

Resolution No. 6 of 2024

FOSTER TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA

**A RESOLUTION ADOPTING A DRUG AND ALCOHOL POLICY AND
TESTING PROCEDURES FOR TOWNSHIP EMPLOYEES**

WHEREAS, the Foster Township Board of Supervisors wish to adopt a Random Drug and Alcohol Testing Policy ("Policy") for all employees of the Township; and

NOW, THEREFORE, BE IT RESOLVED, that the Foster Township Board of Supervisors do hereby adopt the Policy as follows:

DRUG AND ALCOHOL POLICY AND TESTING PROCEDURES FOR EMPLOYEES

1. **APPLICATION**. This Policy shall apply to all employees and applicants for employment.

2. **DEFINITIONS**. For the purposes of this Policy:

A. Authorized drugs or substances- means drugs authorized by and administered as prescribed at the direction of a health care professional or over-the-counter medicine taken under the instructional label. Such drug or medicine usage shall not constitute a violation of this Policy.

B. Controlled substances- means any substance identified in the Controlled Substances, Drug, Device and Cosmetic Act, Pennsylvania Act of 1972, P.L. 233, No 64, as amended, and the drugs or substances identified in federal regulations at 21 CFR 1308.11 Schedule I.

C. Employer- means Foster Township, Luzerne County, Pennsylvania.

D. Employee-means a person employed full-time or part-time by Foster Township.

E. Prohibited drugs- includes substances that an individual may not sell, distribute, use, or purchase under Federal or State Laws.

F. Safety-sensitive function, as currently defined by 49 CFR Part 382.107, means from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

1. All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.

2. All time inspecting equipment as required by 49 CFR 392.7 and 49 CFR 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

3. All time spent at the driving controls of a commercial motor vehicle in operation;

4. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth as defined in 49 CFR 393.76;

5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

F. Workplace- means township owned or leased property, facilities, equipment, or vehicles.

3. DRUGS, ALCOHOL AND OTHER PROHIBITED SUBSTANCES.

A. Employees shall not manufacture, distribute, be under the influence of, purchase, possess, use, obtain, sell, or transfer any of the following in the workplace or in the performance of their duties:

1. Alcoholic beverages.

2. Controlled substances, prohibited drugs and substances, substances that attempt to mask or hide the presence of narcotics, prohibited drugs, or controlled substances.

3. Drug paraphernalia.

4. Substances that look like controlled substances. In instances involving look-alike substances, there must be clear and concise evidence of an employee's intent to pass off the look-alike substance as a narcotic, prohibited drug or a controlled substance.

B. Employees shall not possess prescription drugs for the purpose of sale or distribution in the workplace. While in the workplace, prescription drugs must be kept in their original container identifying the drug, dosage, date of prescription, and prescribing physician.

4. PRE-EMPLOYMENT TESTING. All applicants shall be required to submit to pre-employment drug and alcohol testing. Any applicant that tests positive shall be denied employment. If an applicant refuses to consent or submit to a drug or alcohol test, the offer of employment will be withdrawn.

5. REASONABLE SUSPICION TESTING. Employees shall submit to employer-paid testing when there is reasonable suspicion to believe that the employee is under the influence of a controlled substance or alcohol. The employee shall be tested immediately upon confirmation of such reasonable suspicion by the employer or any of the employer's personnel. Reasonable suspicion shall be limited to behavior or conduct observed at the workplace or in route to the workplace during working hours. The employer's determination that reasonable suspicion exists to require an employee to undergo an alcohol or controlled substance test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Examples of reasonable suspicion include:

- A. Direct observation of symptoms of being under the influence.
- B. Abnormal conduct or behavior while performing duties, excessive absenteeism or tardiness, poor work performance, or disregard for safety and security.
- C. Reported controlled substances or alcohol usage during working hours and corroborated by employer or an employee of the township.
- D. Evidence that an employee has tampered with a controlled substance test during the employee's term of employment.
- E. Reported controlled substance or alcohol possession, including the sale, distribution, manufacturing, or transfer of a controlled substance or alcohol while working.

If a test is not administered within two hours of the determination of reasonable suspicion, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within eight hours following the determination of reasonable suspicion, the employer shall cease attempts to administer the test and shall state in the record the reasons for not administering the test. A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the employer or employee who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever occurs first.

6. POST ACCIDENT TESTING.

- A. Any employee involved in an accident shall be tested at the employer's expense for drugs as soon after an accident occurs as is possible, but not later than thirty-two (32) hours, and for alcohol as soon after an accident as possible, but not later than eight (8) hours. Testing should not take precedence over needed medical treatment or other needed emergency measures. If for any reason the tests cannot be obtained within the times provided, the tests shall not be

administered, and a record made of the reason. However, refusal to submit to a test or interfering with the successful completion of such a test shall be deemed a positive test result. No employee shall consume alcohol or illegal drugs between the time of the accident and the test administration.

B. As soon as practicable following an accident involving a commercial motor vehicle operating on a public road in commerce, the employer shall perform a drug test and alcohol test on its surviving drivers when either of the following conditions occur:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
2. Who receives a citation within eight hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - i. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - ii. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

7. **RANDOM TESTING.** Employees shall be required to participate in random employer-paid testing to be conducted from a common pool of employees with an equal chance of being selected for testing. The tests shall be conducted without any advance notice to the employee. Employees may be randomly selected for both a drug and alcohol test, or just a drug test. So that employees cannot anticipate when testing may happen, random testing may occur on any day of the week. Employees randomly selected by the employer for a test remain in the random test pool, so the chance of being picked is the same.

8. **TEST STANDARDS.**

A. Modern and confidential testing procedures shall be used which will protect the rights of the employee and the integrity of the testing process, safeguard the validity of the test results, and ensure that results are attributed to the correct employee. All drug and alcohol tests will be conducted by licensed facilities selected by the employer.

B. No employee shall refuse to submit to a drug or alcohol test. The employer shall not permit an employee who refuses to submit to such tests to perform or continue to perform his or her duties in the workplace. Any refusal or failure by an applicant or employee to submit to any test required by this Policy or the applicable law and regulations, shall be deemed to be a positive result. Applicants will not be hired, and employees will be subject to the disciplinary provisions of this policy, as a result of a positive test. 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:

1. Refusal to submit in a timely fashion to testing.
2. Refusal or failure by the employee or applicant to complete, sign, or initial the required testing forms.
3. Refusal or failure without good cause to provide any sample or provide an adequate sample for testing,
4. Failure or refusal to otherwise cooperate with the testing process in a way that prevents the completion of any required test.

C. All required tests shall be completed using testing chain-of-custody forms that are designed to protect the rights of the employee and the integrity of the testing process and safeguard the validity of the test results.

D. Alcohol testing shall be conducted using a breathalyzer operated by a certified breath alcohol technician. Any employee receiving an alcohol test result of greater than or equal to 0.02% breath alcohol level, but less than 0.04% breath alcohol level, shall be immediately removed from duties for 24 hours. Any test result equal to or greater than 0.04% breath alcohol level shall be considered a positive test and cause the employee to be removed from duties and subject to the disciplinary provisions of this Policy.

E. Drug testing shall be conducted by urine sample that shall be analyzed at an employer-approved testing facility. Any test result confirming the presence of illegal drugs shall be considered a positive test and cause the employee to be removed from duties and subject to the disciplinary provisions of this Policy. Any employee testing positive for illegal drugs may request that the split sample of the same specimen be retested, at the employee's expense. Employees must speak with the testing facility about such a request.

F. The employer will provide or arrange transportation to and from the testing facility, job site or the employer's facilities, as appropriate, under the following circumstances:

1. All reasonable suspicion tests;
2. All alcohol tests with results of greater than or equal to 0.02% breath alcohol level; or
3. If the employer has reason to believe that the employee has engaged in prohibited conduct regardless of whether the employee would be required to submit to a reasonable suspicion test.

G. Employees will be notified of their positive test results. Test results shall be held in strictest confidence and shall be accessible only to the employee, the employer, and such other persons authorized by law and shall not be released to any other person except with the written consent of the employee.

9. **CONFIDENTIALITY OF DOCUMENTS.** All files, documents, and records of the employer related to the application of this Policy to individual employees shall be deemed and kept confidential by the employer.

10. **ACCESS TO TEST RESULTS AND FINDINGS.** No person other than the employer's designated contact person may obtain the individual test results.

11. **DISCIPLINE.** An employee who has violated this policy shall be subject to discipline, up to and including termination of employment. Any employee with a positive test result shall be given the opportunity to explain any circumstances that may have led to a positive result.

12. **MISCELLANEOUS.**

A. This Policy shall be implemented with the constitutional and legal rights of the employees subjected to it.

B. This Policy shall not be deemed to be a covenant of employment or other form of covenant or contract between the employer and any employee.

C. Any collective bargaining agreement entered into by the employer subsequent to the adoption of this Policy shall conform to the provisions of this Policy.

D. A copy of this Policy shall be delivered to every employee and applicant for employment. All employees shall sign an acknowledgment of receipt of the Policy which shall be permanently retained in the employee's personnel file.

E. Employees agree to waive any liability against the employer arising out of the employer's administration of this Policy.

[Adoption signatures on following page]

This Resolution shall become effective immediately following its adoption this 10th day of April 2024, and shall continue in effect until amended or terminated by the employer.

ATTEST:

Brian Majors
Manager

FOSTER TOWNSHIP BOARD OF SUPERVISORS:

[Signature]
Chairperson

[Signature]
Vice Chairperson

[Signature]
Supervisor