



**CHAPTER: Equal Employment Opportunity Policy**

**SUBJECT: Drug Testing/Substance Abuse**

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**RELATED POLICIES:**      **ENABLING RESOLUTION:**      **REVISION DATE(S):**  
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**DEPARTMENT OF PRIMARY RESPONSIBILITY: HUMAN RESOURCES**

**SPECIAL NOTES: This Policy/Procedures Manual does not in any way constitute an employment contract. Sedgwick County reserves the right to amend this Manual at any time subject only to approval by the Board of County Commissioners and the Governing Body of Sedgwick County Fire District Number One. The Memorandum of Agreement should be consulted for those Fire District employees who are included in the bargaining unit.**

**I. Purpose**

Sedgwick County is committed to maintaining a drug and alcohol free workplace. The public has a right to expect County employees to be free from the effects of drugs and alcohol as they serve the community. Further, County employees have a reasonable right to work in an environment safe from the potential dangers posed by drug and alcohol misuse. Sedgwick County is also obliged to comply with Federally mandated (Omnibus Transportation Employees Act of 1991) alcohol and testing rules for individuals operating vehicles that require a commercial driver's license. This Policy establishes drug and alcohol testing procedures for employees of Sedgwick County in support of Organizational values and legal requirements.

**II. Scope**

This Policy applies to individuals seeking employment and all full-time, part-time and temporary employees of Sedgwick County. For employees, this Policy is effective while the employee is being compensated by or is acting in an official capacity for Sedgwick County. It does not intend to supersede or conflict with binding State or Federal Laws, Statutes or Regulations. Where a conflict occurs, State and Federal mandates take precedence.

**III. Definitions:**

Alcohol: Alcohol is a central nervous system depressant. It is the major intoxicating ingredient in wine, beer and distilled liquor. It is the product of distillation of any fermented liquid whether rectified or diluted. It includes synthetic ethyl alcohol.

Drug: Any chemical substance which produces physical, emotional and behavioral changes in the user including controlled substances and/or illegal drugs. For the purposes of testing, drugs mean marijuana, cocaine, opiates, phencyclidine (PCP) and amphetamines.

Controlled Substance: Any of those substances listed under the Uniform Control Substance Act of the State of Kansas, as well as those substances listed on schedules I through V, 21 U.S.C. S 812, as they may be revised from time to time.

Illegal Drugs: Drugs for which the sale, possession, use or distribution is unlawful in the State of Kansas. For the purpose of this Policy, illegal drugs include drugs which are not legally obtainable and drugs which are legally obtainable but have been illegally obtained.

Employee Assistance Program (EAP): A County sponsored program which offers assessment, short term counseling and referral services to employees for a wide range of drug, alcohol and mental health problems. The program monitors the progress of employees while in treatment.

Medical Review Officer (MRO): A licensed physician with knowledge of substance abuse disorders and appropriate training to interpret drug/alcohol test results together with an individual's medical history and other relevant biomedical information. The MRO receives and evaluates laboratory tests generated pursuant to the County's drug and alcohol testing Policy. **For purposes of this Policy, the Medical Review Officer may be designated by the Board of County Commissioners and/or the Sheriff's Civil Service Board.**

Material Participant: Any person who has an active, on-site role in directing or participating in an activity that resulted in a fatal accident.

Substance Abuse Professional (SAP): A licensed physician, licensed psychologist, social worker, employee assistance professional or addiction counselor designated with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug disorders. The SAP is designated by the County to diagnose and, when appropriate, refer for treatment/treat employees with substance abuse problems.

Protective Services Personnel: Those uniformed personnel charged with protecting public safety of Sedgwick County. This generally refers to and includes Sheriff, Fire and Emergency Medical Service personnel.

#### **IV. Responsibilities**

A. Human Resources is responsible for:

1. Administration and broad oversight of the County's Drug and Alcohol Testing Program.
2. Oversight of contracted services, supervisory training, notification processes, record keeping and the appropriate protection of sensitive information.

B. Elected Officials, County Manager, Assistant County Managers, Division Directors and Department Heads are responsible for:

1. Maintaining a drug and alcohol free workplace.
2. Knowing and complying with the provisions of this Policy.
3. Notifying affected employees that they are subject to testing.
4. Authorizing/directing testing of employees.
5. Ensuring prompt employee notification when directed to test.
6. Ensuring testing correspondence/results are kept confidential.
7. Ensuring that subordinate supervisors are trained in drug/alcohol misuse

recognition.

8. Implementing appropriate action for failure to comply with this Policy.

C. Supervisors at all levels are responsible for:

1. Maintaining a drug and alcohol free workplace.
2. Reporting and documenting behavior that suggests reasonable suspicion exists to warrant drug/alcohol testing.
3. Knowing and complying with the provisions of this Policy.

D. All employees are responsible for:

1. Maintaining a drug and alcohol free workplace.
2. Knowing and complying with this Policy.
3. Advising supervisors when taking substances that may impair performance or safe execution of their duty.

## **V. Procedures**

A. Pre-Employment Testing:

1. Applicants who have received an offer of employment must successfully complete a drug detection test. Pre-employment screening for alcohol may be conducted at the County's option. A positive finding of alcohol or illegal drugs will result in a denial of employment. Applicants testing positive will be ineligible to apply for employment with Sedgwick County for one (1) year unless they provide certified documentation of successful completion of a substance abuse rehabilitation program. A positive drug/alcohol test administered by Sedgwick County may be considered in future hiring decisions.
2. Applicants will be required to sign an informed consent form. A refusal to consent or failure to appear at the designated collection site on the appointed date and time will terminate the hiring process.
3. Pre-employment screening for drugs will include a urinalysis, but may include blood sample testing, at the discretion of the County. Samples will be split and sent to the lab for processing. Normally, alcohol screening will be accomplished by using an approved Evidential Breath Testing device (EBT). However, other recognized breath testing devices or blood sample testing may be used at the County's option. All samples will be collected, screened and documented in accordance with contractual requirements; drug test results will be sent to the Medical Review Officer for review and interpretation.
4. For alcohol screening, an alcohol concentration of .02 or higher will constitute a positive test. A positive test will be immediately (within 20 minutes) confirmed by a second screening. If the second test results in a concentration level of .02 or higher, the outcome will be deemed a valid positive. A second test resulting in a concentration of less than .02 will result in an overall negative screening outcome. Test results will be forwarded to Human

Resources for action and stored confidentially for a minimum of five (5) years.

5. Drug screening will test for marijuana, cocaine, opiates, phencyclidine and amphetamines/methamphetamines. If a sample tests positive for an aforementioned controlled substance, a confirmation test will be conducted using gas chromatography/mass spectrometry analysis.
6. Drug/alcohol test results will be reported to Human Resources and the applicant by the testing facility. The applicant will be promptly notified in writing, delivered in person or by certified mail, of positive test results. A return receipt will be required for mailed notifications. A copy of the test results will be provided to the applicant. As part of the notification process, the applicant will be provided an opportunity to explain positive results. Medical explanations must be accompanied by a medical inquiry consent letter to allow verification of medical facts. An applicant may, at his or her expense, retest the original sample at a laboratory of the applicant's choice but approved by Sedgwick County. A request for a retest must be made within three workdays of initial notification.
7. Prescribed use of legally controlled substances under the auspices of a properly licensed health care professional does not deny the applicant an opportunity for employment unless the treatment adversely affects job performance. Prescriptions must be substantiated by a verifiable medical report.
8. Applicants who attempt to tamper with tests will be denied employment.

B. Procedure for Pre-Employment Testing and Screening

1. When the hiring authority has made a selection decision, the prospective employee will be offered employment contingent on passing a drug/alcohol screening test. The hiring authority will also inform Human Resources of the contingent employment offer. Time and most convenient location of a County designated testing facility will be coordinated with the prospect. Testing should be completed within eight (8) hours of the offer of employment. The hiring authority will ensure the appropriate testing facility is notified of time of the appointment and the name of the prospective employee. Human Resources will maintain a list of approved testing facilities.
2. The testing facility will inform Human Resources and the applicant of test results. If the test results are negative Human Resources will notify the hiring authority and process necessary paperwork. A prospective employee will not begin employment until a negative testing outcome is established.
3. If test results are positive (drug/alcohol thresholds are exceeded), the Human Resources will record the information and notify the hiring authority. The hiring authority will take appropriate steps to fill the position with another candidate.

C. Reasonable Suspicion Testing for Substance Abuse:

1. Elected Officials, the County Manager/Assistant Managers, Division Directors or Department Heads (or designee) may initiate/authorize drug or alcohol testing if a reasonable suspicion of employee substance abuse exists.
2. Supervisors at all levels are responsible to recognize and evaluate circumstances and behavior that may warrant reasonable suspicion drug/alcohol testing. Supervisors who have reasonable suspicion that an employee is under the influence of alcohol or illegal drugs will document the specific facts, symptoms or observations that form the basis of such reasonable suspicion in detail. Additional witness testimony should be sought if possible. The documentation will be delivered to the first individual in the supervisory chain of command empowered to authorize testing for action. If there is concurrence that reasonable suspicion of substance abuse exists, the employee will be tested. The County Substance Abuse Professional (SAP) should be consulted, if possible, during the deliberation process.
3. Supervisors must attend at least one (1) hour of training on alcohol abuse and one (1) hour on controlled substance use. The training covers the physical and behavioral manifestations of probable misuse of alcohol or controlled substances. Refresher training will be provided on an as needed basis. Training will be documented and maintained in the individual's personnel file.
4. Individuals directed to test will be provided a written copy of the facts and rationale leading to the testing decision prior to taking a drug/alcohol detection test. Employees will be escorted to the testing site by their supervisor.
5. Circumstances which may constitute reasonable suspicion may include, but are not limited to:
  - a. Abnormal and/or erratic behavior--this may be a single dramatic event or an unusual pattern of behavior.
  - b. Direct observation of drug use or possession; alcohol consumption or possession in the workplace or observation of physical symptoms of drug or alcohol use.
  - c. Information from a reliable and credible source--such as confirmed reports from law enforcement officers, citizens, employees or other credible sources of drug or alcohol misuse or erratic behavior.
  - d. Persistent absenteeism or tardiness together with other manifestations of substance abuse.
  - e. Any articulable facts which lead supervisors to believe an employee is in possession of drugs or alcohol or is under the influence of drugs or alcohol.

- f. Evidence that an employee has tampered with a recent or alcohol test.
  - g. An incident involving on-the-job injury or property damage where one or more of the circumstances in paragraphs a thru f above are present.
6. Drug and alcohol testing procedures and thresholds are the same as in paragraphs **V. A. 3, 4, 5, 6**. However, an employee whose alcohol concentration is .02 or greater but less than .04 will be removed from duty, without pay, for twenty (24) hours from administration of the test. An employee with an alcohol concentration less than .04 need not undergo further treatment nor be required to take return to duty tests. Tests yielding alcohol concentrations greater than .04 will result in removal from duty without pay until return to duty provisions are satisfied. See paragraph **V. E. 1, 2**. A positive test result (.02 or greater) may subject the employee to disciplinary action. All disciplinary actions less than termination will mandate the employee be evaluated by the County's SAP. If intervention is warranted, the employee will be enrolled in a rehabilitation program. Any employee who is returned to work after a positive drug or alcohol screen will be tested prior to returning to work. The test result must indicate an alcohol concentration of less than .02 or a verified negative result on a controlled substance test. Employees who successfully complete a rehabilitation program are subject to a follow-up no-notice testing when returned to duty. The SAP will determine the schedule of no-notice testing; six (6) unannounced tests may be requested per twelve (12) months for a period of up to sixty (60) months.
7. Employees who fail to successfully complete the rehabilitation program will be terminated. A second positive drug or alcohol test within five (5) years is cause for termination.
8. Employees to be tested for reasonable suspicion shall be removed from duty, with pay, pending test completion and review by the County MRO. If an employee tests positive, he or she will be removed from duty without pay until return to duty requirements are satisfied. See paragraph **V. E. 1, 2**.
9. Refusal to test or attempting to tamper with the testing process are grounds for discipline up to and including termination.

D. Post-Accident Testing (Other than those employees with CDL)

Supervisors have a responsibility to assess work related accidents to determine if drugs or alcohol played a role in the event. **The ultimate decision to test or not to test is based on the best judgment of the supervisor(s) involved.** Supervisors may, however, rely on the judgment of investigating law enforcement agencies to render a drug/alcohol test for those vehicular/non-vehicular mishaps which they investigate.

Generally, supervisors may require drug/alcohol tests for and under the following circumstances:

1. Post-accident drug/alcohol testing will be required of any material participant

in a job related mishap of any kind that results in a non-protective services related fatality.

Protective Services personnel in high-risk duty related activities will not be automatically subject to material participant testing as a consequence of a fatal accident. A decision to test or not to test in those instances rests with supervisors.

2. Substantive damage to County or private property as a result of a non-vehicular mishap may result in testing:

A decision not to test will be forwarded in writing within two (2) work days from the employee's supervisor to the senior member in the department's/bureau's chain of command for review.

3. The operator of any County vehicle (or personal vehicle while the operator is being reimbursed by the County) involved in an injury or damage mishap may be tested unless it can be reasonably and immediately presumed that the operator is not responsible for the mishap. If responsibility is unclear, the employee should be tested. The appropriate Elected Official, County Manager/Assistant Managers, Division Directors and Department Heads (or Designee) will evaluate the circumstances surrounding the accident and, using their best judgment, direct testing if warranted. Failure of a medically competent employee to immediately report a vehicle mishap to a supervisor may result in disciplinary action.
4. Accidents involving Sheriff, Fire or EMS personnel may be assessed using broader supervisory discretion due to the inherently higher mishap risk they face in executing their duties.
5. Following a qualified mishap, all reasonable steps to obtain a testing sample from an employee should be implemented (prudent medical treatment for injuries remains, however, first priority). For vehicle accidents in which the employee is medically incapacitated and law enforcement **is** present, the County will rely on investigating law enforcement agencies to direct testing. For non-vehicular mishaps in which the employee is incapacitated and investigating law enforcement is not present, the employee's supervisor will assess, using his/her best judgment, if drug/alcohol testing is warranted. The supervisor will render a testing recommendation to a senior supervisor in the organizational chain of command empowered to direct testing. If testing is warranted, the MRO should be notified to inform the appropriate medical facility of the requirement to obtain samples for drug/alcohol testing. The senior supervisor will inform the MRO of the need to test as soon as the requirement is known. Samples should not be tested until the employee is able to give consent. If the employee refuses to consent, the sample will be discarded and the incident will be treated as a refusal to test. Competence to consent for hospitalized employees must be verified by the treating physician.
6. Post-mishap testing should be accomplished as soon as possible after a mishap. As a guideline, testing for alcohol should be conducted within two (2) hours of a mishap; testing for drugs within thirty (32) hours. Testing for

alcohol may not be administered more than eight (8) hours following an accident. Employees required to take a post-accident test will refrain from consuming alcohol for eight (8) hours after an accident or until a valid breath alcohol test has occurred.

7. Reasons for failure to test for alcohol within two (2) hours and for drugs within thirty two (32) hours will be recorded and filed by Human Resources.
8. Employees must report out of area, on duty mishaps that result in the employee being tested for drugs/alcohol by a legally empowered testing agency. The employee must notify her/his supervisor of the incident as soon as possible after occurrence.
9. No affected employee will be permitted to take leave until required testing is complete.
10. Testing procedures/criteria are the same as in paragraphs **V. A. 3, 4, 5, 6**. Return to duty procedures are outlined in paragraph **V. E. 1, 2**.
11. Refusal to test or tampering with the testing process are grounds for termination.

**E. Return to Duty Criteria:**

1. An employee who refuses to test or fails a drug or alcohol test may not return to duty until he/she successfully passes a drug or alcohol test and has been cleared by the County MRO or SAP. The employee will be subject to no-notice testing as outlined in paragraph **V. C. 6**.
2. For alcohol, a negative test is one in which the alcohol concentration is less than .02 . For drugs, minimum thresholds must not be exceeded. Absences following a positive test will be without pay.

**F. Tests by Other Jurisdictions:**

Results of a drug or alcohol test conducted by legally authorized Federal, State or Local officials shall be considered to meet the requirements of this Policy if testing conforms to applicable Federal, State or Local requirements. A legal demand for testing must be made while the employee is on duty for the test to be accepted under the provisions of this Policy.

## **VI. Drug/Alcohol Testing for Employees Operating Commercial Vehicles**

The purpose of this section is to establish a County alcohol and drug program for County employees who operate commercial vehicles. The program shall include applicable provisions of the alcohol and drug testing rules adopted by the Federal Highway Administration (FWA) for persons who operate a commercial motor vehicle that requires a commercial driver's license; shall provide guidelines for the detection of misuse of alcohol and illegal use of drugs and shall outline the responsibility of County Supervisors specifically covered by the section.



- A. Definition of Commercial Motor Vehicle:
1. Has a gross combination weight rating of 26,001 or more pounds, exclusive of a towed unit, with a gross vehicle weight rating of more than 10,000 pounds, or;
  2. Has a gross vehicle weight rating of 26,001 or more pounds, or;
  3. Is designed to transport 16 or more passengers including the driver, or;
  4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which requires the motor vehicle to be placarded under the Hazardous Material Regulations, 49 CFR, Part 172, Subpart F.
- B. This section covers regularly employed drivers; casual, intermittent, or occasional drivers; lease drivers; and independent owner-operator contractor(s) who are either employed by or under lease to an employer but who operate a commercial motor vehicle at the direction or with the consent of an employer. A driver also includes all persons appointed to drive a commercial motor vehicle.
- C. Federal Highway Administration Regulations require the following alcohol and drug testing: (1) pre-employment, (2) post-accident, (3) random, (4) reasonable suspicion, and (5) return to duty/follow-up.
- D. Policies and procedures in conformity with the Omnibus Transportation Employee Testing Act of 1991 for the above alcohol and drug testing will be approved by the County Manager and a copy of said policies and procedures shall be provided to all County employees affected by this Act. Said policies and procedures are incorporated by reference in this Policy as if fully set out herein and shall supersede policies otherwise conflicting with the same.
- E. The regulations prohibit a covered employee from performing a safety-sensitive function under the following conditions:
1. When an employee's alcohol concentration level is .04 or greater;
  2. When the employee has consumed alcohol within the four (4) hours just prior to beginning work in a safety-sensitive position;
  3. When the covered employee uses any listed controlled substance except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle.
    - a. Covered employees are required to inform their supervisors when they are taking/have taken drugs which may induce drowsiness or otherwise impair their ability to operate equipment safely.

- b. Covered employees are prohibited from consuming alcohol during the eight (8) hours immediately following certain motor vehicle accidents or until the employee has been tested.

F. Consequences of Engaging in Prohibited Conduct

1. Said employee must be removed from performing safety sensitive functions.
2. Said employee must submit to an examination by a Substance Abuse Professional or a designated MRO. (Upon determination by the Substance Abuse Professional or MRO, the employee may be required to undergo treatment to cure his/her alcohol or drug dependency at his/her own expense.) Further, an employee's fitness to continue in his/her current position while enrolled in a rehabilitation program will be determined on a case-by-case basis.
3. Said employee may not be returned to his/her former safety sensitive position until his/her return to duty test indicates an alcohol concentration level of less than .02 and/or negative result on a controlled substance test. **This absence from duty will be without pay following notification of positive test results.**
4. Said employee will be required to submit to unannounced follow-up testing after he/she has been returned to his/her safety sensitive position.
5. Said employee will be subject to discipline up to and including termination.

A covered employee who refuses to submit to any required drug/alcohol testing is treated in the same manner as an employee who tested .04 or greater on an alcohol test or tested positive on a controlled substance test.

A refusal to submit to a drug or alcohol test is defined as: (1) failing to provide adequate breath for testing without a valid medical explanation after the employee has received notice of the requirement for breath testing in accordance with the provision of the Act; (2) failing to provide adequate urine for controlled substances testing without a valid medical explanation after the employee has received notice of the requirement for urine testing in accordance with the provisions of the Act; or (3) engaging in any conduct that clearly obstructs the testing process after the employee has received notice of the requirement for breath, blood or urine testing in accordance with the provisions of the Act.

An employee whose alcohol test result indicates as an alcohol concentration level of .02 or greater but less than .04 must be removed from his/her safety sensitive position (without pay) for not less than twenty four (24) hours from administration of the test. The employee whose alcohol test result is less than .04 need not undergo the evaluation and treatment for alcohol dependency or the return to duty/follow-up testing.

G. Required Tests

FHWA Regulations require the following alcohol and drug testing: (1) pre-employment, (2) post-accident, (3) random, (4) reasonable suspicion, and (5) return to duty/follow up. The Consent Form for such tests will be filled out at the testing laboratory.

Division or Department Directors, with input from the immediate supervisor(s), shall initiate drug or alcohol testing of employees for reasonable suspicion or post-accident if established criteria are met. Concurrence of the Director of Human Resources or his/her designee should be obtained if possible. Incidents occurring on 2nd or 3rd shift should be reported to the Director of Human Resources or his/her designee the following day.

H. Alcohol Testing

Alcohol Testing will be conducted by using Evidential Breath Testing devices (EBTs) approved by the National Highway Traffic Safety Administration. A screening test will be conducted first. If the result is an alcohol concentration level of less than .02, the test is considered negative. If the alcohol concentration level is .02 or more, a second confirmation test will be conducted. Alcohol testing will be accomplished by the County's own trained employees or through a qualified laboratory. A blood/alcohol test may be used in lieu of the breath test for post-accident or reasonable suspicion situations if an Evidential Breath Testing device is not readily available.

I. Drug Testing

The regulations set forth several provisions relating to drug testing including the following:

1. The test will be conducted by analyzing an employee's urine;
2. The urinalysis will be performed at a laboratory certified by the Department of Health and Human Services;
3. The urine specimen will be split into two bottles labeled "primary" and "split" specimen. Both bottles will be sent to the laboratory;
4. The urine sample will be tested for the following: marijuana, cocaine, opiates, amphetamines and phencyclidine;
5. If the test is positive for one or more of the above listed controlled substances, a confirmation test will be performed using gas chromatography/mass spectrometry (GC/MS) analysis;
6. All drug test results will be reviewed and interpreted by the MRO before they are reported to the County;
7. If the urinalysis of the primary specimen tests positive for the presence of any of the above listed controlled substances, the employee has seventy two (72) hours to request that the split specimen be analyzed by a different certified laboratory;

8. With all positive drugs tests, the MRO will contact the employee to determine if there is an alternative medical explanation for the results. If documentation is provided and the MRO determines that there was a legitimate medical use for the prohibited substance, the test result may be reported to the County as a “negative.”

J. Tests Required

1. **Pre-employment Testing:** Applicants who have received an offer of employment in, or promotion to, a safety sensitive position, must successfully complete an alcohol and drug test in addition to successful completion of any other physical examination requirement(s). Applicants who do not submit to screening at the appointed time, or who test positive for either drugs or alcohol, will be denied employment for one (1) year, unless they provide certified documentation of successful completion of a County-approved substance abuse rehabilitation program. Applicants who have completed a rehabilitation program will be subject to alcohol and drug testing prior to being considered for employment.
2. **Post-accident Testing:** Post-accident drug and alcohol testing will be conducted on covered employees engaged in a safety sensitive function and are involved in the following described motor vehicle incidents:
  - a. Any accident which results in a fatality, regardless of whether or not the employee was culpable or at fault.
  - b. Any accident in which the employee receives a traffic citation arising from the accident, which indicates the employee’s actions may have contributed to the accident, where any vehicle involved is required to be towed away, or where medical assistance at a remote medical facility is required to be provided for any person involved in the accident (i.e., any person removed by ambulance for treatment at other than their home).

Any person involved in an accident which involved the loss of human life or received a citation is required to notify his/her supervisor immediately. Failure to notify an appropriate supervisor will result in disciplinary action up to and including termination.

A post-accident alcohol test must be administered within two (2) hours following an accident. No test may be administered after eight (8) hours. A post-accident drug test must be conducted within thirty two (32) hours following the accident.

3. **Random Testing:** The County is required to conduct random drug and alcohol testing of employees. At various times throughout the year, the County will randomly select covered employees to be tested.

- a. With alcohol testing, the number of employees tested per year shall equal at least 25% of the total number of employees. The random alcohol test may only be administered to an employee just prior to the employee performing the safety sensitive function, while the employee is performing the safety sensitive function or just after the employee has stopped performing a safety sensitive function.
  - b. With drug testing, the number of employees tested per year shall equal at least 50% of the total number of employees. Some employees may be tested more than once in a year, while others may not be tested at all depending on the random selection process.
  - c. These percentages shall be in effect for the first two (2) years of implementation. Thereafter, the percent of employees tested will be adjusted according to violations within an industry.
4. **Reasonable Suspicion Testing:** A covered employee is required to submit to an alcohol or drug test when a supervisor has reasonable suspicion to believe the employee has violated the provisions of the Act relating to alcohol or the listed controlled substances. The supervisor's determination of reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The supervisor shall submit an **Observation of Impairment Report** to Human Resources, within twenty four (24) hours of the observed behavior.
- a. An employee may be directed by his/her supervisor to undergo reasonable suspicion testing for alcohol only while the employee is performing safety sensitive functions, just before the employee is to perform a safety sensitive function or just after the employee has ceased performing such a function.
  - b. Reasonable suspicion alcohol tests should be administered within two (2) hours of the observation. If not, the department must provide written documentation as to why the test was not promptly conducted. No alcohol test may be administered after eight (8) hours following the observation.
  - c. Supervisors who have the authority to demand a reasonable suspicion test of a covered employee must attend at least one (1) hour of training on alcohol misuse and at least one (1) hour of training on controlled substances abuse. This training will provide supervisors with knowledge of physical, behavioral, speech and performance indicators of probable alcohol and drug abuse.
5. **Return to Duty Follow-up Testing:** This testing will be conducted on covered employees who have violated the provisions of the Act or this Policy.
- a. A covered employee must submit to a return to duty test before he/she may be returned to his/her safety sensitive position. The test result

must indicate an alcohol concentration of less than .02 or a verified negative result on a controlled substance test. Absences will be without pay following notification of positive test results.

- b. Because studies have shown that the relapse rate is highest during the first year of recovery, return to duty tested employees are subject to follow-up testing which is separate from the random testing.
- c. For employees identified as needing assistance in resolving problems associated with alcohol/drug abuse, the County must perform at least six (6) unannounced drug/alcohol tests on such employees during their first year back in the their safety sensitive position(s).
- d. Return to Duty Follow-up testing can be conducted for up to sixty (60) months from the date of the employee's return to duty.

**K. Release of Alcohol and Controlled Substance Test Information**

1. The County is required to obtain, pursuant to an employee's consent, information of the employee's alcohol tests with a concentration result of .04 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two (2) years, which are maintained by the employee's previous employers. Failure of the employee to provide such consent will result in denial of employment, or, if such information is obtained after employment is gained with the County, the employee is subject to discipline to include termination.
2. This information should be obtained and reviewed by the County at least 14 calendar days after the first time an employee performs safety sensitive functions. If the County is unable to obtain this information within the 14 calendar days, the employee will not be permitted to perform safety sensitive functions.
3. If the requested information cannot be obtained or a previous employer does not comply with the County's request, the documentation of such action must be kept with the employee's other testing information. The employee can perform safety sensitive functions under these documented circumstances.

**VII. Procedures for Employees affected by the Omnibus Transportation Employee Testing Act**

**A. Pre-employment Testing:**

1. Departments which must comply with this regulation will forward a list of positions that require a Commercial Driver's License (CDL) to Human Resources.
2. When there is a request to fill a vacancy for a position which requires a CDL, it should be noted on the Vacancy Notice.

3. Employment offers will be to made candidates contingent upon their passing a drug and alcohol examination. Hiring authorities will use the following step(s) when making offers of employment:
  - a. With the applicant's input, the hiring authority will schedule a time and location for drug and alcohol testing.
    1. The appointment should be made within 2 to 8 hours of the phone call if at all possible. The laboratory shall be called with the appointment time and the name of the person(s) to be tested. Laboratory personnel should be informed at this time that the person(s) to be tested is/are CDL applicant(s).
    2. Human Resources will maintain a list of approved testing facilities.
4. The hiring authority will also call Human Resources and notify as to who has been selected/recommended for testing.
5. The selected laboratory will call Human Resources to notify the results of the test.
  - a. If the test results are negative (no drugs), Human Resources will notify the hiring authority. Also, see VII. D., Procedure for Release of Alcohol/Controlled Substances Test Information.
  - b. Applicants are prohibited from reporting to work or being added to the County's official personnel roster until after negative testing results have been established.
6. If test results are positive (drugs indicated), Human Resources will so note the information as Policy prescribes and notify the hiring authority, who may process the vacancy by another selection, or request that the vacancy be placed on an until filled status.

B. Procedure for Post Accident and Reasonable Suspicion Testing

1. The hiring authority shall initiate drug and alcohol testing for those incidences or events that are described by the Policy.
2. Drug and alcohol testing can be done at the same locations and times as indicated in VII. A. 3. a. 2.: Pre-employment Testing. For post-accident or reasonable suspicion situations, testing is available 24 hours per day. .

C. Procedure for Random Testing

1. Departments which must comply with this regulation will forward a list of affected employees to the testing laboratory. This list will be updated when there are changes in the personnel who require these tests.

2. The laboratory will randomly select those to be tested on a monthly basis, according to this Policy. The department(s) will be notified by the laboratory as to whom will be tested, where they are to be tested, and when they are to be tested.
  3. Upon completion of the testing process, the department(s) will be notified of the results, and the paperwork will be sent to Human Resources.
  4. This Policy shall be followed as to VI. F., Consequences of Engaging in Prohibited Conduct, and VI. J. 5. Tests Required - Return to Duty Follow-up Testing, when there has been a violation of this Policy.
- D. Procedure for Release of Alcohol/Controlled Substances Test Information
1. This section is in relation to pre-employment testing and will be coordinated with pre-employment testing procedures as listed in VII. A.
  2. Appropriate forms will be maintained in the departments which must comply with this regulation.
  3. The form will be sent to the previous employer, as per the Policy, upon an offer of employment, contingent upon passing the drug and alcohol tests, and the receipt of the required information.
  4. When the requested information is received and the selection has been finalized, the hiring authority may then send the information sheet to Human Resources with the recommended hiring date, along with any other collected information.

### **VIII. Employee Rights:**

- A. Employee test results will be handled confidentially and on a "need to know" basis. Records will be stored to provide carefully controlled access. Records are the property of Sedgwick County. Copies of test results shall be made available to the employee for inspection and copying. Individual records will not be released to outside agencies/individuals without the employee's written consent unless mandated by law. Violation of an employee's confidentiality can result in disciplinary action leading to termination.
- B. Embodied in the County's desire to maintain a drug and alcohol free workplace is the commitment to assist employees who on their own seek treatment for substance abuse. The County will not initiate disciplinary action against an employee who meets all of the following conditions:
  1. Voluntarily self-identifies as an alcohol/drug abuser before being identified through other means.
  2. Obtains professional counseling or rehabilitation through an EAP or other



formal drug/alcohol mediation program.

3. Refrains from abusing drugs/alcohol thereafter.

C. Employees have the prerogative to file a grievance for any disciplinary action pursuant to this Policy in accordance with established County procedures.

**IX. Special Provisions for Certain Aging Department Employees and Other Employees Servicing Certain Aging Department Vehicles**

**In addition to the requirements of this section, employees of the Department on Aging who perform transportation program driver and dispatcher duties which are funded by grants from the Kansas Department of Transportation (KDOT) and/or the Federal Transit Administration (FTA) shall be governed by the Sedgwick County Department on Aging's Anti-Drug and Alcohol Misuse Prevention Policy (ADAMPP). The provisions of the ADAMPP are hereby incorporated by reference as if set out in full. Also, the Director of the Fleet Management Department shall designate certain positions within that department to be responsible for servicing and maintaining Aging Department's vehicles used for programs funded by KDOT or FTA grants. Those designated Fleet Management positions shall also be governed by the ADAMPP in addition to the requirements of this section. Where a discrepancy exists between items or subjects covered in both this personnel Policies and Procedures Manual and ADAMPP, the ADAMPP shall be the higher authority and will control for the employees to whom it applies.**

**This Policy is intended to be a unilateral expression of the general policies, procedures and guidelines concerning the Omnibus Transportation Employee Testing Act. It is not intended to create a contractual rights of employment, either express or implied, between the County and its employees. In addition to the general policies and procedures listed above, County employees will continue to be covered by the policies and procedures as listed in the County Substance Abuse Policy. The County reserves the right to change the provisions of the Personnel Program and this Policy at any time.**