

NOTICE TO EMPLOYERS

The sample Drug-Free Workplace 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-Free Workplace Policy. While LUBA Workers' Comp believes the sample Drug-Free Workplace Policy satisfies the requirements of the workers' compensation laws of Texas and the Occupational Health and Safety Administration, all employers should consult with their human resource professionals and/or employment counsel.

Additionally, while the sample Drug-Free Workplace Policy is being provided as a courtesy, it is the Employer's responsibility to ensure that the application and administration of the Drug-Free Workplace Policy complies with various state and federal regulations including, but not limited to, Occupational Safety and Health Administration. Drug and Alcohol testing or screening cannot be used to deter or discourage the reporting of workplace accidents, injuries or illnesses.

The following is a Sample Drug-Free Workplace Policy and a Sample Drug And/Or Alcohol Testing Consent Form:

SAMPLE DRUG-FREE WORKPLACE POLICY

_____, (the Company) intends to help provide a safe and drug-free work environment for our clients and our employees. With this goal in mind and because of the serious drug abuse problem in today's workplace, we are establishing the following policy for existing and future employees of the Company.

The Company explicitly prohibits:

- The use, possession, solicitation for, or sale of narcotics or other illegal drugs, alcohol, or prescription medication without a prescription on Company or customer premises or while performing an assignment.
- Being impaired or under the influence of legal or illegal drugs or alcohol away from the Company or customer premises, if such impairment or influence adversely affects the employee's work performance, the safety of the employee or of others, or puts at risk the Company's reputation.
- Possession, use, solicitation for, or sale of legal or illegal drugs or alcohol away from the Company or customer premises, if such activity or involvement adversely affects the employee's work performance, the safety of the employee or of others, or puts at risk the Company's reputation.
- The presence of any detectable amount of prohibited substances in the employee's system while at work, while on the premises of the company or its customers, or while on company business. "Prohibited substances" include illegal drugs, alcohol, or prescription drugs not taken in accordance with a prescription given to the employee.

The Company may/will conduct drug and/or alcohol testing under any of the following circumstances:

- **RANDOM TESTING:** Employees may be selected at random for drug and/or alcohol testing at any interval determined by the Company.
- **FOR-CAUSE TESTING:** The Company may ask an employee to submit to a drug and/or alcohol test at any time it feels that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances: evidence of drugs or alcohol on or about the employee's person or in the employee's vicinity, unusual conduct on the employee's part that suggests impairment or influence of drugs or alcohol, negative performance patterns, or excessive and unexplained absenteeism or tardiness.
- **POST-ACCIDENT TESTING:** Any employee involved in an on-the-job accident or injury under circumstances that suggest possible use or influence of drugs or alcohol in the accident or injury event may be asked to submit to a drug and/or alcohol test. "Involved in an on-the-job accident or injury" means not only the one who was or could have been injured, but also any employee who potentially contributed to the accident or injury event in any way.

If an employee is tested for drugs or alcohol outside of the employment context and the results indicate a violation of this policy, or if an employee refuses a request to submit to testing under this policy, the employee may be subject to appropriate disciplinary action, up to and possibly including discharge from employment. In such a case, the employee will be given an opportunity to explain the circumstances prior to any final employment action becoming effective.

An insurance carrier is not liable for payment of workers' compensation benefits if the injury occurs while the employee was in a state of intoxication. The Texas Labor Code provides in part, as follows:

Sec. 406.032. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the injury:

(A) occurred while the employee was in a state of intoxication;

(B) was caused by the employee's wilful attempt to injure himself or to unlawfully injure another person;

(C) arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment;

(D) arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties, unless the activity is a reasonable expectancy of or is expressly or impliedly required by the employment; or

(E) arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public; or

(2) the employee's horseplay was a producing cause of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.013. DEFINITION OF INTOXICATION. (a) In this subtitle, "intoxication" means the state of:

(1) having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code; or

(2) not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(A) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code;

(C) a dangerous drug, as defined by Section 483.001, Health and Safety Code;

(D) an abusable glue or aerosol paint, as defined by Section 485.001, Health and Safety Code; or

(E) any similar substance, the use of which is regulated under state law.

(b) The term "intoxication" does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance:

(1) taken under and in accordance with a prescription written for the employee by the employee's doctor; or

(2) listed under Subsection (a) by inhalation or absorption incidental to the employee's work.

(c) On the voluntary introduction into the body of any substance listed under Subsection (a)(2)(B), based on a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and does not have the normal use of mental or physical faculties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.48, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.004, eff. September 1, 2005

SAMPLE DRUG AND/OR ALCOHOL TESTING CONSENT FORM

EMPLOYEE AGREEMENT AND CONSENT TO DRUG AND/OR ALCOHOL TESTING

I hereby agree, upon a request made under the drug/alcohol testing policy of _____ (the Company), to submit to a drug or alcohol test and to furnish a sample of my urine, breath, and/or blood for analysis. I understand and agree that if I at any time refuse to submit to a drug or alcohol test under company policy, or if I otherwise fail to cooperate with the testing procedures, I will be subject to immediate termination. I further authorize and give full permission to have the Company and/or its company physician send the specimen or specimens so collected to a laboratory for a screening test for the presence of any prohibited substances under the policy, and for the laboratory or other testing facility to release any and all documentation relating to such test to the Company, its workers' compensation insurance carrier and/or to any governmental entity involved in a legal proceeding or investigation connected with the test. Finally, I authorize the Company to disclose any documentation relating to such test to any governmental entity involved in a legal proceeding or investigation connected with the test.

I understand that only duly-authorized Company officers, employees, and agents will have access to information furnished or obtained in connection with the test; that they will maintain and protect the confidentiality of such information to the greatest extent possible; and that they will share such information only to the extent necessary to make employment decisions and to respond to inquiries or notices from government entities.

I will hold harmless the Company, its company physician, and any testing laboratory the Company might use, meaning that I will not sue or hold responsible such parties for any alleged harm to me that might result from such testing, including loss of employment or any other kind of adverse job action that might arise as a result of the drug or alcohol test, even if a Company or laboratory representative makes an error in the administration or analysis of the test or the reporting of the results. I will further hold harmless the Company, its company physician, and any testing laboratory the Company might use for any alleged harm to me that might result from the release or use of information or documentation relating to the drug or alcohol test, as long as the release or use of the information is within the scope of this policy and the procedures as explained in the paragraph above.

This policy and authorization have been explained to me in a language I understand, and I have been told that if I have any questions about the test or the policy, they will be answered.

I UNDERSTAND THAT THE COMPANY WILL REQUIRE A DRUG SCREEN AND/OR ALCOHOL TEST UNDER THIS POLICY WHENEVER I AM INVOLVED IN AN ON-THE-JOB ACCIDENT OR INJURY UNDER CIRCUMSTANCES THAT SUGGEST POSSIBLE INVOLVEMENT OR INFLUENCE OF DRUGS OR ALCOHOL IN THE ACCIDENT OR INJURY EVENT, AND I FURTHER UNDERSTAND THAT "INVOLVED IN AN ON-THE-JOB ACCIDENT OR INJURY" MEANS NOT ONLY THE PERSON INJURED, BUT ALSO ANYONE WHO

**ARGUABLY OR POTENTIALLY CONTRIBUTED TO THE ACCIDENT OR
INJURY EVENT IN ANY WAY, AND I AGREE TO SUBMIT TO ANY SUCH TEST.**

Signature of Employee

Date

Employee's Name - Printed

Company Representative

Date