



County of Essex Policy Manual

Fit for Duty Policy draft June 6, 2018

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Approved by:	Pending Approval
Department:	All Departments
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Replaces Policy No:	2007-01 Drug and Alcohol Policy

1.0 Purpose

To document the Corporation of the County of Essex (the "County")'s policy regarding employee Fitness for Duty, and to reduce the risks to safety (and to service levels) associated with on-the-job impairment.

2.0 Definitions

"Drug(s)" includes any substance, other than alcohol or medication, the possession, use, or sale of which is prohibited, restricted or controlled by law, and which, if present in the body, have a psychoactive and/or physiological effect and may adversely affect work performance and/or fitness to continue working safely and effectively in one's position of employment.

Drugs include, but are not limited to, cannabis (cannabinoids), opiates, PCP (phencyclidine), cocaine, heroin, methadone, methaqualone, amphetamines, barbiturates, benzodiazepines, narcotics, hallucinogens, inhalants, "designer" drugs, and/or any substances and/or materials that are prohibited, restricted or controlled by law.

In the event that cannabis is legalized for recreational purposes, for use without a medical prescription, cannabis will continue to be treated as a "drug" for the purposes of this Policy.

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“Medication” means a substance used for medicinal purposes and obtained legally, whether with a personal prescription from a licensed health care provider, or by purchasing a non-prescription medicinal product lawfully sold in Canada (for example “over-the-counter” medication). Please note that “medication” includes medical cannabis, for which an employee holds a valid doctor’s authorization.

“Un-Fit for Duty” means being unable to productively perform assigned duties resulting in an increased risk of negative impact to their safety and safety of others, caused by the effects or after-effects of alcohol, drugs, medication, or other substances.

“Safety Sensitive” positions constitute any position in which impairment could result in direct and significant risk of injury to the employee, and/or others, and/or constitutes a threat to public safety.

“Substance Abuse Professional” (or “SAP”) is a third party professional counsellor who is trained to assist with issues relating to substance abuse. The SAP evaluates employees who have tested positive for drugs or alcohol, have self-disclosed addiction or substance abuse issues, or have otherwise contravened this Policy, and makes recommendations regarding treatment, follow-up testing, and/or aftercare.

“Workplace” includes physical job sites, offices, buildings, or anywhere in or around County-owned vehicles or equipment, or anywhere else where County business is being carried out. This includes training and any other breaks from work while on County property or while on duty on County property.

3.0 Statement of Policy

The Corporation of the County of Essex is firmly committed to the health and safety of our employees and the public we serve. The County recognizes that impairment caused by alcohol, drugs or medication misuse or abuse can adversely affect workplace safety and job performance.

The County is also committed to maintaining a healthy and respectful workplace. In accordance with applicable human rights laws, the County recognizes its duty to accommodate disabilities to the point of undue hardship, and will balance this duty against its obligation to provide a safe workplace.

The County further recognizes the need to balance safety and security objectives with employees’ reasonable expectations of privacy. The County

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will take reasonable measures to ensure that personal information obtained through the application of this Policy (e.g. drug and alcohol test results; employee referrals to substance abuse treatment programs, etc.) will be treated sensitively and disclosed on an “as-needed” basis only.

3.1 Summary of Expectations

It is essential that our employees work in a lawful, safe and productive manner. Accordingly, all employees are expected to report for work Fit for Duty and remain Fit for Duty throughout their work schedules, free from any impairing effects (or after-effects) of drugs, alcohol, or medication.

The County will not permit a person to work, or to remain on the County's property or workplaces, if there are reasonable grounds to believe that the person is impaired by alcohol, drugs, medication, or any other impairing substance.

The possession or consumption of alcohol or drugs (including recreational Cannabis), or the misuse of prescription or over-the-counter medication, is strictly prohibited on the County's property and/or workplaces.

While working in Safety Sensitive Positions, employees are expected to meet higher standards of safety as compared to other locations and positions, due to the greater risk involved in this work. The County recognizes that hazards and risks associated with impairment differ in an office, or office like, environment, as compared to positions designated as Safety Sensitive and the guidelines established in accordance with this Policy reflect such understanding.

The County reserves the right to require an employee to submit to drug and alcohol testing in accordance with this Fit for Duty Policy where there is a reasonable basis to warrant such testing.

In all cases where an employee is suspected to be in violation of this policy, the County will immediately place the employee on paid administrative leave pending the outcome of an investigation into the circumstances. The County will assist the employee in making arrangements to leave work safely if the employee is suspected of being impaired.

Employees are further required to immediately report if they suspect another employee is not fit for duty, or has otherwise violated this Policy.

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An employee's use, possession, sale, solicitation, or transfer of drugs or alcohol while on the County's premises or time is prohibited.

As a condition of employment with the County, employees must accept and abide by the terms of this Policy. Violations of this Policy may result in disciplinary action up to and including termination of employment for just cause.

3.2 Specific Expectations

A. Obligation to arrive and remain *Fit for Duty*

Employees are expected to report to work fit for duty, and remain fit for duty. In particular, employees must be able to perform their duties with the required competence and diligence for that particular job, free from any impairing effects (or after-effects) of drugs, medication, or alcohol.

The following is a direct violation of this Policy where it occurs in a County Workplace and/or while on duty:

- The use of alcohol (except as outlined in *Policy 09-002 Purchase of Alcohol with Municipal Funds*);
- The use of drugs (including recreational cannabis);
- The misuse of medication;
- The undisclosed use of medication that could cause impairment, or the use of such medication where management approval has not been received in accordance with this Policy;

B. Obligation to disclose the use of potentially impairing medication

Employees who are taking medication (regardless of whether it has been prescribed or not) must immediately notify his or her Supervisor (or departmental specific alternate) if this medication could impact the employee's fitness for duty.

For clarity, the employee is not required to inform the Supervisor of the specific substance being taken; however the employee must alert the Supervisor to the fact that (a) the employee is taking a medication that could adversely affect the employee's safe and productive work performance; and

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(b) the effects of such medication. The employee is required to report this prior to performing any further work, as the County will be required to assess whether and how the employee can be appropriately accommodated.

A prescribing health care provider, with the authorization of the employee, will be responsible for providing sufficient information for the County to determine whether the employee can safely perform his or her usual work, or whether modifications are required. In particular, the County may, if necessary, ask for the employee's authorization to seek information from the health care provider regarding the medication's impact on the employee's ability to work safely and effectively, so that the County can devise an accommodation plan appropriate in the circumstances.

C. Obligation to disclose regarding emergency call-in or unscheduled shift

Employees who are contacted to report to work for an emergency or other unscheduled reason must not accept a work assignment if they have reason to believe they are not Fit for Duty.

An employee contacted to report to work in such circumstances must refuse the assignment and may advise the person contacting them that their refusal is based on a belief that they may be not be Fit for Duty. Employees refusing a work assignment on this basis will not be subject to discipline for their refusal if the employee was on his or her time off, not on a scheduled on-call shift, and not at a County property or workplace.

An employee who is on a scheduled on-call shift must abstain from the use of any substances that could impair his or her fitness for duty in the event that the employee is called in for work.

D. Self-referral for drug and alcohol problems

Employees who believe they may have a substance abuse problem are encouraged to seek assistance from the County Human Resources Department before job safety or performance is compromised. Where an Employee comes forward prior to the substance abuse problem creating a performance or safety issue, he or she will be referred for professional assessment and guidance on how best to treat the problem. Managers who receive direct requests from employees for assistance should contact the County's Human Resources Department.

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An employee with a dependency or addiction will not be disciplined because of the employee's self-referral or involvement in a treatment program. However, an employee requesting assistance does not eliminate the requirement of meeting satisfactory performance levels or of complying with this Policy and other County policies (for example Attendance Wellness Program).

An employee who self-discloses immediately following a request to submit to drug and alcohol testing or during the course of an investigation into a suspected violation of this Policy may not be considered as a legitimate self-referral under this Policy. Self-referral at such a time may not prevent the employee from being subject to discipline up to and including termination of employment for cause for violations of this Policy.

As a condition of continued employment, an employee who voluntarily self-discloses and seeks assistance from the County with an addiction, dependency or substance abuse problem will be required to follow all the terms and conditions of professional treatment as assessed and recommended by a Substance Abuse Professional. This may include any reasonable treatment or monitoring components of a rehabilitation program, up to and including follow-up testing to monitor compliance.

Failure to disclose and seek assistance for an addiction, dependency or substance abuse problem prior to a violation of this Policy occurring may result in discipline up to and including termination of employment for just cause upon any subsequent violation of this Policy.

E. Prohibition against possession of drugs or alcohol

To be in possession of any of the following except if possession is directly related to the employee carrying out their job duties:

- Drugs;
- Drug Paraphernalia;
- Vaporizers for cannabis;
- Masking Agents;
- Detox Agents;

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- Unlawfully obtained prescription or non-prescription medication;
- Lawful medication, including medical cannabis, whose possession and use has not been properly disclosed to the appropriate Supervisor and approved as required; or
- Alcohol,

while on County property or in County Workplaces is a direct contravention of this Fit for Duty Policy.

F. Drug and Alcohol Testing

Employees in positions that are designated "Safety Sensitive" may be asked to undergo testing in accordance with this Policy, as set out below.

An employee who refuses to comply with a reasonable request to undergo such testing may be subject to discipline up to and including termination of employment.

(i) "Reasonable Suspicion" Testing

Such testing is based upon specific observations of an employee's appearance, behaviour, speech, or body odours that gives rise to a reasonable belief that the employee is impaired by the use of drugs, medication, or alcohol.

The County may require an employee in a Safety Sensitive Position to undergo such testing in response to direct observation by a supervisor of the following:

- An employee's obvious physical or cognitive impairment;
- An employee's actual substance use or abuse on the job or prior to reporting for work;
- An employee exhibiting physical symptoms of impairment due to substance use or symptoms of chronic abuse or withdrawal effects of drugs, medication, or alcohol;
- An employee's abnormal conduct or erratic behaviour while at work or a significant deterioration in the employee's productivity, behaviour, safety, or job performance;

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If an employee reports to work noticeably impaired, he or she will not be allowed to work. A member of management will consult with the employee (and union representative, if the employee is unionized) privately to determine the cause of the observation, including whether the employee is impaired by drugs, medication or alcohol. If after a thorough review of the circumstances, the manager determines that the employee may be impaired, the employee may be required to take a drug or alcohol test. The employee will be provided with a paid taxi or other safe transportation alternative to attend the testing, and may be accompanied by the manager/union representative.

If the manager suspects that the employee is impaired, the employee will not be allowed to drive.

(ii) Post-Incident/Accident/"Near Miss" Testing

The County may require an employee to undergo testing if that employee is involved in a significant workplace accident, near-miss, or potentially dangerous incident. The determination to conduct Post-Incident Testing will be made on a case-by-case basis, depending on whether the employee's behavior, actions or omissions could be a contributing cause of the workplace accident, near-miss or potentially dangerous incident.

(iii) "Return to Work" Testing

If you seek a return to work after (1) a previous violation of this Policy and/or (2) obtaining treatment for substance dependency or addiction through the County's Employee Assistance Program or another treatment program under the supervision of a Substance Abuse Professional (and in consultation with the employee's health care practitioner and/or regulatory college, where applicable), you may be required to undergo random drug or alcohol testing as part of a rehabilitation monitoring agreement.

Periodic unannounced testing in these circumstances will be tailored to individual circumstances.

G. Impaired Driving Charge or Suspension

Employees (where driving is a requirement of their job) must immediately inform their supervisor if they have been convicted of a drug or alcohol related driving offence under the Criminal Code or have received an administrative license suspension under the Highway Traffic Act when operating a County vehicle or driving a vehicle on County business.

This would include but not be restricted to testing over the legal Blood Alcohol Content (BAC) in that jurisdiction, driving while impaired, or refusal to provide a sample for testing. Receipt of a charge or suspension will result in a full investigation, and action will be taken, including any discipline appropriate to the situation. Failure to report the charge will normally be grounds for termination

H. Consequences of a Policy Violation

- (i) Any violation of the provisions of this policy will result in discipline up to and including termination. In all situations, an investigation will be conducted to verify that a policy violation has occurred, and this investigation will include an interview with the appropriate level of management (at which a unionized employee may have union representation in accordance with any applicable collective agreement requirements).
- (ii) Management has the authority and discretion to remove from duty any individual who is believed to be in violation of the policy pending the results of the investigation. The appropriate discipline in a particular case depends on the nature of the policy violation and the circumstances surrounding the situation.
- (iii) Consuming, using, possessing or being under the influence of illicit drugs or alcohol (except as outlined in Policy 09-002 Purchasing Alcohol with Municipal Funds) when on County business, premises or a worksite and/or when in uniform (if applicable) are all considered violations of the policy and may be grounds for immediate termination of employment.
- (iv) A positive drug (not medication) test, or an alcohol test result of .04 BAC or higher, or a failure to test, are all considered a violation of this policy and may constitute grounds for immediate termination of employment. Anyone who has an alcohol test result of .02 to .039 BAC will be removed from duty until considered safe to return and will be subject to progressive discipline up to and including termination.

I. Conditions of Continued Employment

Should the employer determine that employment will be continued in a specific circumstance following a policy violation, the individual (and if the employee is unionized, their union) will attempt to enter into an agreement

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governing their continued employment (failure to achieve such agreement may result in termination of employment) which may require any or all of the following actions, or any other condition appropriate to the situation:

- temporary removal from the employee's position;
- referral for assessment by a SAP to determine the need for a structured treatment program;
- adherence to any recommended treatment and aftercare program;
- maintenance of sobriety and satisfactory performance on return to duty;
- successful completion of a return to duty test;
- ongoing unannounced testing for a period determined on a case by case basis; and
- no further violations of the policy.

Failure to meet the requirements of the agreement during the monitoring period may be grounds for termination.

J. Off-Duty Activities

In addition to the above, the employer will investigate any situation where off-the-job actions involving alcohol or drugs may have implications for the workplace, and will take appropriate action under the circumstances.

4.0 Scope

This policy applies to all employees of the Corporation of the County of Essex.