

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA  
EMPLOYEE DRUG AND ALCOHOL POLICY**

Adopted by Resolution #2026/03 of the Fond du Lac Reservation Business Committee on April 4, 2003.

Amended pursuant to Resolution #1236/07 by the Fond du Lac Reservation Business Committee on June 13, 2007.

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Amended pursuant to Resolution #1193/18 by the Fond du Lac Reservation Business Committee on July 17, 2018.

Amended pursuant to Resolution #1222/23 by the Fond du Lac Reservation Business Committee on July 26, 2023.

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# FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA EMPLOYEE DRUG AND ALCOHOL POLICY

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## **I. INTRODUCTION**

The Fond du Lac Band is dedicated to providing its employees with a safe and drug-free work environment. We require our employees to report to work in a suitable condition to perform their job responsibilities safely and effectively. The use of drugs or alcohol by employees will be regarded as an unsafe work practice because it increases the risk to the safety of employees and the public. As a condition of employment, all employees must abide by the terms of this Policy and the procedures herein. Individuals working in a volunteer status, including student teachers, interns, and temporary personal are required to comply with this Policy, as described in Section XI. Individuals working for or as an independent contractor are required to comply with this Policy, as described in Section XII. Elected officials of the Reservation Business Committee are required to comply with this Policy, as described in Section XIII.

## **II. PROHIBITED SUBSTANCES**

This Policy prohibits the use of any drug not lawfully prescribed by a physician or misuse of a lawfully prescribed controlled substance. Any drug test required under this Policy will test for the presence of any of the following substances:

1. Alcohol (ALC)
2. Amphetamine (AMP)
3. Benzodiazepine (BZO)
4. Cocaine (COC)
5. EDDP
6. Methadone (MTD)
7. Methamphetamine (MET)
8. Opiates (OPI)
9. Oxycodone (OXY)

## **III. PROHIBITED CONDUCT**

The Fond du Lac Band prohibits use, possession, manufacture, transfer, and sale of alcohol and illegal drugs in the workplace, while on any Band premises, and while operating vehicles, equipment, or machinery during employment. It also prohibits reporting to work and /or working anywhere on behalf of FDL while under the influence of alcohol or illegal drugs. FDL prohibits the use of alcohol or any illegal drugs during the work day or while on call. The work day includes lunch and other breaks, whether or not the employee is on or off the work site. Individuals who entertain others or may be entertained by others as part of a job are prohibited from drinking alcoholic beverages during work hours.

This Policy does not prohibit:

1. The moderate (not to exceed the legal limit) consumption of alcoholic beverages at FDL-sponsored events, if any, where alcoholic beverages are to be served in conjunction with the event; or
2. The possession of sealed bottles or cans of alcoholic beverages in employee vehicles on facility property, so long as such possession would be in compliance with tribal, state and federal law if the vehicle were on a public street.

NOTE: The purchase of alcohol, even if for later off-duty consumption, while being either an operator or passenger in any tribal owned or rented vehicle is prohibited.

#### **IV. VOLUNTARY DISCLOSURE**

Employees are encouraged to voluntarily disclose any personal excessive use of alcohol or illegal drugs before being confronted, tested or otherwise involved in drug or alcohol related disciplinary proceedings. Employees will be required to seek assistance through a Licensed Substance Abuse Professional (SAP). An individual who does so may be eligible for time off for treatment, rehabilitation, or counseling in accordance with company policy. Employees who voluntarily disclose excessive use of alcohol or illegal drugs before being confronted, tested, or otherwise involved in drug or alcohol related discipline or proceedings will not be discriminated against because of this disclosure. Individuals who disclose drug and/or alcohol use must have a negative test before returning to work and will be subject to follow up testing.

#### **V. TESTING**

The Fond du Lac Employee Drug and Alcohol Policy includes these five types of tests:

1. Pre-employment
2. Reasonable Suspicion
3. Post- Accident
4. Follow-up
5. Return to duty

#### **Pre-employment Testing**

All applicants for employment with the Fond du Lac Band will be required to submit and pass a drug test as a condition of employment. Pre-employment testing is administered after a job offer has been made, and the job offer is contingent upon results of the drug test. Pre-employment drug test must be administered within eight (8) calendar days of the hire date. If the pre-employment drug test is not administered within eight (8) calendar days, the job offer will be rescinded by the Employee Compliance Department. An applicant with a positive test will not be hired. An applicant with a positive pre-employment test will be disqualified from employment with the Band for 30 days. Employees who are returning to work following lay-off, injury, summer recess, extended sick leave, or rehire lasting ten (10) days or longer are subject to drug testing prior to returning to work. A negative test is required before these individuals may return to work.

## **Reasonable Suspicion**

Employees may be tested for the presence of alcohol or drugs when there is reasonable suspicion that the employee:

1. Is under the influence of alcohol or drugs; or
2. Has violated the Policy set forth regarding onsite drug and alcohol possession, manufacture, transfer, and sale.

Reasonable suspicion must be based on specific, contemporaneous, articulated observation concerning the employee's appearance, behavior, speech, body odors, and /or job performance. Employees being tested upon reasonable suspicion will be transported to the collection site and from the collection site to their home by the company, a taxi, or other form of transportation not controlled by the employee. These individuals are required to stay off work until the test result is received and should receive pay for the time off unless the result is positive.

The on-call drug tester in the Employee Compliance Department can be reached at (218) 428-0619.

## **Post-Accident**

Whenever an employee is involved in a serious workplace accident or equipment is damaged and a manager, supervisor, or employee compliance department representative has made a reasonable documented determination that the employee's unexplained behavior may have caused or contributed to the accident, the employee will be required to immediately undergo a drug and/or alcohol test.

Unexplained behavior includes, but is not limited to, behavior for which there is no logical explanation, is not directly related to the performance of the employee's duties lacking sound judgment, or is not consistent with safety procedure or work rules. If a supervisor does not request a drug test after a serious workplace accident, the supervisor must document the reason in writing to the Director of Human Resources within twenty-four hours of the incident.

The on-call drug tester in the Employee Compliance Department can be reached at (218) 428-0619.

## **Follow-up**

When a substance abuse professional (SAP) has determined that an employee is in need of assistance in resolving problems with drugs and/or alcohol, the employee will be subject to unannounced follow-up testing by the Employee Compliance Department for up to two years following the incident.

## **Return to Duty**

Employees who have a positive test for alcohol or illegal drugs must undergo treatment or counseling whichever is applicable, as described in Section VII, and have a negative drug and alcohol test result before returning to work.

### **Refusal to Submit**

Any job applicant or employee has the right to refuse drug and alcohol testing. Applicants who refuse will not be employed by the Fond du Lac Band. Refusal to submit to the requested testing will result in the employee's **immediate termination** from his or her position.

Refusal to test/submit includes the following:

- Failure to provide specimen
- Failure to cooperate with the testing process
- Failure to report to the collection site in a timely manner
- Failure to provide adequate specimen without legitimate reason preventing adequate urination; or submitting an adulterated or substituted specimen.
- Resignation from employment in response to a test request

If an employee refuses to test/submit as defined above, or refuses to sign the consent form, he or she will be informed that the refusal to test/submit or to sign form will result in **immediate termination**. An employee discharged for test refusal will be disqualified from employment with the Band for either (1) 90 days or (2) until the employee obtains a counseling evaluation with a Substance Abuse Professional or another state certified rehabilitation program and provides the Employee Compliance Department with evidence of commencing or completing compliance with the rehabilitation recommendation. If the employee is permitted to return to work based on commencing compliance, the employee's employment shall be contingent upon ongoing compliance with the rehabilitation recommendation; failure to comply with and complete the rehabilitation recommendation will result in discharge.

Any employee who professes to "shy bladder syndrome" or the inability to produce a urine specimen will be given up to 40 ounces of liquid and allowed to wait no more than three (3) hours at the collection site. As soon as it becomes apparent the donor is unwilling or unable to produce a specimen, he or she should be advised of the three (3) hour time limit. At the end of three (3) hours, his/hers specimen will not be accepted and he /she will sent to a doctor chosen by FDL to determine if there are any medical conditions present that would prevent the ability to provide a urine specimen. This examination doesn't have to be done within a certain time frame, but should be conducted as soon as possible. If no medical condition is found, it will be considered a refusal to submit, and the employee will be disciplined in accordance with this Policy and company personnel policies. For pre-employment testing, it is not necessary to send "shy bladder" applicants to the doctor. If at the end of a three (3) hour time limit the applicant is still unable to produce a specimen, he or she will no longer be considered for employment.

## **VI. COLLECTION**

1. **Drug:** Employees who are being tested for drugs will be tested in-house using an oral fluid test or be transported to the Raiter Clinic in Cloquet, the Cloquet Memorial Hospital, or Workright Duluth Clinic for a urine screen. Drug screening may utilize a urine or oral fluid test.
2. **Alcohol:** Employees who are being tested for alcohol will be tested in-house using a breath analyzer or be transported to Raiter Clinic, Cloquet Memorial Hospital, or Workright Duluth Clinic. Alcohol screening may utilize breath, saliva, or blood.

If the individual's behavior is such that management and/or the clinic/hospital staff feel the employee is not capable of driving, the employee's supervisor will arrange for others to transport the employee to their home or another appropriate location.

## **VII. TESTING - LAB AND METHODOLOGY**

1. **Drugs:** All urine and oral fluid specimens to be tested for the presence of drugs will be analyzed by a laboratory certified by Health and Human Services (HHS) under the National Laboratory Certification Program as meeting the minimum standards of subpart C of the HHS Mandatory Guidelines for Workplace Drug Testing Programs.

Every specimen is required to undergo an initial screen followed by conformation of all positive screen results. The screening confirmation process utilizes highly sophisticated techniques to detect specific levels of prohibited substances in urine or oral fluid. Any urine or oral fluid specimen identified as positive on the initial test screen will be confirmed by the use of gas chromatography/mass spectrometry test.

When appropriate, the laboratory will also analyze the specimen for the presence of adulterants. The laboratory shall report to the Medical Review Officer (MRO) any presence of adulterants.

2. **Alcohol:** The breath alcohol test will be conducted by as trained technician using a breath analyzer or by a certified Breath Alcohol Technician at the Raiter Clinic, the Cloquet Memorial Hospital, or the Workright Duluth Clinic using an Evidential Breath Measurement Device. The breath alcohol test will be considered positive if it indicates a blood alcohol concentration at or above 0.04, expressed in terms of grams of alcohol per 210 liters of breath as measured by a breath-taking device.

If for some reason a breath test is not possible, a blood alcohol test must be conducted and the urine drug chain of custody form must be used. The collection site must send a sample to the lab for testing. The lab will notify the MRO of the test result and the MRO will use the same notification method as if it were a drug test.

3. **Results**

- a. Negative results will be forwarded to the FDL contact person who will in turn notify the donor by mail of the results.
- b. Positive Results. When the initial result is positive, the MRO will contact the donor first to review any prescription medication that the he/she may be taking which could alter the result and give the employee a reasonable opportunity to explain a confirmed positive result. After conducting the telephone interview with the donor, the MRO will rule either the sample positive or negative. If the donor has a legitimate prescription in his/her name, the sample will be ruled a negative if the result is connected to the prescription and will be routed back through the negative process.

If the sample is confirmed positive, it will be reported to the FDL contact person. Although the donor is already aware through talking with the MRO that his/her test was positive, the Employee Compliance department will contact the individual and the individual's supervisor. At this time the employee will be suspended from work without pay. The employee will be given local SAP contacts. It will be the employee's responsibility to make initial contact with the SAP. After meeting with the employee, the SAP will contact the FDL contact person and will inform the contact person about the treatment recommendations.

4. **Prescribed Medication.** The prohibitions outlined above do not apply to use of a controlled substance pursuant to the instruction of a licensed physician who is familiar with the employee's medical history and assigned duties. However, the physician must advise him/her that the use of such substances will not adversely affect his/her ability to work in the capacity required by the employee's job description.

Any employee requested to submit to a drug test under this Policy will have the opportunity to discuss the use of this medication with the MRO. They will be required to identify the physician prescribing the medication and authorize the MRO to discuss the use of the medication with that physician, including the possible side effects and its relationship to the employee's ability to perform his/her job duties. If it is determined that an employee is taking or is under the influence of a prescribed medication that will adversely affect his/her ability to perform the functions of his/her job and/or pose a significant risk of substantial harm to the employee or other employee's, or the general public, the employee will be removed from the performance of any job functions and/or placed on a medical leave of absence until that threat is acceptably reduced or eliminated. FDL further reserves the right to place any employee taking a prescribed medication on a temporary medical leave of absence until the information described above is provided.



## **VIII. DISCIPLINARY CONSEQUENCES**

Any Fond du Lac employee who is found to have a confirmed positive test result, if it is found to be the first such result for an employee on a required test, will be suspended immediately without pay and will be required to seek counseling evaluation with a Substance Abuse Professional or another state certified rehabilitation program of his/her choice within seven business days of the report of a positive test. Employees who do not make an attempt to meet with a SAP within this time period will be considered abandoning their job and terminated. The employee will not be permitted to return to work until he/she has provided the Employee Compliance Department with evidence of commencing or completing compliance with the rehabilitation recommendation. If the employee is permitted to return to work based on commencing compliance, the employee's employment shall be contingent upon ongoing compliance with the rehabilitation recommendation; failure to comply with and complete the rehabilitation recommendation will result in discharge. Additionally, before the employee is permitted to return to work, his/her Division Director will require him/her to submit to a drug test and/or alcohol test and have a negative result.

Compliance with a rehabilitation program, in and of itself, does not guarantee continued employment. The future employment of such an employee will be based on satisfactory job performance and work behaviors as well as follow-up testing for two (2) years after the completion of a rehabilitation program.

Should the employee who has tested positive on a drug or alcohol test again test positive on a drug or alcohol test within two (2) years and one (1) day of the original positive test, this will be considered a second positive test and the employee will be discharged.

If an employee is discharged for failing to meet with a SAP, for failing to comply with the rehabilitation recommendation, or for a second positive test, the employee will be disqualified from employment with the Band for either (1) 90 days or (2) until the employee obtains a counseling evaluation with a Substance Abuse Professional or another state certified rehabilitation program and provides the Employee Compliance Department with evidence of commencing or completing compliance with the rehabilitation recommendation. If the employee is permitted to return to work based on commencing compliance, the employee's employment shall be contingent upon ongoing compliance with the rehabilitation recommendation; failure to comply with and complete the rehabilitation recommendation will result in discharge.

**Safety-Sensitive Functions.** An employee who returns to work following a confirmed positive test result shall not be allowed to perform safety-sensitive functions until the employee provides the Employee Compliance Department with evidence of successfully completing compliance with the rehabilitation recommendation. An employee whose breath alcohol test indicates a blood alcohol concentration at or above 0.02 but less than 0.04 shall be removed from safety-sensitive functions for at least 8 hours and, if safety-sensitive functions are essential to the employee's job, the employee shall be suspended without pay for a corresponding period of time. For purposes of this policy, "safety sensitive functions" means (1) operation of a motor vehicle, (2) maintenance of a motor vehicle, and (3) carrying a firearm for security purposes. The consequences described in this paragraph shall be in addition to any consequences required under the Band's FTA Drug

and Alcohol Testing Policy.

**Pharmacy Employees.** In the case of Pharmacy employees, FDL Human Services Division will notify appropriate Law Enforcement if there is reasonable suspicion of drug related criminal activity on the premises. The Pharmacy coordinator will provide the required notifications concerning drug-related activities in accordance with the State Board of Pharmacy requirements.

**On-Call Employees.** Employees (who are not scheduled On-Call) who are called in, have the responsibility to self-disclose to their supervisor if they have ingested alcohol or controlled substances.

**Adulterated or Substituted Specimens.** Adulterated or substituted specimens will be treated as a “refusal to submit”. As previously stated, refusal to submit to the requested testing will result in the employee’s immediate suspension and the employee shall also be subject to disciplinary action up to and including immediate termination.

**Self-Referrals.** For assistance in addressing substance abuse concerns, Fond du Lac employees may refer themselves to any member of the Employee Compliance Department, the FDL Employee Assistance Officer, or the FDL Director of Human Resources. All self-referrals will be held strictly confidential.

Any employee who self-refers into an in-patient drug treatment program will be placed on leave and will not be subject to drug testing during that period of time. He/she must cooperate with and comply with any prescribed rehabilitation program or be subject to discipline up to and including suspension without pay or termination.

An employee granted Self-Referral Rehabilitation Status will be permitted to use paid and/or unpaid leave which the individual may have available.

If the employee goes into an out-patient treatment program and continues to work, he/she would be subject to testing should his/her name be selected. If tested positive, the employee would be subject to discipline up to and including suspension without pay and/or termination.

## **IX. CONFIDENTIALITY**

All records generated and information received on an employee or applicant are strictly confidential and will not be released by the FDL Employee Compliance Department to any third-party individual, governmental agency, or private organization without the written consent of the job applicant or employee.

Notwithstanding, the employee consent requirement set forth above, evidence of a positive test result may be used as follows:

1. In a judicial proceeding, provided that the information is relevant to the hearing or proceeding, except that positive results may not be used as evidence in a criminal action against the job applicant or employee tested;

2. Disclosed to any federal agency or other unit for the United States Government as required under federal law, regulations or order, or in accordance with compliance requirements of a federal government contract; or
3. Disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

## **X. CRIMINAL CHARGES**

Any employee who is charged with a drug and/or alcohol related crime which, if convicted, would disqualify the employee from employment, will be suspended without pay pending the outcome of the charge. Upon demonstrating the charge has been dropped or the employee has been found not guilty of the charge, the employee will be reinstated to his /her position or to a comparable position if one is available. If convicted of the charge, the employee will be removed from the leave of absence without pay list and terminated.

## **XI. VOLUNTEERS**

Individuals working in a volunteer status, including student teachers, interns, and temporary personal are subject to testing in accordance with this policy if the individual works or is expected to work on site on more than three days in a one-year period. The volunteer will be subject to suspension, discharge, and reinstatement to the volunteer position under the same circumstances as an employee would be under this policy.

## **XII. INDEPENDENT CONTRACTORS**

An individual working as an independent contractor for the Band or a Band-owned entity shall be required to enter into an agreement, at the individual's cost, with the Employee Compliance Department for testing in accordance with this policy, if the individual works or is expected to work on site on more than one day in a one-year period. The individual's contract shall be suspended, terminated, and reinstated under the same circumstances that an employee would be suspended, discharged, and reinstated under this policy.

A company, or other organization consisting of two or more individuals, working as an independent contractor for the Band or a Band-owned entity shall be required to show proof of a company policy equal to or more stringent than this Policy or shall be required to enter into an agreement, at the contractor's cost, with the Employee Compliance Department for testing in accordance with this policy, if the company or other organization works or is expected to work on site on more than one day in a one-year period. If the contractor has entered into a testing agreement with the Employee Compliance Department, individual employees of the contractor shall be suspended from, removed from, and reinstated to the Band project under the same circumstances that an employee would be suspended, discharged, and reinstated under this policy. Failure to comply with the contractor's policy or to suspend or remove employees in accordance with this policy shall result in termination of the contractor's contract.

### **XIII. RESERVATION BUSINESS COMMITTEE**

The elected officials of the Reservation Business Committee are subject to testing in accordance with this policy. However, the consequences, if any, of a positive test shall be governed by the Reservation Business Committee Code of Ethics, Fond du Lac Ordinance #04/15, and by Article X of the Minnesota Chippewa Tribe Constitution.

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