

# HANNAHVILLE INDIAN COMMUNITY DRUG AND ALCOHOL FREE WORKPLACE TESTING POLICY

1. **History.** The Hannahville Indian Community is interested in protecting the health and safety of its reservation-based workforce. One of the Tribe's greatest concerns is the effect of using alcohol and drugs on work attendance, performance and safety. The Hannahville Indian Community is implementing an Employee Drug and Alcohol Testing Program as one component of a Drug Free Workplace Policy. Hannahville's Drug Free Workplace Committee, representing many work units, has met several times and developed a draft policy. This policy was presented to the Tribal Council, and after much discussion, the Tribal Council wanted to know how employees felt about drug testing. They asked the Drug Free Workplace Committee to develop a survey and administer it to all employees. This survey was completed (with a 51 % response rate), and the results strongly supported an employee drug and alcohol testing program with the components described below.
  
2. **Introduction.** The Hannahville Indian Community believes that:
  - (1) The abuse of alcohol and drugs is contrary to the traditions of the Potawatomi culture, including the dimensions of physical, mental, emotional and spiritual health.
  - (2) Alcohol and drug abuse breaks down the individual, the family, the community and the work force, and places future generations in jeopardy.
  - (3) The abuse of alcohol and drugs by Hannahville Indian Community employees can also pose an immediate health and safety threat to customers and other employees, as well as to themselves.
  - (4) Employees who are free from alcohol and drug problems are usually more productive, more reliable, have better work attendance, and are more balanced in body, mind and spirit.
  
3. **Purpose.**
  - (1) The goal of the Hannahville Indian Community is to establish and maintain a work environment free from the effects of alcohol and drugs.
  - (2) The Hannahville Indian Community believes in a proactive approach and in utilizing an interaction of education, treatment, assistance, deterrents and discipline in dealing with the problems created by alcohol and drug abuse.
  - (3) The Hannahville Indian Community respects every person's personal dignity, privacy, and religious freedom while remaining concerned with legal, safety and security considerations in the workplace.

4. **Occasions for Testing.** With the exception of persons who are establishing their eligibility to run for public office and off-reservation employers who contract with the Hannahville Indian Community on an irregular basis, all persons subject to this Policy including persons required to be tested due to an offer of employment, will be required to have their tests collected and initially processed at the Hannahville Health and Human Services laboratory. This Policy covers testing in all the following situations:

- (1) **Mandatory Testing Post-Offer of Employment.** Mandatory drug testing and alcohol testing of all job applicants who are offered a position with the Hannahville Indian Community or any of its organizations before they actually begin work or within 2 working days of beginning employment, **except that**, testing shall be done prior to any actual work being performed in safety sensitive positions, including but not limited to the following: law enforcement, construction, positions requiring the operation of vehicles of all kinds, security, swimming pool or HVAC maintenance, or sensitive positions such as the school, daycare, or certain health services positions that are subject to the Indian Child Protection and Family Violence Prevention Act or other licensure or ethical considerations. A positive post offer test result for alcohol or drugs will result in withdrawal of the offer of employment.
- (2) **Testing Upon Reasonable Suspicion.** Alcohol and drug testing of any person subject to this Policy whose behavior reasonably indicates that he or she may be under the influence of drugs or alcohol at work.
- (3) **Post-Accident Testing.** Alcohol and drug testing of all persons subject to this Policy who are involved in any type of significant accident while working, including, but not limited to, death, personal injury to self or others requiring hospitalization or medical evaluation or significant property damage, such as, but not limited to, the need to tow a vehicle.
- (4) **Post Violent Incident Testing.** Alcohol and drug testing of all subject persons responsible for an act of violence while working, as defined by the Workplace Violence Policy.
- (5) **Follow-Up Testing.** Following a confirmed positive drug and/or alcohol test a person will be required to comply with follow-up testing as required by this Policy, and as may be recommended by a certified substance abuse professional. Persons whose position descriptions include safety sensitive functions may be required to undergo additional testing beyond the minimum number of tests for drugs and/or alcohol within the 12-month period required by this Policy. Return to duty drug testing after a confirmed positive in respect to employees who are eligible to continue to work will include a re-test within 7 days of the return to work and weekly testing until drug levels return to zero, which shall be in addition to random pool testing and prescribed testing associated with the number of positive occurrences which the person has accumulated. Any increase in levels of an illegal drug or a legal drug that is being

misused, will be treated as a new positive. All additional tests required outside of random testing will be paid for by the person who tested positive.

(6) Mandatory Random Testing. Mandatory random alcohol and drug testing will be required of all employees, including part-time, temporary and substitute employees, independent contractors and subcontractors who contract with the Hannahville Indian Community to perform regularly scheduled work, and public officials, including Tribal Council and elected Board members. Approximately two percent per month of the employee work force will be tested. Public officials will be placed in a separate testing pool and will be tested at a rate of approximately 25 percent per month. Public officials who are also employees of the Hannahville Indian Community will be in both the public office and the employee random pools. However, a positive test and/or Policy noncompliance will affect both tribal employment and position in public office regardless of which pool generated the testing requirement.

(7) Exception

Marijuana shall not be on the panel of substances tested for random and post offer drug testing unless a position is deemed by the Tribal Council to be high risk / safety sensitive.

For the Casino, the list of high risk/ safety sensitive positions is on file with the Casino's Human Resources Department.

For the Community (including Council and Board positions), the only high risk/safety sensitive positions are those positions whose professional or driving licenses require post offer and random drug screening for marijuana, including but not limited to all CDL positions.

All employees are still subject to random and post offer testing for all drugs previously tested for other than marijuana.

All employees are still not permitted to be under the influence of marijuana while at work, and subject to reasonable suspicion testing for marijuana. If a supervisor has reasonable suspicion to believe that an employee is under the influence of marijuana while at work, the employee may be subject to drug testing and disciplined accordingly if found to be under the influence of marijuana while at work.

Observed Tests. Tests in subsections (2) through (5) of this section will be observed. All observed tests will be collected by a collector of the same sex as the sample donor. Tests may also be observed in other situations, such as, but not limited to, those situations where samples are found to be dilute or it is reasonably suspected that adulteration or tampering has occurred. These situations include, but are not limited to, samples where the temperature is out of the acceptable range, or that are reported as "invalid" or "cancelled" results, or where the collector observes behavior (documented) that signifies obvious attempts by the sample donor to adulterate or substitute the sample. It is a condition of employment that tests may be observed under these conditions.

**5. Persons Subject to Testing.**

(1) Employees and Independent Contractors. This policy applies to all Hannahville Indian Community employees while at work and while representing the Community in a work capacity. Employees include:

(a) Adult Employees. All adult full-time, part-time and temporary employees and volunteers who are performing regularly scheduled job functions.

[1] Change of Position. Any person who changes his or her position and who has not been tested within the previous 30 days must re-test in order to assume the new position. All persons who are not regularly assigned or performing safety sensitive work but who are asked to perform safety sensitive functions must be tested prior to performing safety sensitive duties, regardless of when they were last tested.

[2] Temporary Employees. Any person who has been regarded as a temporary worker who has not worked as an employee of the Hannahville Indian Community for 180 days must be re-tested before beginning any work, in accord with this Policy. Temporary employees shall be placed in the

employees' random testing pool. So long as they remain temporary employees they must, in all respects, comply with the testing and other requirements of this policy.

[a] Substitute Teachers. A list of substitute teachers will be provided by the Nah Tah Wahsh/Hannahville Indian School to Human Resources. Substitute teachers are subject to this Policy in all respects, and will be placed in the random pool for testing.

[3] Leave of Absence; Return to Duty Testing. Any person returning to work or public service after a leave of absence of 12 or more weeks shall be required to submit to return to duty testing.

(b) Youth Workers. Youth workers under 18 years of age are included in this policy and require parental consent for drug and alcohol testing.

(c) "On-Call" Employees. Employees are subject to the provisions of this policy during hours when they may be off-site [and for which they are being compensated] when they are officially subject to reporting to work when notified.

(d) Contractors. All contractors and subcontractors, while performing regularly scheduled work for the Tribe. All contractors who are covered by their own testing policy must submit a copy of their policy to the appropriate Human Resources Department for review with their proposal or bid document. Their policy must, at a minimum, provide for reasonable suspicion laboratory testing and be approved prior to the signing of their contract. All contractors will be charged for testing and related services completed by the Hannahville Indian Community. All persons in this category shall be understood to come within the definition of "employee" throughout this Policy. When working pursuant to a contract with the Tribe, Contractors and their employees shall comply with the zero tolerance standard of the Hannahville Indian Community as set forth in this policy, irrespective of any other provisions that may appear in any policy promulgated by their contractor employer.

(e) Health and Human Services Clients and Foster Care Parents.

[1] Involuntary and Voluntary Clients, Babysitters and Respite Care Workers. Except in safety sensitive employment positions, the employment of involuntary and voluntary clients of the Health and Human Services departments and babysitters or respite care workers who volunteer to provide services in the place of foster care parents, who test positive, will not be affected when they are asked to undergo drug and alcohol testing as part of their case plans or prior to or while rendering services. Reporting of positive tests in these cases will be directly to the authorized requesting worker in the department. In the case of safety sensitive positions employment will be

affected and reporting, monitoring and compliance with the Drug and Alcohol Policy will occur through the appropriate Human Resources department with reporting to the Health and Human Services departments, probation or the court, according to internal protocols.

[2] Foster Care Parents. Prospective or current foster care parents who are licensed by the Tribe shall be tested prior to placement of children in their homes regardless of whether or not they reside on the reservation. Reporting of positive tests in these cases will be directly to the authorized requesting worker in the department. Only in the case of safety sensitive positions will employment with the Tribe be affected and reporting, monitoring and compliance with the Drug and Alcohol Policy will then occur through the appropriate Human Resources department with reporting to the probation department, the court or Health and Human Services departments according to internal protocols.

(f) Adult and Juvenile Probation Department Clients. Except in safety sensitive employment positions, Court authorized drug and alcohol testing of both adult and juvenile probation clients will not affect employment. In the case of safety sensitive positions, employment will be affected and reporting, monitoring and compliance with the Drug and Alcohol Policy will occur through the appropriate Human Resources department with reporting to the probation department and the court according to internal protocols.

(2) Public Officials. Throughout this policy all Tribal Council and elected Board members during their terms of office shall be understood to come within the definition of employees and/or public officials. The results of positive testing or noncompliance with this policy will affect both tribal employment and position in public office.

6. **Candidates for Public Office: Testing Requirement: Election: Effect of Prior Positives.** All candidates for public office must present the results of a negative drug and alcohol test done within the 30 days before their registration to run for public office. Each candidate will be responsible for paying for his or her own test, which may be obtained from a facility other than the Hannahville Health and Human Services laboratory.

(1) Confidentiality of Qualifying Test. Because candidates have sought and paid for testing themselves, they do not need to release the test results if positive. Therefore, a positive test will not be reported to anyone but the candidate and will not affect current employment or public office.

(2) Prior Positives. All candidates, regardless of whether or not they now hold public office who have prior positives but who are compliant with the Drug & Alcohol

Policy (i.e. are complying with a treatment program) will, if re-elected, have the same number of positives as they had at their last term of office and/or employment. However, if a candidate for public office was removed from office due to noncompliance with this Policy, the person will not be eligible to run for office unless he or she has also had an assessment and complied with any required minimum treatment program requirements in regard to testing and counseling as determined by the number of positive occurrences which he or she has had within the records retention cycle of this Policy.

- (a) Certification of Treatment Program Compliance. In addition to presenting a negative drug and alcohol test in order to be eligible to register to run for public office a person who has previously tested positive must present written documentation, not more than 30 days old, from his or her treatment provider that he or she is in compliance with his or her treatment program.
  - (b) Releases. Appropriate HIPAA compliant releases must be provided by the candidate in respect to Drug and Alcohol testing and treatment program compliance.
- (3) Random Pool After Election or Appointment. Candidates who are elected to public office will be placed in the random drug and alcohol testing pool for Tribal Council and elected Board members.
- (4) Effect of Positive Test During Term of Public Office. Tribal Council, and elected Board members (“public officials”) who test positive during their term of office will be removed from public office. Except for elected positions that are full-time, this action is separate and distinct from any action required under the Policy in regard to employment.
7. **Prohibited Substances.** Prohibited substances covered by the policy include, but are not limited to:
- (1) All types/forms of alcohol.
  - (2) All substances classified as schedule I by the DEA, including heroine, PCP, hallucinogens, methamphetamines, and marijuana, including “medical marijuana,” but not marinol.
  - (3) Legal drugs such as amphetamines, marinol, and sedatives when misused or abused.
  - (4) Prescription drugs, which may alter physical or mental ability so that work performance is significantly impaired.
  - (5) Other mind-altering substances, such as inhalants.

## 8. **Training and Distribution of the Policy.**

- (1) **Distribution of Policy.** All public officials, new employees, and other persons subject to this Policy will receive a written copy of the Policy as part of, or as a supplement to an employee handbook, at their time of hire or election, as appropriate. A signed *Acknowledgement of Receipt of Hannahville Indian Community Drug and Alcohol Free Workplace Policy* must be in the employee file within one week after attending the New Employee or New Public Official Orientation Program.
- (2) **Trainings.** All managers and public officials will participate in annual trainings in regard to the Drug and Alcohol Free Workplace Policy. Current employees, contractors and public officials will receive trainings in, and be given a copy of the Policy as changes are made to the Policy.

## 9. **Policy for Alcohol and Illegal Drugs During Working Hours.**

- (1) **Drug and Alcohol Free Workplace.** All persons subject to this Policy must arrive at work free from any influence of alcohol or drugs. While at work they are to refrain from the use, possession or sale of alcohol or drugs.
  - (a) "Work" includes any place or event where a person subject to this Policy represents the Hannahville Indian Community in a work capacity. This includes all tribally sponsored travel during the time periods in which work is expected to be performed. Any operation of a tribally provided vehicle will be considered to be within the work period. This includes situations in which tribal mileage or rental car reimbursements are being provided, as well as the operation of a tribally owned vehicle.
- (2) **Exception.** While acting within the scope of their employment, persons who are required to sell or possess alcoholic beverages or drugs within the scope of their employment are exempt from the above provision.
- (3) **Employee Cooperation.** Participation in the drug and alcohol testing program and signing a consent form is a condition of employment. A request to submit to drug and/or alcohol testing is considered an instruction to perform a work assignment. There are no exceptions. A person whose work-related behavior suggests he or she may be under the influence of alcohol or drugs must comply with all Policy requirements including submission to alcohol and/or drug testing.
- (4) **Refusal to Test; Adulteration; Test Tampering.** Refusal to complete a drug or alcohol test, adulteration, or test tampering will be treated as a positive test.
- (5) **Suspension Without Compensation.** Persons subject to suspension without pay are not eligible to use vacation, sick, or personal time during the suspension period.



- (6) Eligibility for Re-Employment After Termination. An employee, independent contractor, public official, or other person subject to this Policy whose relationship is terminated due to a violation of this Policy remains ineligible for re-employment, a new contract, to run for public office, or to serve in any capacity with the Hannahville Indian Community for the periods indicated in sections 15 through 18 of this Policy. A person whose relationship is re-established after a termination for any reason connected to the Drug & Alcohol Policy remains subject to the number of positive test occurrences previously recorded in regard to him or her within the record-keeping retention cycle established in section 19 of this Policy.
- (a) Resignation to Avoid Policy Compliance. If a person resigns in order to avoid compliance with this Policy, his or her resignation shall be treated as an involuntary termination due to noncompliance with the Drug & Alcohol Policy.
- (7) Action Required on Positive Confirmation Test. Action required to be taken under the Policy in regard to employment and/or public service shall be based upon the confirmed positive test result.

**10. Policy for Prescription Drug Use.**

- (1) Prescribed Medications; Verified Authorized Use. The use of controlled substances as part of a prescribed treatment program is not grounds for disciplinary action if an employee or public official provides satisfactory evidence to the Medical Review Officer (the MRO), of the medically prescribed use of medications. Evidence may include, but is not limited to, the following:
- (a) A copy of the prescription.
- (b) Written verification by the prescribing physician/staff.
- (c) Written verification by the dispensing pharmacist.
- (d) The original prescription container identifying the medication, the dosage, and the duration of the prescription.
- (2) Prescribed Medications; Adverse Effects on Job. Any person whose job assignment may be adversely affected by use of prescription drugs may be temporarily reassigned. This reassignment may or may not result in a loss or reduction in pay.
- (3) Unauthorized Use of Prescribed Medications. Prescription drugs used or held by any person subject to this Policy that are used in a manner or combination other than as prescribed, will be treated as illegal drug use and the person will be subject to this Policy, including any appropriate disciplinary action.

- (a) Abuse of prescription drugs resulting in poor or problem work performance will result in an employee referral to the Hannahville Indian Community's Behavioral Health Department, and may result in a referral to an approved medical facility for assessment and treatment.
- (b) Refusal of a substance abuse referral, medical referral, or of treatment will result in appropriate disciplinary action up to and including termination for noncompliance with the Policy.

**11. Tribally Available Services for Alcohol and Drug Assessment and Counseling (AODA).**

- (1) Behavioral Health and Employee Assistance Programs. The Hannahville Indian Community offers substance abuse services through the Behavioral Health Department and provides an Employee Assistance Program (EAP) that offers confidential and professional assistance to tribal members and to employees and their household members. Both of these services provide constructive ways for individuals and their families to deal with alcohol or drug related problems before they interfere with job performance, continued employment, or service in public office.
- (2) AODA. The substance abuse counselors will conduct assessments and determine with the employee how the employee can best be served while remaining drug and alcohol free in the workplace.
- (3) Costs of Services. As a part of the Drug and Alcohol Free Workplace Policy, the Hannahville Indian Community accepts costs of referrals only to its substance abuse and other counselors.

**12. Policy Enforcement: Management and Public Official Responsibility.**

- (1) Manager and Public Official Responsibility to Enforce Policy. The Hannahville Indian Community has delegated primary responsibility for enforcement of the Drug and Alcohol Free Workplace Policy to Managers, and Council and Board chairpersons, or next in charge, in the chairperson's absence. It is the responsibility of the respective Human Resources Departments to assist managers and public officials with training, record keeping, and advice, especially in regard to screening of applications for re-employment that are compliant with this Policy. However, it is the manager's, or in the case of public officials, the responsibility of chairpersons, or next in charge, to notify the employee or public official to submit for testing and to carry out all actions mandated by the Policy in regard to those persons whom they supervise. Concerns regarding a Manager must be reported to the Tribal Chairperson in the case of Community employment, to the General Manager in the case of Gaming employment, and to the public officials' chairpersons, or next in charge, as well as to the appropriate Human Resources Departments.

- (a) Managers; Definition. Managers include, but are not limited to, Program Directors, Department Managers, Supervisors, and anyone who has comprehensive responsibility over tribal programs or enterprises, including the job duties of employees.
  - (b) General Reporting Structure. Appropriate action, as described in this policy, is to be faithfully and fairly applied to all employees, including managers and public officials. Concerns about drug or alcohol abuse by managers and public officials must be reported to the appropriate managing official, giving due consideration to the organizational chart of any particular agency or enterprise of the Community.
- (2) Absence of Specific Manager or Public Official. In the event that a specific manager or public official is unavailable, any available person of like or similarly appointed authority shall be called upon in their absence, and he or she shall perform the duties to enforce the Policy in all respects as though he or she were the manager or public official whose duty it would otherwise be to enforce the Policy in regard to the person who is required to submit to testing. Managers, public officials, and those acting in their stead, are responsible for assuring that proper notification to the appropriate Human Resources Department is made in all cases where the required action is taken under this policy.
  - (3) Time for Notice to Present for Testing; Persons Subject to Testing. The person to be tested shall not, insofar as possible, be notified of the need for testing more than 30 minutes before the test.
  - (4) Duty to Monitor. All managers and public officials, who have more immediate contact, are expected to reasonably monitor employees and public officials under their supervision as well as other persons subject to the Policy in the work area for unacceptable or potentially dangerous on the job behavior.
- (a) Reporting; Reasonable Suspicion; Specific Actions. The observation or report of questionable behavior in the workplace or while performing their duties by persons subject to this Policy requires immediate supervisory action and a referral to the appropriate manager or public official and the appropriate Human Resources Department. It is important to distinguish behavior "incidents" from behavior "patterns" in the implementation of this Policy. Managers and public officials will receive training in determining the need for testing.

[1] Examples of Questionable Behaviors. Behaviors considered questionable and possibly the result of alcohol or drug use include, but are not limited to:

[a] The smell of substances on the breath.

[b] An impaired gait.

- [c] Slurred or abnormal speech.
- [d] Disruptive behavior.
- [e] Sleeping on the job.
- [f] Frequent, unexplained absences from the workstation.
- [g] Erratic work performance.
- [h] Involvement in a serious worksite accident or a pattern of accidents.
- [i] Irresponsibility in completing tasks.
- [j] Wasted materials or damaged equipment.
- [k] Mood swings.
- [l] Outbursts of inappropriate anger, fear, or laughter.
- [m] Inappropriate remarks.
- [n] Complaints from co-workers, associates, or customers.
- [o] Other characteristics, which are unusual for that person.

[2] Stop work. A manager or appropriate public official who has reason to believe that a person may be under the influence of alcohol or drugs, including prescription drugs, will ask the person to stop work and discuss his or her behavior.

[3] Interview. If the person's explanation is unacceptable, the manager or appropriate public official will initiate an interview with the assistance of another independent observer of similar supervisory responsibility in making the determination of the need for the person to undergo drug and/or alcohol testing.

[4] Decision to Test. Based on the results of this joint decision, the manager or appropriate public official will then request the person to undergo approved testing. The manager or appropriate public official will contact the

Hannahville Health Clinic laboratory (or after hours contractor) and arrange for immediate testing.

[a] Consent to Test. Before testing, the manager or appropriate public official must obtain a signed *Consent to Drug and/or Alcohol Testing and Release of Test Results* from the person being referred. This form is available in the Human Resources Department and will be on file in the person's employment file within one week of his or her orientation.

[b] Transportation to Testing Site. The Hannahville Health and Human Services laboratory will perform testing. A person under reasonable suspicion for alcohol or drug use should be transported or escorted to the testing site. Insofar as possible, managers and public officials will be responsible for arranging transportation for reasonable suspicion and post-accident testing of their employees. Appropriate actions will be taken to discourage employees from driving themselves home or elsewhere where reasonable suspicion indicates a need for testing.

(i) Alternative Testing Sites. Testing after normal business hours and weekend drug testing will occur as arranged from time to time by the employer. Managers and public officials will have specific information about this site.

[c] Choice of Tests. The least intrusive, most specific of the approved tests will be utilized, as determined to be necessary by the Medical Review Officer or the Hannahville Health and Human Services laboratory technician.

[d] Screening Test Results; Return to Work. If the test results are non-negative, and except for safety sensitive positions, if regularly scheduled to work, the person being tested may return to work without loss of pay.

[e] Refusal to Test. If a person refuses, fails to complete, tampers with, or adulterates the test, (as determined using standard DOT laboratory operating procedures), the consequences proceed as though the test was positive.

(5) Disciplinary Action for Failure to Enforce. All persons responsible for the enforcement of this Policy will be subject to disciplinary actions for failure to enforce the Policy. It shall be the duty of every employee and public official to report known failures of enforcement to appropriate management or public officials and to the appropriate Human Resources Department. After investigation, appropriate disciplinary action shall be taken.

- (6) Recording Actions Taken. All actions related to this Policy shall be recorded and sent in a sealed envelope marked “confidential” to the appropriate Human Resources Department for record retention.
- (7) Confidentiality. All persons responsible for enforcement of the Drug & Alcohol Policy must participate in training regarding confidentiality, the violation of which will result in disciplinary actions.

**13. Types of Drug and Alcohol Tests.**

- (1) Urine Drug Test:
- (2) Preliminary Breath Test or Alco-Sensor Intoximeter: If positive, this test may be immediately followed by a breathalyzer or other confirmation test. If breathalyzer testing cannot be completed within an hour of the PBT, the PBT result will stand.
- (3) Blood Test.
- (4) Breathalyzer.

**14. Negative Test Results.**

- (1) Notification of Results. The Hannahville Health and Human Services laboratory technician will inform the appropriate Human Resources Department of negative test results.
- (2) Return to Work. If scheduled to work, a person may return to work provided there were no other violations of other policies or procedures requiring disciplinary action.

**15. Positive Tests; Procedures; Required Actions.**

- (1) Positive Test Results; General. The following procedures apply to all confirmed positive drug test results. Specific requirements in regard to number of tests and frequency of retesting, use of annual and sick leave during periods of intensive outpatient or residential treatment, return to work, termination of employment or contractual relations for noncompliance with the Policy, and eligibility for re-employment or re-establishment of contractual relations are stated after the subsections relating to the number of positive tests that a person has. A positive test for alcohol is greater than 0.00. A confirmed positive post-offer drug test or a positive PBT or breathalyzer alcohol test, as provided in this Policy, will result in withdrawal of an offer of employment or the offer to contract.
  - (a) Laboratory Technician Responsibilities. The Hannahville Health and Human Services Department laboratory technician (or the Contract Testing Laboratory) will inform the appropriate Human Resources Department of the results and will

fax a copy of any non-negative screening test results to the MRO. For safety sensitive positions, notice of test results may be given directly to the appropriate manager and/or public official if Human Resources Department personnel are unavailable. The non-negative test sample will be forwarded to the confirmation testing laboratory observing standard laboratory chain of custody procedures.

- (b) Person Tested; Responsibilities. The person who tested positive is responsible for providing appropriate releases and acceptable evidence to the MRO of a valid prescription and other evidence of proper use for any legal substance for which the person may have tested non-negative on the screening test, and for assuring that all the following requirements are met:

[1] Contact Human Resources Department. If, within 5 working days of the initial screening test, the person tested has not received notice from the appropriate Human Resources Department of final test results, he or she shall make repeated documented contact with the Human Resources Department to verify confirmation testing results were not positive.

[2] Assessment Scheduled Within 72 Hours. Except for safety sensitive positions, scheduling of the assessment must occur within 72 hours of notification by the appropriate Human Resources Department of a confirmed positive test. The 72 hours shall be counted as follows: each 24-hour day that occurs on a service provider business day shall be counted in making up the 72 hours. Tribal holidays shall not be counted in making up the 72 hours. However, the person tested is responsible for making this appointment and for making certain what those business hours are. It is the responsibility of the person who tested positive to keep trying to schedule the appointment and to effectively document those attempts. There shall be no waiver of the need to make the assessment appointment within the 72 hours. Failure to keep any subsequently scheduled appointment without prior written authorization by an appropriate manager and/or public official for a work-related cause due to business reasons that cannot be rescheduled will result in a finding of noncompliance with this policy.

[a] Unpaid Suspension; Positive Test. Unless otherwise indicated in this Policy, the person who has been notified of a confirmed positive by the Human Resources Department will be on suspension without pay for at least a minimum of 24 hours **and** until the assessment has been scheduled, unless the failure to schedule is due to the immediate unavailability of service provider personnel on the day that the test was performed. The person may not use annual, sick or personal leaves during required policy suspensions. However, if he or she subsequently begins an intensive out-patient or residential treatment program, he or she must use any available

accrued annual, sick or personal time during the period of treatment. If paid leaves are not available, the time taken will be without pay.

(i) Safety Sensitive Positions; Return to Work. Persons employed in safety sensitive positions such as, but not limited to, law enforcement, construction, security, swimming pool or HVAC maintenance, and vehicle transportation, or sensitive positions such as the school, daycare, or certain health services positions that are subject to the Indian Child Protection and Family Violence Prevention Act or other licensure or ethical considerations, may only return to work upon presentation of a negative test or confirmation by the MRO that drug testing levels are sufficiently low as to pose a minimal threat to self or others. Re-tests will be offered and scheduled on a weekly basis until the person either tests negative or shows an increase in levels of the illegal drug or legal drug that was being misused (resulting in a new positive). All additional tests required outside of random testing will be paid for by the person who tested positive. Persons subject to this Policy must also comply with all other return to work requirements as stated in this Policy.

[3] Completion of Assessment Within 10 Calendar Days. The person must have completed an assessment or reassessment and have developed a treatment program within 10 calendar days of the referral unless the service provider's scheduling does not permit. A reassessment, or update, as appropriate, shall be done after each confirmed positive test. The person tested is responsible for assuring that the required information in regard to scheduling, especially delayed scheduling, is submitted to the respective Human Resources Department.

[4] Treatment Program Development and Other Providers. The person must meet with the selected substance abuse service provider to participate in an assessment and the development of a valid treatment program including recommendations for follow-up testing that comply with this Policy.

[a] Notice to All Service Providers. The person who tested positive is responsible for notifying the service provider of the need to contact the appropriate Human Resources Department to provide it with the required information.



- (i) The person is responsible for signing appropriate required releases and assuring that documentation of compliance with recommended treatment is received by the appropriate Human Resources Department.

[5] Consequences of Noncompliance with Policy. The person's refusal to participate in follow-up testing, delay in scheduling an assessment within 72 hours, failure to complete an assessment and develop a treatment program within 10 calendar days, delay or failure to keep any subsequent treatment program meeting or session without preauthorized written excuse by a manager or public official, as appropriate, for a work-related cause due to business reasons that could not be rescheduled, or unless the service provider's scheduling did not permit, will be noncompliance and will result in, as appropriate, a termination of employment or contractual relations.

- (c) Responsibilities of Service Providers. Subject to receipt of appropriate required releases, service providers must report any noncompliance to the appropriate Human Resources Department, which shall be responsible for notifying the appropriate manager or public official of any missed appointments and/or failures to complete the treatment program. Details of treatment shall be kept confidential unless an appropriate release has been given. The service provider is only responsible for reporting that the client has been noncompliant.

[2] Referral for Services. Service providers will further refer the employee to appropriate services through the Behavioral Health Department, the Employee Assistance Program (EAP), or other designated service providers.

- (d) Human Resources Department Responsibilities. The appropriate Human Resources Department will notify the appropriate manager and/or public official of confirmed positive test results as well as any missed appointments and/or failures to complete the treatment program and of the need for the manager and/or the public official to take the required action. In addition to the sealed confidential records that shall be kept during the records retention cycle, the Human Resources Departments will maintain a separate record of positive tests for the purpose of notifying managers in regard to scheduling of re-tests and the number of tests required.

[1] The Human Resources Department will also inform the person tested of confirmed positive test results and of the need to schedule for an assessment through appropriate services.

[2] If the positive test is in relation to possible misuse of a prescription drug, either the MRO or the Human Resources Department will provide a release form so that the person may obtain and present prescription information documenting proper use.

**16. Confirmed Positive Test Results: First Occurrence.** In addition to the general requirements stated in section 15 of this Policy, the following apply:

(1) Number and Frequency of Re-Testing. After a first-occurrence confirmed positive test result, a minimum of 3 re-tests within a 12-month period will be scheduled. These tests will be in addition to any tests required by random pool selection or other required tests pursuant to this Policy. This provision applies to current and new employees or contractual relationships. The Human Resources Departments will facilitate the scheduling of the re-tests.

(2) Current Employees, Contractors: Eligibility to Continue Employment or Maintain Contractual Relations After a First Confirmed Positive Random, Reasonable Suspicion, or Other Required Test. Persons who are currently within the above identified categories must meet the following requirements or be terminated from their positions:

[a] Suspension without pay for a minimum of 24 hours and until an assessment or reassessment is scheduled within 72 hours.

[b] Present evidence of having scheduled and having completed a drug and alcohol assessment or reassessment and have developed a treatment program that has been done subsequent to the confirmed positive test within the 72 hours and 10 day periods required by this Policy.

[c] Keep all scheduled appointments.

[d] Comply with all scheduled re-testing.

(3) New Employees, Contractors: Eligibility to Re-Apply for Employment or to Re-Establish Contractual Relationship After Withdrawal of Offer of Employment or Offer to Contract Due to Post-Offer Confirmed Positive Test. Post-offer confirmed positive tests are counted and retained during the records retention cycle as indicated in section 19(3)(a) of this Policy. A new employee whose offer of employment is withdrawn or a contractor whose contract proposal is rejected due to a first positive test must meet the following requirements in order to be eligible for employment or re-establishment of contractual relations:

[a] A minimum of 30 days must pass since notification of the confirmed positive test.

[b] Present evidence of assessment or reassessment and compliance with any recommended treatment program of at least 21 days in duration.

[c] Present a negative follow-up drug test.

[d] Comply with all scheduled re-testing.

17. **Confirmed Positive Test Results: Second-Occurrence.** In addition to the general requirements of section 15 of this Policy the following apply after a second confirmed positive test:

(1) Suspension Without Pay. After a second confirmed positive test result, the person who tested positive will be suspended from work without pay for 5 working days beginning the day of notification of the confirmed positive test results. If a contractor, the contractor's compensation will be appropriately adjusted. An employee may not use annual, sick or personal leave during this suspension; however, if intensive out-patient or residential treatment is subsequently begun, the employee may then use any accrued sick or annual leave upon proper prior application for such leave.

(2) Current Employees and Contractors: Eligibility to Continue Employment or Maintain Contractual Relations After a Second Confirmed Positive Random Selection or Other Required Test Pursuant to This Policy. In addition to the requirement of subsection (1) of this section, section 15 and other requirements of this Policy, persons who are currently within the above identified categories must meet the following requirements or be terminated from their positions:

(a) Present evidence of having scheduled and having completed a drug and/or alcohol assessment or reassessment and treatment program that has been done subsequent to notification of the confirmed positive test within the 72 hours and 10 day periods required by this Policy.

(b) Keep all scheduled appointments.

(c) Comply with all scheduled re-testing.

(3) New Employees, Contractors: Eligibility to Re-Apply for Employment or to Re-Establish Contractual Relationship After Withdrawal of Offer of Employment or Offer to Contract Due to Post-Offer Confirmed Positive Test. Post-offer confirmed positive tests are counted and retained during the records retention cycle as indicated in section 19(3)(a) of this Policy. A new employee whose offer of employment is withdrawn or a contractor whose contract proposal is rejected due to a second confirmed positive test must meet the following requirements in order to be eligible for employment or re-establishment of contractual relations:

(a) A minimum of 60 days must pass since notification of the confirmed positive test.

- (b) Present evidence of assessment or reassessment and compliance with any recommended treatment program of at least 45 days in duration.
  - (c) Present a negative follow-up drug test.
  - (d) Comply with all scheduled re-testing.
- (4) Number and Frequency of Re-Testing. After a second-occurrence confirmed positive test result, a minimum of 6 re-tests within a 12-month period will be scheduled. These tests will be in addition to any tests required by random pool selection or other required tests pursuant to this Policy. This provision applies to current and new employee or contractual relationships. The Human Resources Departments will facilitate the scheduling of the re-tests.

**18. Positive Test Results; Third-Occurrence.** A third positive drug or alcohol test requires immediate removal from public office, termination from employment, or contractual relations. Reporting shall be in compliance with the general requirements of this section.

- (1) Eligibility for Re-Employment After Third-Occurrence Confirmed Positive Test. If a person is re-hired, re-elected, or contractual relations are re-established, he or she is subject to the number of accumulated confirmed positive tests within the retention cycle as stated in the Policy, and in order to be considered for employment, election, or independent contract, the Person must meet the following requirements:
- (a) Wait 12 months to apply **unless** there is a health provider's documented evidence of participation in a treatment program of at least 90 days' duration since the termination, and continued compliance with the recommended treatment program.
  - (b) Present a negative follow-up drug test.
  - (c) Comply with all scheduled re-testing.
- (2) Number and Frequency of Re-Testing. A person whose employment, contract, or public office relationship is re-established after a third occurrence confirmed positive test result will undergo weekly drug and alcohol testing for a period of 3 months. However, a minimum of 6 re-tests within a 12-month period will be scheduled. These tests will be in addition to any tests required by random pool selection or other required tests pursuant to this Policy. This provision applies to current and new employees, public officials, and contractors who are subject to this Policy. The Human Resources Departments will facilitate the scheduling of the re-tests.

- (a) Maximum Number of Positive Tests. A person may not be employed, serve in public office, or contract with the Hannahville Indian Community with more than 3 confirmed positive occurrences within the 5 year records retention cycle.

**19. Records Retention Cycle.**

- (1) Negative Tests. A record of negative test results will be maintained for one year.
- (2) Collection Process. Records related to the alcohol and controlled substances collection process (except calibration evidential testing devices) shall be kept for two years.
- (3) Positive Tests and Other Records. Refusals of testing, records of alcohol test results indicating an alcohol concentration of greater than 0.00, records of confirmed positive results for drugs and other controlled substances, driver evaluations, substance abuse referrals and assessments, calibration documentation, records related to the administration of the alcohol, drug and controlled substances testing program, and annual calendar year summaries will be retained for five years. If a person subject to this policy violates the policy, the record-keeping retention date shall be extended for 5 years from the date of the last violation.
  - (a) Post-Offer Positives, Other Confirmed Positives. All positive test results, including post-offer positives which have resulted in withdrawals of an offer of employment or rejection of a contract proposal will be recorded and retained for the 5-year retention cycle. These positives count for all purposes in the implementation of this Policy.
- (4) Location of Test Results. Records of positive test results and compliance with the policy will be maintained by the Human Resources Department record keeping division.

**20. Appeals.**

- (1) Work-Related Disciplinary Actions. Employees seeking to appeal disciplinary actions for conduct that is unrelated to positive testing or to noncompliance with the Drug & Alcohol Policy, shall follow the procedures set forth in their respective policies and procedures manuals in regard to all appeals. Disciplinary appeals by members of the Tribal Council, Boards and Committees shall be to their peers with final appeal to the Tribal Council. Employees follow personnel policies and procedures manuals for their enterprise or agency.
- (2) Drug and Alcohol Policy Actions. Appeals in relation to the Drug and Alcohol Policy will be limited to challenges to the validity of test results and shall not be appealed as to the consequences contained in this policy. All interpretations of this

policy shall be made by the Tribal Council and shall be written and communicated after consensus of the Tribal Council.

21. **Disclaimer.** The Hannahville Indian Community is an at will employer. No contract is formed by the statements made in this policy. No waivers of tribal sovereignty are granted, either express or implied, by the terms of this policy.
22. **Other Discipline.** Depending upon the seriousness or gravity of the situation, other employment policies in regard to discipline may be involved, and their sanctions may exceed suspensions or other requirements of this Policy. Examples would include, but not be limited to, workplace violence, gender based and/or sexual harassment, theft, and any other misconduct as indicated in other tribal personnel policies.

**Failure by managers and/or public officials in the administration of this Policy will result in specified actions, which may include suspension or termination of employment.**