

BOARD OF SUPERVISORS
TOWNSHIP OF MIDDLE SMITHFIELD
MONROE COUNTY, PENNSYLVANIA

RESOLUTION 07-2022-1

**RESOLUTION ADOPTING A NON-CDL EMPLOYEE
DRUG AND ALCOHOL TESTING POLICY**

WHEREAS, the Township of Middle Smithfield (hereinafter "Township") is committed to providing a safe, healthy, and productive workplace for the benefit of its employees and the public; and

WHEREAS, employees working under the influence of drugs or alcohol pose a safety risk to themselves, other employees, and the Township community; and

WHEREAS, the use, possession, distribution or sale of controlled substances or alcohol is prohibited whenever employees are conducting Township business, regardless of whether they are on Township property or conducting Township business offsite.

WHEREAS, in furtherance of the Township's commitment to providing a safe, healthy, and productive workplace, the Board of Supervisors hereby adopts a Non-CDL Employee Drug and Alcohol Testing Policy (hereinafter "Policy") in which job applicants and current employees will be required to submit to drug and alcohol testing as a condition of their hire or, under certain circumstances, their employment.

NOW THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the Middle Smithfield Township as follows:

Section 1: Policy.

1. Application.

This Policy applies to all employees and applicants for employment with the Township not otherwise covered under the Township's policy applicable to employees possessing Commercial Driver's License (CDL).

2. Policy Established.

Employees of the Township shall not use, sell, possess or receive alcohol or illegal drugs, or distribute or sell prescription drugs while on duty. Violation of these rules will subject the employee to discipline and/or dismissal from employment, not otherwise inconsistent with applicable law.

The term "illegal drugs" shall include drugs for which the employee does not have a valid prescription, as well as cocaine, phencyclidine (PCP), marijuana, opiates (including Heroin), amphetamines and such other drugs as may be identified from time to time as illegal. The term also includes over the counter and prescription drugs that are being abused.

3. Pre-Employment Testing.

All job applicants are subject to drug and alcohol testing. All offers of employment with the Township are conditioned on the applicant submitting to and successfully completing and passing a drug and alcohol test in accordance with the testing procedures described in this policy.

4. Testing Based on Reasonable Suspicion.

Employees will be required to submit to a drug and alcohol test when an individual in a supervisory capacity over that employee has reasonable suspicion, based on objective observations concerning the employee's appearance, speech, behavior, odors, or other conduct and facts, that the employee possesses or is under the influence of unlawful drugs, alcohol, or both. Supervisory personnel making reasonable suspicion observations shall make and file with the Township Human Resources Manager a written report of the attendant circumstances. Such reports shall be confidential.

5. Periodic/Random Testing.

Only employees in safety-sensitive positions will be subject drug and alcohol testing on a random basis. As according to applicable law, safety-sensitive positions are those positions that require any activity that the Township reasonably believes present a potential risk of harm to the health or safety of an employee or others while under the influence, such as (for example) duties performed at heights or confined spaces; the operation of a vehicle, equipment, machinery, or power tools; repairing or maintaining equipment; or positions requiring direct childcare. The above examples are intended to explain, not to limit, which positions may be considered "safety sensitive," and, therefore, subject to random testing.

6. Post-Accident Testing.

Any employee involved in an accident as defined herein shall be tested at the Township's expense for drugs as soon as practical after an accident occurs, as is possible, but not later than 32 hours thereafter, and for alcohol as soon as after an accident as possible, but not later than eight hours, thereafter: Provided that:

(1) Testing shall not take precedence over needed medical treatment or other needed emergency measures.

(2) If for any reason the tests cannot be obtained within the times provided, the test shall not be administered. However, refusal to submit to a test or interfering with the successful completion of the test shall be deemed a positive test result.

(3) No employee shall consume alcohol or illegal drugs between the time of the accident and the test administration.

The term "**accident**" as utilized herein shall include any occurrence, act or omission which causes or results in death and/or actual or potential injury to person or property and shall further include, but not be limited to, those instances involving the handling or operation of tools, equipment, vehicles, where the following conditions occur:

- (1) There is a fatality regardless of fault; or
- (2) There is issuance of a citation to the Township employee for a moving violation, and (i) bodily injury of any person involved requiring transportation of the injured person away from the accident scene for treatment or (ii) vehicular damage requiring the vehicle to be towed from the scene.
- (3) The occurrence, act or omission causes or results in actual injury to person or property or, in the opinion of the Township officials, had the potential to result in injury to person or property.

7. Testing Procedures.

Any refusal or failure by an employee or applicant for employment to submit to any test required by this policy or the applicable law or regulation shall be deemed to be a positive result for alcohol and drug abuse and a violation of this policy. Refusal to submit to a test under this policy shall include any act or omission which prevents, thwarts or frustrates the objectives of this policy, including without limitation the following: (i) refusal to submit in a timely fashion to testing; (ii) refusal or failure by the employee or applicant to complete, sign or initial the required testing form; (iii) refusal or failure without good cause to provide any sample or provide an adequate sample for testing; and (iv) failure or refusal to otherwise cooperate with the testing process in a way which prevents the completion of any required test.

- A. **Alcohol Testing.** Alcohol testing shall be conducted using an approved Breathalyzer. Any employee receiving a test result of greater than 0.02 but less than 0.04 breath alcohol level shall be removed from safety sensitive duties as defined in the act and the regulations, for 24 hours. In the case of an applicant for employment, such a result shall be a basis for denial of employment. Any test result of greater than 0.04 breath alcohol level shall be considered a positive test and shall subject the employee to discipline, up to and including termination from employment, or, in the case of an applicant for employment, shall be a reason to deny such person employment with the Township.
- B. **Drug Testing.** Drug testing shall be conducted by urine sample, which shall be analyzed at a federally approved testing facility. Any test result showing the presence of illegal drugs shall be considered a positive test and shall subject the employee to discipline, up to and including termination from employment, or, in the case of an applicant for employment, shall be sufficient reason to deny such person employment with the Township.

8. Test Results.

Employees and applicants for employment will be notified of their positive test results. The Medical Review Officer responsible for analyzing the employee's test results shall retain test results. Said results shall be held in strictest confidence and shall be accessible only by the employee, the applicant for employment, the employer and such other persons or entities

authorized by law or regulation and shall not be released to any other person except with the written consent of the employee or applicant for employment.

9. Confidentiality and Recordkeeping.

All files, documents, and records of the Township relative to the application of this Policy to individual employees and applicants for employment shall be maintained and kept confidential by the Township, except as otherwise set forth herein or by state or federal law or regulation, in accordance with guidelines provided by PSATS.

10. Access to Test Results and Findings.

No person may obtain the individual test results retained by the Medical Review Officer, and no Medical Review Officer shall release the individual test results of any employee or applicant to any person, without obtaining written authorization from the tested individual, unless otherwise authorized or directed by law or order of court of competent jurisdiction.

11. PSATS Program.

The Township designates the PSATS CDL Drug and Alcohol Program for the purpose of implementing the Township's testing program. Designation of the PSATS Program shall continue for so long as the Township is a member in good standing with the PSATS Program. The Township will comply with guidelines issued by the PSATS Program that are not inconsistent with this Resolution.

Section 2: Severability. The provisions of this Resolution shall be severable, and, if any of the provisions are found to be invalid or unenforceable, the remaining provisions shall remain in effect.

Section 3: Construction. All provisions of this Resolution shall be interpreted consistent with applicable law. Further, any resolutions conflicting or inconsistent with any of the provisions of this Resolution are hereby repealed, but only insofar as such conflict of inconsistency.

Section 4: Effective Date. This Resolution shall be effective immediately and shall remain in effect until modified or repealed by further Resolution of the Board of Supervisors.

[signature page to follow]

RESOLVED THIS 14th DAY OF July, 2022 BY THE BOARD OF SUPERVISORS OF THE MIDDLE SMITHFIELD TOWNSHIP AT A LAWFUL SESSION DULY ASSEMBLED.

**TOWNSHIP OF MIDDLE SMITHFIELD
BOARD OF SUPERVISORS**

Carrie C. Heison
Chairperson

Mary B. Bly
Vice Chairperson

Mark H. H.
Supervisor

Michele S. Clewell
Michele Clewell, Secretary

(Township Seal)