOYEE CONSENT FOR DRUG ANALYSIS**

I, (please print) \_\_\_\_\_, Social Security Number \_\_\_\_\_, do hereby give my consent to \_\_\_\_\_ and its designated physician to perform all appropriate tests or examinations on me for drugs and to release the results of the tests or examinations to my employer.

I further agree that I will report any change in the over-the-counter or prescribed medications, which I am now taking to the Director within seven (7) days so that such changes can be noted on this form, whether determined by me or as directed by my prescribing physician.

I have taken within the past forty-five (45) days or am taking at the present the following medications:

Name of Drug	Condition for which taken	Prescribing Physician/ Over-the-Counter

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness