



# Bannock County

# Drug and Alcohol-Free Workplace Policy

## **Bannock County Drug and Alcohol-Free Workplace Policy**

Adopted by the Bannock County Commissioners with an effective date of October 1, 2022, amending Bannock County's Drug-Free Workplace Policy Adopted by the Bannock County Commissioners on March 12, 2014.

Effective October 1, 2022, this Drug and Alcohol-Free Workplace Policy will be implemented and will supersede any previous versions. This will apply to all prospective and current employees of **Bannock County** (hereafter referred to as the County).

## **Philosophy**

The County believes that it must provide a safe work environment and has an obligation and right to have alert employees who are free from drugs and alcohol. This means that during working hours, all employees are expected to be free from any substance, whether legal or illegal, that can negatively affect job performance or risk the health and safety of employees and the public.

The purpose of this testing policy is to protect the physical and psychological well-being of all the employees at the County's facilities and job sites and protect the safety of the public. Use of intoxicants and drugs that alter the ability to function on the job in an effective and safe manner will not be tolerated. The use of or condition of being under the influence of drugs and/or alcohol while at work can affect the morale of other employees as well as increase accidents, theft, and absenteeism. This testing policy is a critical step in establishing and maintaining an efficient and safe work force and will be applied in conjunction with all established County policies, procedures and programs.

The County will vigorously pursue the enforcement of this policy, and will make efforts to protect the privacy of its employees. It is the intent of this policy to encourage and support employee recovery from substance abuse.

## **Policy on Drugs and Alcohol in the Workplace**

The County has a strong commitment to its employees to provide a safe environment and to promote high standards of employee health. Consistent with the spirit and intent of this commitment, we have established this policy on drug and alcohol use. Bannock County is a drug and alcohol free workplace. Our goal is to establish and maintain a work environment that is completely free from the effects of drug and alcohol use of employees.

Drug and alcohol abuse is a threat to us all. It threatens your safety on the job. It threatens your job security. If you abuse drugs and/or alcohol, it threatens your right and the rights of others to a healthy, productive and rewarding life.

We expect employees to report to work in a condition to perform their duties in a safe, effective and efficient manner. An employee's "privacy" right to his or her "personal life" does not mean that

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he/she has the "right" to endanger their self or any co-worker by working under the influence of drugs and alcohol.

## **1. Employee Assistance Program**

An employee who believes that she/he has a problem involving the use of drugs and alcohol can ask their Human Resources representative for assistance. No discipline or discrimination will result from an employee asking for such assistance. We will work with the employee to identify programs that may be available to help deal with the problem. The request for help and any later treatment program will be kept as confidential as possible under all the factual circumstances.

A "last chance agreement" or performance contract will be required of an employee once the problems have been identified or assessed and a treatment or education program started. Failure to sign the agreement/contract, refusal to sign the disclosure agreement from your provider to the County or failure to comply with all treatment program obligations will be grounds for discipline, up to and including termination.

The County encourages employees to ask for assistance if they believe they have a problem involving the use of drugs and/or alcohol. Although we recognize that drug and/or alcohol abuse can sometimes be successfully treated, we are willing to work with employees who may suffer from such problems. It is each employee's responsibility to seek such assistance before a drug and/or alcohol problem leads to an on the job incident, misconduct, or violation of County policy. After a violation of our policy occurs or a drug and/or alcohol test has been requested, willingness to seek County or outside assistance will NOT "excuse" the violation and most often the employee will be terminated.

### FMLA Leave for Treatment of Substance Abuse

Treatment for substance abuse may be a **serious health condition if the conditions for inpatient care and/or continuing treatment are met.**

FMLA leave may only be taken for substance abuse treatment provided by a health care provider or by a provider of health care services on referral by a health care provider. Absence because of the employee's use of the substance, rather than for treatment, *does not qualify for FMLA leave.* An employee may also take FMLA leave to care for a covered family member who is receiving treatment for substance abuse.

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## **2. Definitions**

### **Alcohol**

The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

### **Alcohol Concentration**

The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test (EBT).

### **Confirmation alcohol test**

A subsequent test using an evidential breath test (EBT), following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

### **Confirmation drug test**

A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (G.C./M.S.) or Liquid chromatography/mass spectrometry (L.C./M.S.) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

### **Designated Employer Representative (DER)**

The person(s) designated by the Employer to receive confidential test results.

### **Dilute Specimen**

A urine sample with a low Specific Gravity and a low Creatinine level.

### **Direct Observation**

Employee is to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show, by turning around, that they do not have a prosthetic device. If the employee does not have such a device, the employee may return clothing to its proper position for observed urination. The observer must watch the employee urinate into the collection container. Specifically, the observer to watch the urine go from the employee's body into the collection container.

Direct Observations are to be conducted with no advance notice to the employee, if:

- Requested by the Designated Employer Representative (DER).

### **Invalid Test**

A urine sample in which the laboratory has been unable to obtain a valid test result.

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**Medical Review Officer (MRO)**

A licensed physician (Medical Doctor or Doctor of Osteopathy) responsible for receiving laboratory results generated by an Employer's drug and alcohol testing program who has knowledge of substance abuse disorders, possesses a certificate of completion or certification from an approved MRO program and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

**3. Alcohol**

The possession, sale, consumption or being under the influence of any intoxicating liquor while on County time, in route to County property, or in other circumstances we believe will adversely affect our operations or safety, may result in disciplinary action up to and including termination of employment.

The conduct prohibited includes consumption of any intoxicating liquor four hours prior to reporting to work, during breaks or lunch period. An employee who tests positive for alcohol to any degree (0.02 BrAC/BAC or greater) will be deemed "under the influence" for purposes of this rule.

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**4. Drugs**

The possession, sale, consumption or being under the influence of any drug while on County time, in route to County property or in other circumstances we believe might affect our operations or safety, will be subject to disciplinary action up to and including termination of employment. The conduct prohibited by this rule includes consumption of any such substance prior to reporting for work, during breaks or lunch period. An employee who tests "positive" for any such substance by screening and confirmation tests, will be deemed "under the influence" for purpose of this rule.

**5. Right to Test and Search**

Where evidence indicates to us that an employee may have violated either of the above rules, the employee may be required to submit to search of her/his possessions and to submit to drug and/or alcohol testing.

When reasonable suspicion exists to cause us to believe an employee has consumed or is under the influence of drugs, alcohol or any substance in violation of this policy, the County may search the employee's possessions located on County property or job site, including clothes, locker, lunch box, tool box, desk, car, etc. The County, in such circumstances, may also require the employee to submit to appropriate tests for alcohol or prohibited drugs or substances in her/his system, including urinalysis and breath tests. Failure to promptly permit such searches and tests will be

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considered a refusal to test and will be grounds for disciplinary action up to and including termination of employment.

Among the situations where the County may exercise its "Reasonable Suspicion" right to test and search include the following:

- \*An observable symptom of an employee being under the influence of drugs and/or alcohol.
- \*Unexplained significant changes in behavior (e.g., abusive behavior, repeated disregard of safety rules or procedures, insubordination, etc.)
- \*Failure to complete or comply with a treatment program already started.
- \*Employee admissions regarding drug and/or alcohol use.

These are examples of situations in which the County may ask an employee to submit to Reasonable Suspicion drug and/or alcohol test. The County will enforce this policy based on each individual factual circumstance and at its discretion. In some cases, it may, based on all factual circumstances, decide not to test an employee, despite the fact that it could do so under this policy. Such individual situations of County discretion shall not affect the County's right to enforce the policy in other situations.

Employees subject to disciplinary action up to and including termination might be offered the opportunity to participate in a chemical dependency/alcohol rehabilitation program, provided the employee voluntarily agrees to the terms of a "Last Chance" agreement. This option will only apply to a first-time violation of the Drug and Alcohol-Free Policy. The decision to offer a "Last Chance Agreement" will be made on a case-by-case basis depending upon the circumstances. Not all employees will be offered this option. All treatment, follow-up drug and/or alcohol testing and other associated costs incurred from a rehabilitation program will be the sole responsibility of the employee.

## **6. Testing Procedures**

A drug test that is confirmed by G.C./M.S. or L.C./M.S. technology at or above the cut-off levels established by the Department of Health and Human Services (DHHS). The County will attempt to notify covered employees as cut-off level changes occur. Currently, the cut-off levels are: (expressed in nanograms per milliliter (ng/mL):

Screening	Confirmation
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• Marijuana	50	15
• Cocaine	300	150
• Opiates	2000	2000
○ 6-acetylmorphine (6-AM)		10
□ When specimen confirms w/morphine at 2000 ng/mL or greater		
• Phencyclidine (PCP)	25	25
• Amphetamines	1000	500
• Methamphetamines	1000	500

### **Pre-Employment Testing**

Employees applying for positions may be required to pass a drug and/or alcohol test as a condition of employment. This will be completed before any job offers are finalized. If a pre-employment drug and/or alcohol test is found to be diluted, the job applicant shall be warned that a second dilute test may result in the job offer being withdrawn.

### **Reasonable Suspicion**

Employees may be tested for drugs and/or alcohol when there is reasonable suspicion to believe that the employee has violated the County drug and alcohol policy. Whether reasonable suspicion exists depends on the indicators used to determine that an employee may have used or be under the influence of drugs and/or alcohol.

**It is the responsibility of the employee to notify employer of arrests made for alcohol and/or drug offenses within five-(5) days of the arrest. Employees who are instructed to submit to testing under reasonable suspicion will be escorted to the collection facility; they will not be allowed to operate a motor vehicle or return to work until the test results are confirmed. If the test results are negative the employee will be compensated for the normal amount of hours that they would have worked while waiting for the results. If the test is non-negative, no compensation is given for time loss but employee will be allowed to use compensatory time or vacation if available.**

### **Post-Accident**

Post-accident testing may be required when an employee is involved in an accident, whether the employee is responsible for the accident in whole or in part. Post-accident testing may be required in the event of an injury requiring medical care, damage to property or in a near miss situation that could have resulted in injury or damage. Failing to immediately report for a test will be considered as a "Refusal to Test."

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### **Follow Up Testing**

If the "Last Chance" contract requires drug and/or alcohol follow-up testing, then the employee will submit to all unannounced requests for drug and/or alcohol testing during the term of the "Last Chance" agreement. Refusal or failing to immediately report ("immediately" means the employee shall proceed to the collection location without delay, never longer than one-(1) hour after notification) after a request will result in a presumption that the employee was incapable of passing the test and the test results would have indicated an unacceptable level of prohibited substances or alcohol. Failing to report will be considered as a "Refusal to Test". If a "Last Chance" follow-up drug and/or alcohol test is non-negative during the term of the contract the employee will, in most cases, be terminated.

## **7. Confidentiality**

The employee's test results, positive, negative, invalid, adulterated or substituted and the fact that the test was performed will be kept as confidential as possible under all the factual circumstances.

## **8. Test Results and Right to Retest**

Positive test results will be considered with medical review and other evidence to determine what action, if any, is to be taken. Actions by Bannock County may include, but are not limited to the following:

- a) A requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;
- (b) Suspension of the employee with or without pay for a period of time;
- (c) Termination of the employee;
- (d) Other disciplinary measures in conformance with the employer's usual procedures.

Any employee or prospective employee who tests positive for drugs or alcohol will be given written notice of that test result, including the type of substance involved. The employee will be given an opportunity to discuss and explain the positive test result with a medical review officer or other qualified person.

Any employee or prospective employee who has a positive test result may request that the same sample be retested by a mutually agreed upon laboratory. A request for retest must be done within seven (7) working days from the date of the first confirmed positive test notification and may be paid for by the employee or prospective employee requesting the test. If the retest results in a negative test outcome, the employer will reimburse the cost of the retest, compensate the employee for his time if suspended without pay, or if terminated solely because of the positive test, the employee shall be reinstated with back pay.

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It is up to the employee and their prescribing physician to determine if any prescribed or over the counter medication may negatively affect their job performance. If an employee is advised by their physician that they should not perform any of their job functions, the employee must notify her or his supervisor of that fact before reporting to work.

If a prescription medication was properly authorized and appropriately used, a positive test result related to such medication will not be cause for discharge or discipline unless the employee failed to notify the County prior to the test of the use of a medication that could impair the employee's ability to work safely.

## **9. Medicinal Use of Marijuana**

The County considers marijuana an illicit substance as defined by the federal government as a Schedule I Controlled Substance. The County prohibits employees from having any detectable level of marijuana in their system while working for this County.

## **10. Refusals to Test**

Refusal to test includes failure to cooperate with the testing process in a manner which does not allow the test to be conducted, leaving the testing location before a test is completed, refusal to offer an adequate specimen without a valid medical explanation, failure to immediately report to the collection location when requested, adulterating, substituting or tampering with a specimen, invalid test result or other behavior that interferes with the testing process. Consequences of refusals to test will, in most cases, result in disciplinary action up to and including termination from employment.

## **11. Shy-Bladder**

Employees unable to provide an acceptable urine sample in a three- (3) hour time period after arrival at the testing location may be deemed as "refusing to test." If the employee is able to demonstrate that the "shy-bladder" situation is due to a qualified medical condition, the County will reverse the "refusal" and cancel the test. The employee claiming a medical condition will automatically be placed on unpaid administrative leave for up to five- (5) working days after the shy-bladder situation to obtain a written report prepared by a physician who has medical expertise in the condition the employee claims is the reason for the shy-bladder. The employee will be allowed to use compensatory time or vacation if available. For the purpose of this paragraph, a medical condition includes an ascertainable physiological condition (*e.g.* a urinary system dysfunction) or a medically documented pre-existing psychological disorder; but does not include unsupported assertions of "situational anxiety" or dehydration. If the employee has not presented a physician report that is

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acceptable to the County Medical Review Officer at the end of the five- (5) day period, the employee will be terminated from employment.

## **12. Situations not Covered by Policy**

We recognize that situations may arise which are not specifically covered by these guidelines. We deal with them on a "case by case" basis taking into account such things as the nature of the situation or problem, the employee's overall employment record and job assignment, the potential impact on safety, production, customer service, etc.

Effective Date: October 1, 2022

If you have questions regarding this policy, please speak with the following County representative for assistance: Bannock County Director of Human Resources and Risk Management, Human Resources Professional and/or County civil legal counsel.

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**Certificate of Receipt**

I, the undersigned have received a copy of Bannock County’s Drug and Alcohol-Free Workplace Policy.

Effective Date: October 1, 2022. I agree to the terms and conditions set forth in this policy and agree to abide with the requirements.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_


Date: \_\_\_\_\_

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AMENDED this 6<sup>th</sup> day of September, 2022.

Board of County Commissioners:

Chair   
Ernie Moser

9-6-2022  
Date

  
Board Member Jeff Hough

Terrell N. Tovey  
Board Member Terrell N. Tovey

Attest:   
Clerk Jason C. Dixon

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