



# **PERSONNEL POLICIES AND PROCEDURES**

## **BOROUGH OF CLAYTON**

**Adopted August 14, 2008  
Amended November, 2010  
Amended April, 2012  
Amended April, 2014  
Amended April, 2016  
Amended September, 2016  
Amended May, 2018  
Amended September, 2018  
Amended September, 2021**

**THE BOROUGH OF CLAYTON IS AN EQUAL OPPORTUNITY  
EMPLOYER**

### **DISCLAIMER:**

**NOTHING HEREIN SHALL BE INTERPRETED OR  
CONSIDERED TO CREATE AN EMPLOYMENT  
CONTRACT OF ANY KIND.**

**EMPLOYMENT IS AT-WILL AND MAY BE TERMINATED  
AT ANY TIME, SUBJECT TO APPLICABLE LAW AND/OR  
COLLECTIVE BARGAINING REQUIREMENTS.**



## **AT-WILL EMPLOYMENT**

**THE POLICIES AND PROCEDURES HEREIN ARE GUIDELINES ONLY AND SUPERCEDE ANY PRIOR MANUAL AND/OR HANDBOOK.**

**NOTHING HEREIN CREATES AN EMPLOYMENT CONTRACT.**

**THE BOROUGH OF CLAYTON HAS THE RIGHT, WITH OR WITHOUT NOTICE, IN AN INDIVIDUAL CASE OR GENERALLY, TO CHANGE ANY OF ITS GUIDELINES, POLICIES, PRACTICES, WORKING CONDITIONS OR BENEFITS AT ANY TIME.**

**NO ONE IS AUTHORIZED TO PROVIDE ANY EMPLOYEE WITH AN EMPLOYMENT CONTRACT OR SPECIAL ARRANGEMENT CONCERNING TERMS OR CONDITIONS OF EMPLOYMENT UNLESS THE CONTRACT OR ARRANGEMENT IS IN WRITING AND IS SIGNED BY BOROUGH COUNCIL.**

**EMPLOYMENT WITH THE BOROUGH OF CLAYTON IS AT-WILL AND MAY BE TERMINATED AT ANY TIME WITH OR WITHOUT CAUSE OR NOTICE BY THE EMPLOYEE OR THE BOROUGH OF CLAYTON.**

**THIS NOTICE APPLIES TO ALL EMPLOYEES REGARDLESS OF DATE OF HIRE.**



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## **Personnel Policy Introduction and General Principles**

Welcome to the Borough of Clayton!

It is the policy of the Borough of Clayton to treat employees and prospective employees in a manner consistent with all applicable employment laws and regulations. The personnel policies and procedures of the Borough of Clayton shall apply to all employees, volunteers, elected or appointed officials and independent contractors unless otherwise specified. In the event there is a conflict between these rules and any collective bargaining agreement, personnel services contract, or applicable law, or the Attorney General's Guidelines with respect to Police Department, the terms and conditions of that contract or law shall prevail. In all other cases, these policies and procedures shall prevail.

All employees, officers and Department Heads shall be appointed and promoted by the Borough Council. No person shall be employed or promoted unless there exists a position created by an ordinance adopted by the Borough Council as well as the necessary budget appropriation and salary ordinance.

The Borough Administrator and all managerial/supervisory personnel are authorized and responsible for personnel policies and procedures. The Borough Council has appointed the Borough Clerk to assist the Borough Administrator in implementing personnel practices. The Administrator and Borough Clerk shall also have access to the Borough Solicitor and Labor Counsel appointed by the Borough Council for guidance in personnel matters.

As a general principle, the Borough of Clayton has a "no tolerance" policy towards workplace wrongdoing. Borough of Clayton officials, employees and independent contractors are to report anything perceived to be improper. The Borough of Clayton believes strongly in an open door policy and encourages employees to talk with their supervisors, Department Head, Administrator, the Borough Clerk or the Borough Solicitor concerning any problem.

**The Personnel Policies and Procedures Manual adopted by the Borough Council is intended to provide guidelines covering public service by Borough of Clayton employees and is not a contract.** This manual contains many, but not necessarily all of the rules, regulations, and conditions of employment for Borough personnel. The provisions of this manual may be amended and supplemented from time to time without notice and at the sole discretion of the Borough of Clayton.



## **SECTION ONE**

# **POLICIES RELATING TO EMPLOYEE RIGHTS AND OBLIGATIONS**



## **Equal Employment Opportunity Policy**

The Borough of Clayton is committed to the principle of equal employment opportunity and anti-discrimination pursuant to Title VII of the 1964 Civil Rights Act as amended by the Equal Opportunity Act of 1972 and the New Jersey Law against Discrimination as amended by the New Jersey Pregnant Worker's Fairness Act (LAD). Under no circumstances will the Borough of Clayton discriminate on the basis of sex, race, creed, color, religion, national origin, ancestry, age, marital or political status, affectional or sexual orientation, domestic partnership status, civil union status, atypical heredity, cellular or blood trait, genetic information, disability (including AIDS or HIV infection), pregnancy (including pregnancy related medical condition), childbirth, breastfeeding, liability for service in the United States armed forces, gender identity or expression, and/or any other basis protected by law.

Any employees with questions or concerns about any type of discrimination or harassment in the workplace are strongly encouraged to bring these issues to the attention of management through the Employee Complaint Procedure. The Borough will not tolerate retaliation of any kind with respect to any such questions, concerns, or complaints.

This policy applies to all personnel, regardless of employment status.

*Version: October 2021*



### **Americans with Disabilities Act Policy**

In compliance with the Americans with Disabilities Act, the ADA Amendments Act and the New Jersey Law Against Discrimination (as amended by the New Jersey Pregnant Worker's Fairness Act (LAD)), the Borough of Clayton does not discriminate based on disability, pregnancy, pregnancy-related medical condition or childbirth. This applies to all aspects of the employer-employee relationship, including recruitment, hiring, upgrading, training, promotion, transfer, discipline, layoff, recall, and termination.

It is the policy of the Borough of Clayton to comply with all relevant and applicable provisions of the Americans with Disabilities Act, the ADA Amendments Act and LAD. We will not discriminate against any employee or job applicant with respect to any terms, conditions, or privileges of employment on the basis of a known or perceived disability, pregnancy, childbirth, breastfeeding, or pregnancy related medical condition. We will also make reasonable accommodations to known physical or mental limitations of all employees and applicants with disabilities or pregnant, provided that the individual is otherwise qualified to safely perform the essential functions of the job and also provided that the accommodation does not impose undue hardship on the Borough of Clayton.

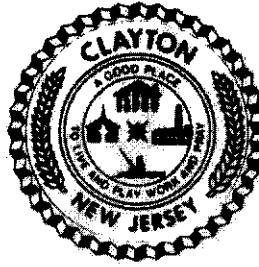
Where applicable, the Borough Administrator shall engage in an interactive dialogue for purposes of determining reasonable accommodations. Requests for reasonable accommodations should be directed to the Borough Administrator. The Borough may require the production of adequate medical or other appropriate documentation of the disability and the need for the desired accommodation. The Borough will also consider whether the proposed accommodation would impose an undue hardship on the Employer's business operation.

In the case of an employee breastfeeding her infant child, the accommodation shall include reasonable break time each day to the employee and a suitable room or other location with privacy, other than a toilet stall, in close proximity to work area for the employee to express breast milk for the child.

The Americans with Disabilities Act does not require the Borough of Clayton to offer permanent "light duty", relocate essential job functions, or provide personal use items such as eyeglasses, hearing aids, wheelchairs, etc.

Employees should also offer assistance, to the extent possible, to any member of the public who requests or needs an accommodation when visiting the Borough of Clayton facilities. Any questions concerning proper assistance should be directed to the Borough Administrator.





The Borough of Clayton will endeavor to make every work environment handicap accessible and all future construction and renovation of facilities will be in accordance with applicable barrier-free Federal and State regulations and the Americans with Disabilities Act Accessibility Guidelines, as well as the ADA Amendments Act.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



### **Americans with Disabilities Act Grievance Procedure**

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the Borough. The Borough's Employee Complaint Procedure governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to the Borough of Clayton, ATTN: ADA Coordinator, 125 North Delsea Drive, Clayton, New Jersey, 08312.

Within 15 calendar days after receipt of the complaint, the ADA Coordinator (or the Coordinator's designee) will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, the ADA Coordinator (or the Coordinator's designee) will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the Borough and offer options for substantive resolution of the complaint.

If the response by the ADA Coordinator (or the Coordinator's designee) does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the Borough Administrator (or Administrator's designee).

Within 15 calendar days after receipt of the appeal, the Administrator (or Administrator's designee) will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the Administrator (or Administrator's designee) will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the ADA Coordinator (or Coordinator's designee), appeals to the Administrator (or Administrator's designee), and responses from these two offices will be retained by the Borough for at least three years.



Attached to the Personnel Policy is a notice concerning relevant provisions of the ADA for all persons who may be interested in the Borough's programs, activities, and services.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



### **Notice Under the Americans with Disabilities Act**

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Borough of Clayton will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

*Employment:* The Borough of Clayton does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

*Effective Communication:* The Borough of Clayton will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the Borough's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

*Modifications to Policies and Procedures:* The Borough of Clayton will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in Borough offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the Borough of Clayton, should contact the office of the ADA Coordinator, 125 North Delsea Drive, Clayton, New Jersey 08312 as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the Borough to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of the Borough is not accessible to persons with disabilities should be directed to the ADA Coordinator, 125 North Delsea Drive, Clayton, New Jersey 08312.

The Borough will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.



### **Contagious or Life Threatening Illnesses Policy**

The Borough supports employees who may be facing the trauma of a life-threatening or catastrophic illness. The Borough of Clayton encourages employees with contagious diseases or life-threatening illnesses to continue their normal pursuits, including work, to the extent allowed by their condition. The Borough will not discriminate against any disabled persons.

If an employee has learned that he or she has a contagious or life threatening illness, the employee should take all steps to protect further spread of the disease or illness. When appropriate, the employee's Department Head and/or the Administrator should be notified of any illnesses that may affect the health, safety, and welfare of any co-employee or member of the general public.

The Borough Administrator will be available to discuss resources which may be available through the County or other agencies.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



## **Safety Policy**

The Borough will provide a safe and healthy work environment and shall comply with the Public Employees Occupational Safety and Health Act (PEOSH).

Consistent with this policy, employees will receive periodic safety training and will be provided with appropriate safety equipment. Employees are responsible for observing safety rules and using available safety devices including personal protective equipment. Failure to do so constitutes grounds for disciplinary action.

Any occupational or public unsafe condition, practice, procedure or act must be immediately reported to the supervisor or Department Head. Any on-the-job accident or accident involving Borough facilities, equipment or motor vehicles must also be immediately reported to the supervisor or Department Head. Failure to do so constitutes grounds for disciplinary action.

The Borough is equally concerned about the safety of the public. As such, the Borough has adopted a Motor Vehicle Records (MVR) policy that is included in this Manual.

The Borough Council has appointed a Safety Committee that meets on a regular basis to discuss and recommend solutions to safety problems. Employees are encouraged to discuss safety concerns with their Safety Committee Representative.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



## **Workplace Violence Policy**

The Borough of Clayton will not tolerate workplace violence. Violent acts or threats made by an employee against another person or property are cause for immediate dismissal and will be fully prosecuted. This includes any violence or threats made on Borough property, at Borough events or under other circumstances that may negatively affect the Borough's ability to conduct business.

Prohibited conduct includes:

- Causing physical injury to another person;
- Making threatening remarks;
- Aggressive, hostile, or bullying behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress;
- Intentionally damaging employer property or property of another employee;
- Possession of a weapon while on Borough property or while on Borough business except with the authority of the Police Chief; and
- Committing acts motivated by, or related to, sexual harassment or domestic violence.

The following are examples of warning signs, symptoms, and risk factors which may indicate an employee's potential for workplace violence:

- Dropping hints about a knowledge of firearms;
- Making intimidating statements like: "You know what happened at the Post Office," "I'll get even," or "You haven't heard the last from me";
- Possessing reading material with themes of violence, revenge and harassment;
- Physical signs of hard breathing, reddening of complexion, menacing stare, loudness, fast profane speech;
- Acting out either verbally or physically;
- Disgruntled employee or ex-employee who is excessively bitter;
- Being a loner;
- Having a romantic obsession with a co-worker who does not share that interest;
- History of interpersonal conflict;



- Intense anger, lack of empathy;
- Domestic problems, unstable/dysfunctional family;
- Brooding, depressed strange behavior, “time bomb ready to go off.”

Supervisors should be alerted to and made aware if any of these indicators arise. If an employee exhibits such behavior, the employee should be monitored and such behavior should be documented.

Incidents or threats or acts of physical violence should be reported in good faith to police and the Administrator for further investigation.

This policy prohibits retaliation against any employee who, in good faith, reports a violation of this policy. Every effort to the extent practicable will be made to protect the safety and identity of anyone who comes forward with concerns about a threat or act of violence.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*





## **Anti-Harassment Policy**

It is the Borough's policy to prohibit harassment of an employee by another employee, management representative, supplier, volunteer, or business invitee on the basis of actual or perceived sex, race, creed, color, religion, national origin, ancestry, age, marital or political status, affectional or sexual orientation, domestic partnership status, civil union status, atypical heredity, cellular or blood trait, genetic information, disability (including AIDS or HIV infection), gender liability or expression, pregnancy, liability for service in the United States armed forces, and/or any other basis protected by law. Harassment of non-employees by our employees is also prohibited.

The Borough prohibits harassment from occurring in the workplace or at any other location at which Borough sponsored activity takes place.

While it is not easy to define precisely what harassment is, it includes slurs, epithets, threats, derogatory comments, unwelcome jokes, teasing, caricatures or representations of persons using electronically or physically altered photos, drawings or images, and other similar verbal, written, printed or physical conduct.

Unwelcome sexual advances, requests for sexual favors and other verbal, physical or visual conduct of a sexual nature constitute harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Regarding unwelcome sexual advances toward non-employees, requests for sexual favors and other verbal, physical or visual conduct of a sexual nature constitute harassment when:

- Submission to such conduct is made either explicitly or implicitly in exchange for a benefit;
- Submission to or rejection of such conduct by an individual is used as the basis for a decision affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's activities or creating an intimidating, hostile or offensive environment.



Sexual harassment may include unwanted sexual advances; offering employment benefits in exchange for sexual favors; visual conduct (leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters); verbal sexual advances, propositions or requests; verbal abuse of a sexual nature; graphic verbal commentaries about an individual's body; sexually degrading words used to describe an individual; suggestive or obscene letters, caricatures or representations of persons using electronically or physically altered photos, drawings, or images; notes or invitations; and/or, physical conduct (touching, assault, impeding or blocking movements).

Sexual harassment also occurs when one person harasses another solely because of the victim's gender. This type of sexual harassment may involve unwelcome sexual demands or overtures, but it may also take the form of other harassing conduct not necessarily sexual in nature. For example, this would include gender stereotyping such as comments about the lesser abilities, capacities, or the "proper role" of females. It also includes subjecting a woman or a man to non-sexual harassment solely because of her or his gender. Sexual harassment is prohibited whether the harasser is male or female, and whether the harassment is opposite sex or same-sex harassment.

If an employee is witnesses to or believes to have experienced harassment, immediate notification should be made under the Employee Complaint Procedure.

Harassment of any employees, in connection with their work, by non-employees may also be a violation of this policy. Any employee who experiences harassment by a non-employee, or who observes harassment of an employee by a non-employee should report such harassment under the Employee Complaint Procedure. Appropriate action will be taken against any non-employee.

Notification of appropriate personnel of any harassment problem is essential to the success of this policy and the Borough's generally. The Borough cannot resolve a harassment problem unless it knows about it. Therefore, it is the responsibility of all employees to bring those kinds of problems to attention of management through the Employee Complaint Procedure so that steps are taken to correct them.

This policy applies to all personnel, regardless of employment status.

*Version: October 2021*



## **Whistleblower Policy**

Employees have the right under the “Conscientious Employee Protection Act” (“CEPA”) to complain about any activity, policy or practice that the employees reasonably believe is in violation of a law, rule, or regulation promulgated pursuant to law without fear of retaliation or reprisal. This right shall be communicated to all employees in an annual letter outlining the specific employee complaint procedure and in a posted notice. The annual notice shall be in English and Spanish and must contain the name of the person who is designated to receive written notification of policies or practices that might violate CEPA. All complaints will be taken seriously.

The Borough shall not take any retaliatory action or tolerate any reprisal against an employee for any of the following:

- Disclosing or threatening to disclose to a supervisor, Department Head, the Administrator, other official or to a public body, as defined in the Conscientious Employee Protection Act (N.J.S.A. 34:19-1 et seq.) an activity, policy or practice that the employee reasonably believes is in violation of a law, a rule or regulation promulgated pursuant to law;
- Providing information to, or testifying before any public body conducting an investigation, hearing, an inquiry into any violation of law, or a rule or regulation promulgated pursuant to law; or
- Objecting to, or refusing to participate in any activity, policy, or practice that the employee reasonably believes is a violation of a law, rule or regulation promulgated pursuant to law; is fraudulent or criminal; or is incompatible with a clear public policy mandate concerning the public health, safety, or welfare.

In accordance with CEPA, the employee must bring the violation to the attention of the Borough Administrator or the Borough Solicitor. However, disclosure is not required where (1) the employee is reasonably certain that the violation is known to one or more officials; (2) where the employee reasonably fears physical harm; or (3) the situation is emergent in nature. Complaints should be brought under the Employee Complaint Procedure, but an employee may make a verbal complaint at their discretion.

Under the law, the employee must give the Borough of Clayton a reasonable opportunity to correct the activity, policy or practice.



The administration of whistleblower complaints is not subject to the limitations in the Grievance Policy.

This policy applies to all personnel, regardless of employment status.

*Version: October 2021*



### **Employee Complaint Procedure**

Employees who observe actions they believe to constitute harassment, or any other workplace wrongdoing, should immediately report the matter to their supervisor, or, if they prefer, or do not think that the matter can be discussed with their supervisor, they should contact the Department Head, the Borough Administrator, or the Borough Solicitor.

Employees have the right to formally or informally report any statement, act, or behavior by a co-employee, supervisor, elected official or visitor that they believe to be improper.

Reporting of such incidents is encouraged both when an employee feels that he or she is subject to such incidents, or observes such incidents in reference to other employees. Incidents do not have to occur on Borough property during regular work hours for an employee to file a complaint under this policy.

Employees should report incidents in writing using an Employee Complaint Form, but may make a verbal complaint at their discretion.

If the employee has any questions about what constitutes harassment, sexual harassment, or any other workplace wrongdoing, they may ask their supervisor or one of the individuals listed above.

All reports of harassment, sexual harassment, or other wrongdoing will be promptly investigated by a person who is not involved in the alleged harassment or wrongdoing.

No employee will be penalized in any way for reporting a complaint. There will be no discrimination or retaliation against any individual who files a good-faith complaint, even if the investigation produces insufficient evidence to support the complaint, and even if the charges cannot be proven. There will be no discrimination or retaliation against any other individual who participates in the investigation of a complaint.

If the investigation substantiates the complaint, appropriate corrective and/or disciplinary action will be swiftly pursued. Disciplinary action up to and including discharge will also be taken against individuals who make false or frivolous accusations, such as those made maliciously or recklessly. Actions taken internally to investigate and resolve complaints will be conducted confidentially to the extent practicable and appropriate in order to protect the privacy of persons involved. Any investigation may include interviews with the parties involved in the incident, and if necessary, with individuals who may have observed the incident or conduct or who have other relevant knowledge. The complaining employee will be notified of a decision at the



conclusion of the investigation within a reasonable time from the date of the reporting of an incident.

Complaints received under this policy will generally be processed according to the following steps, subject to the discretion of the Borough on advice of counsel:

- **Identification/Screening:** The supervisor, Department Head, Borough Clerk or Borough Solicitor must report all written or verbal complaints to the Borough Administrator unless the complaint is against the Borough Administrator (in which case the complaint should be directed to the Borough Solicitor). Upon receipt, the Borough Administrator will determine if the complaint was made pursuant to the Anti-Harassment Policy, the Whistleblower Policy, a grievance procedure or is another form of complaint. The Borough Administrator or investigator appointed by the Borough Administrator may interview the employee for further information. If the matter does not involve an issue under the Anti-Harassment Policy or Whistleblower Policy, the employee will be informed accordingly and may be referred to an alternative process for fair resolution as suitable for the situation.
- **Investigation:** The Borough Administrator will seek the advice of the Borough Solicitor and/or Labor Counsel when planning the investigation. The investigation should be conducted by the Borough Solicitor, Labor Counsel or other Borough designee. The purpose of the investigation is to substantiate the accuracy of the allegations. The investigatory methods appropriate for the situation will vary depending on the circumstances. Consideration will also be given to whether any wrongdoing may involve or impact other individuals. While the fact-finding process is ongoing, it is important to protect the rights of both the person making the complaint and the alleged wrongdoer. If the matter involves potential criminal charges, the Borough will defer to the County Prosecutor as to issues of criminality and may, on advice of counsel, need to await to conclusion of any criminal investigation pending completion of the Borough's investigator.
- **Response Plan – No Corrective Action Required:** The Borough Administrator will discuss the conclusions with the Borough Solicitor and/or Labor Counsel. If the validity of a complaint cannot be determined or the complaint is groundless, the complaining employee should be notified. Care should be taken to avoid being too specific, confrontational or accusatory and to avoid any language that might be construed as defamatory. A general statement is usually more appropriate that the claim was thoroughly investigated, but could not be sufficiently documented or confirmed to justify taking formal action. Employees making such complaints are assured that future complaints will be investigated and that the Borough is committed to eliminating



wrongful employment practices when they are found to exist. If the investigation reveals that the complainant intentionally and maliciously levied false charges against the alleged wrongdoer, the complainant must be notified of the seriousness of filing a false complaint, and the appropriate disciplinary penalty under the circumstances, up to and including termination.

- **Response Plan – Corrective Action Required:** If the investigation reveals that the complaint is justified and substantiated, the Borough Administrator will formulate, with the advice of the Borough Solicitor and/or Labor Counsel, a corrective action plan as well as possible disciplinary action. The complaining employee will be notified that it appears that the complaint was justified and an appropriate response plan has been formulated. The response plan should provide for appropriate remedial action to prevent a recurrence of the wrongful act or behavior.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



### Employee Complaint Form

**\*THIS INVESTIGATION IS CONFIDENTIAL AND INFORMATION OBTAINED DURING THE  
COURSE OF THIS INVESTIGATION MUST NOT BE DISCLOSED\***

Name:

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Department:

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Job Title:

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Supervisor:

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Union Representative *(if any)*:

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Time Period Covered by Complaint:

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#### Individuals Who Allegedly Committed Harassment or Wrongdoing

Name

Department

Job Title

1.

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2.

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3.

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4.

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5.

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**BOROUGH OF CLAYTON – PERSONNEL POLICIES AND PROCEDURES  
THIS IS NOT A CONTRACT**





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Describe the dates and the nature of the wrongdoing allegedly committed by each identified individual:

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Identify all employees or others with knowledge of the complained of conduct:

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Are there any documents which contain information supporting the occurrences described above?

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Is there any physical evidence which supports your complaint? If so, please describe:

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Have you missed any work time as a result of the alleged wrongdoing? If "yes," identify the occasions.

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Have you incurred any unreimbursed medical expenses as a result of the alleged wrongdoing?

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If you previously complained about this or related acts of wrongdoing to an Employer supervisor or official, please identify the individual to whom you complained, the date of the complaint, and the resolution of your complaint:

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*(Attach Additional Sheets if Necessary)*

Are you afraid that someone may retaliate against you because you filed this complaint? If so, please identify the person(s) and indicate the reasons why you feel the person(s) may retaliate against you.

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What is your requested remedy in this complaint?

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Acknowledgement:

The information provided above is true and correct.

Signature of Complainant: \_\_\_\_\_

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

To investigate your complaint, it may be necessary to interview you, the alleged harasser(s), and any witnesses with knowledge of the allegations or defenses. The Employer will notify all persons involved in the investigation that it is confidential and that unauthorized disclosures of information concerning the investigation could result in disciplinary action up to and including termination.

*I am willing to cooperate fully in the investigation of my complaint and to provide whatever evidence the Employer deems relevant.*

Signature of Complainant: \_\_\_\_\_

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



## **Grievance Policy**

A. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

AGGRIEVED PERSON – The person or persons making the complaint.

GRIEVANCE – A complaint by a Borough employee based upon the interpretation, application, or violation of the rules and regulations or supervisory decisions affecting him or her. A grievance must be initiated within three working days of its occurrence in order to be considered. A grievance shall not include any matter which is the subject of the grievance process of a collective bargaining agreement or which is subject to the internal affairs process in the Police Department.

B. Procedure.

- (1) The purpose of this procedure is to secure solutions to problems as soon as possible. The number of days, therefore, at each level should be considered the maximum number, and every effort should be made to resolve the problem sooner if feasible.
- (2) Level 1. Any Borough employee who has a grievance shall discuss it first with his or her immediate supervisor in an attempt to resolve the matter.
- (3) Level 2. If as a result of the discussion the matter is not resolved to the satisfaction of the employee within three working days, he/she shall put the grievance in writing and hand it to his immediate supervisor specifying the nature of the problem; the results of previous decisions and/or discussions; and the date of the initial problem. The immediate supervisor shall communicate his decision in writing, to the aggrieved person within three working days.
- (4) Level 3. If the aggrieved person is not satisfied with the decision at Level 2, he or she may appeal to the department head. All written communications must be forwarded to the department head. The following shall apply:
  - (a) The aggrieved person has three days after Level 2 to appeal the supervisor's decision.
  - (b) The aggrieved person and the supervisor must forward all previous written communications immediately upon initiation to Level 3.
  - (c) The department head will act with his Council-appointed committee to render a decision within three working days upon receiving the written communications. The decision by the committee and handed down by



the department head in writing, is final and binding on all parties involved.

C. Miscellaneous provisions.

- All hearings or meetings that may be held under this procedure shall come under the Sunshine Law and not be conducted in public.
- Failure at any level of this procedure to appeal a grievance shall mean acceptance of the decision at that level.

These limitations do not apply to employee complaints made under the Anti-Harassment Policy or the Whistle Blower Policy.

This policy applies to all personnel, regardless of employment status, except in cases involving employee discipline. Disciplinary appeal processes are governed by the Employee Discipline Policy or collective bargaining agreement, as applicable. Unless otherwise specified by collective bargaining agreement or applicable law, part-time employees, probationary employees, and volunteers may be terminated at any time with or without cause, and without any appeal process.

*Version: September 2021*



### **Confidentiality of Personnel Files**

The official personnel file for each employee shall be maintained by the Borough Clerk. Personnel files are confidential records that must be secured in a locked cabinet and will only be available to authorized managerial and supervisory personnel on a need-to-know basis. Records relating to any medical condition will be maintained in a separate file. Electronic personnel and medical records must be protected from unauthorized access.

Upon request, employees may inspect their own personnel files at a mutually agreeable time on the Borough's premises in the presence of the Borough Administrator or the Borough Clerk. The employee will be entitled to see any records used to determine his or her qualifications for employment, promotion, or wage increases and any records used for disciplinary purposes. Employees may not remove any papers from the file. Employees will be allowed to have a copy of any document they have signed relating to their obtaining employment. Employees may add to the file their versions of any disputed item.

Personnel files do not contain confidential employee medical information. Any such information that the Borough may obtain will be maintained in separate files and treated at all times as confidential information. Any such medical information may be disclosed under very limited circumstances in accordance with any applicable legal requirements.

The Borough endeavors to maintain the privacy of personnel records. There are limited circumstances in which the Borough will release information contained in personnel or medical records to persons outside the Borough. These circumstances include:

- In response to a valid subpoena, court order or order of an authorized administrative agency;
- To an authorized governmental agency as part of an investigation of the Borough of Clayton's compliance with applicable law;
- To the Borough's agents and attorneys, when necessary;
- In a lawsuit, administrative proceeding, grievance or arbitration in which the employee and the Borough are parties;
- In a workers' compensation proceeding;
- To administer benefit plans;
- To an authorized health care provider;
- To first aid or safety personnel, when necessary; and
- To a potential future employer or other person requesting a verification of your employment as described in the following section titled, "Requests for Employment Verification and Reference Procedure."

This policy applies to all personnel, regardless of employment status.

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### **Conflict of Interest Policy**

Employees including Borough officials must conduct business according to the highest ethical standards of public service. Employees are expected to devote their best efforts to the interests of the Borough. Violations of this policy will result in appropriate discipline including termination.

The Borough of Clayton recognizes the right of employees to engage in outside activities that are private nature and unrelated to Borough business. However, business dealings that appear to create a conflict between the employee and the Borough's interests are unlawful under the New Jersey Local Government Ethics Act. Under the Act, certain employees and officials are required to annually file with the Borough Clerk a state mandated disclosure form. The Borough Clerk will notify employees and Borough officials subject to the filing requirements of the Act.

A potential or actual conflict of interest occurs whenever an employee including a Borough official is in a position to influence a Borough decision that may result in a personal gain for the employee or an immediate relative including a spouse or significant other, child, parent, stepchild, sibling, grandparents, daughter-in-law, son-in-law, grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an employee's household. Employees are required to disclose possible conflicts so that the Borough may assess and prevent potential conflicts. If there are any questions whether an action or proposed course of conduct would create a conflict of interest, immediately contact the Borough Administrator or the Borough Solicitor to obtain clarification.

Employees are allowed to hold outside employment as long as it does not interfere with their Borough responsibilities. Employees are prohibited from engaging in outside employment activities while on the job or using Borough time, supplies or equipment in the outside employment activities. The Borough Administrator may request employees to restrict outside employment if the quality of Borough work diminishes. Any employees who holds an interest in, or is employed by, any business doing business with the Borough must submit a written notice of these outside interests to the Borough Administrator.

Employees may not accept donations, gratuities, contributions or gifts that could be interpreted to affect their Borough duties. Under no circumstances accept donations, gratuities, contributions or gifts from a vendor doing business with or seeking to do business with the Borough or any person or firm seeking to influence Borough decisions. Meals and other entertainment valued in excess of \$100.00 are also prohibited. Employees are required to report to the Borough Administrator any offer of a donation, gratuity, contribution or gift including meals and entertainment that is in violation of this policy.





Donations, gratuities, contributions or gifts which do not violate this policy will still not be enjoyed for the singular benefit of any individual employee, but rather shall be shared communally, unless otherwise authorized by the Administrator.

This policy applies to all personnel, regardless of employment status.

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### **Political Activity Policy**

Employees have exactly the same right as any other citizen to join political organizations and participate in political activities, as long as they maintain a clear separation between their official responsibilities and their political affiliations. Employees are prohibited from engaging in political activities while performing their public duties and from using Borough time, supplies or equipment in any political activity. Political activities include, but are not limited to, advocating the election or appointment of any candidate for office, verbally or otherwise, and soliciting funds for campaigns or campaign materials.

Additionally, State law precludes employees from directly or indirectly using their position to control or affect the political action of another person. In accordance with the Hatch Act and Federal regulations, an employee whose principal employment is with a program financed in whole or in part by Federal funds or loans shall not:

- be a candidate for public office in a partisan election. (This provision does not apply to the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs.)
- use his/her official authority to influence, to interfere with or affect election results or nominations for office.
- directly or indirectly coerce contributions from any employee to support a political party or candidate.

Violations of either State or Federal laws are serious matters and such violations should not be taken lightly. Any employee engaging in such political activities during working hours will be subject to disciplinary action up to and including termination of employment. Employees who engage in political activities during their non-working hours must not represent themselves as spokespersons for the Borough.

Any violation of this policy must be reported to the supervisor, Department Head, Administrator, Borough Clerk or the Borough Solicitor.

This policy applies to all personnel, regardless of employment status.

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## **Performance Evaluation Policy**

The Borough recognizes that an employee job performance evaluation system is the basis for assisting in employee growth and development. The Borough requires supervisors to conduct performance appraisals to ensure that:

1. each employee receives feedback on objectives, accomplishments, strengths, and areas for improvement;
2. each employee receives advice from his or her supervisor on ways to improve performance and has the chance to identify with his or her supervisor areas where greater contribution is possible, or where either feels more development would be beneficial; and
3. essential information is recorded concerning strengths and weaknesses of all employees in relation to career development, including potential for advancement and suitability for other positions and training.

The performance evaluation provides the vehicle for a dialogue between the employee and the supervisor and ensures shared expectations of the requirements for the employee's job and the employee's performance in the job. Accordingly, the Borough will use a performance review/evaluation system for all employees.

During performance reviews, supervisors will consider, among others:

- Initiative, dependability and effort
- Knowledge of work
- Attitude and willingness
- Quantity and quality of work
- Disciplinary record
- Attendance and tardiness

A copy of an employee performance evaluation shall be maintained in the employee's personnel file.

This policy applies to all personnel, regardless of employment status.

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## **Employee Discipline**

In cases of employee misconduct, the Borough believes in corrective action for the purpose of correcting undesirable behavior and preventing a recurrence of that behavior. The corrective action taken will be related to the gravity of the situation, the number and kind of previous infractions and other circumstances. In every case, employees will be given an opportunity to state the situation from their point of view.

In order to correct undesirable behavior, supervisors and managers may utilize the following corrective tools: verbal reprimand; Administrator review; written reprimand; suspension; fines, and, dismissal. At the discretion of Borough Council, action may begin at any step, and/or certain steps may be repeated or by-passed, depending on the severity and nature of the infraction and the employee's work/disciplinary record.

Major disciplinary action includes termination, disciplinary demotion or suspension or fine exceeding five working days. Minor discipline includes a formal, written reprimand or a suspension or fine of five working days or less. Employees who object to the terms or conditions of the discipline are entitled to a hearing under the applicable grievance procedure. In every case involving employee discipline, employees will be provided with an opportunity to respond to charges either verbally or in writing.

An employee may be subject to discipline for any of the following reasons:

- Incompetency, inefficiency or failure to perform duties;
- Insubordination;
- Inability to perform duties;
- Chronic or excessive absenteeism or lateness;
- Conviction of a crime;
- Conduct unbecoming a public employee;
- Neglect of duty;
- Misuse of public property, including motor vehicles;
- Discrimination that affects equal employment opportunity, including sexual harassment;



- Violation of federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and state and local policies issued thereunder;
- Falsification of public records, including attendance and other personnel records.
- Failure to report absence.
- Harassment of co-workers and/or volunteers and visitors.
- Theft or attempted theft of property belonging to the Borough, fellow employees, volunteers or visitors.
- Failure to report to work day or days prior to or following a vacation, holiday and/or leave, and/or any other unauthorized day of absence.
- Fighting on Borough property at any time.
- Being under the influence of intoxicants (e.g., liquor) or illegal drugs (e.g., cocaine or marijuana) on Borough property and at any time during work hours.
- Possession, sale, transfer or use of intoxicants or illegal drugs on Borough property and at any time during work hours.
- Entering the building without permission during non-scheduled work hours.
- Soliciting on Borough premises during work time. This includes but is not limited to distribution of literature or products or soliciting membership in fraternal, religious, social or political organizations, and/or sales of products, such as those from Avon, Amway, etc.
- Careless waste of materials or abuse of tools, equipment or supplies.
- Deliberate destruction or damage to Borough or suppliers' property.
- Sleeping on the job.
- Carrying weapons of any kind on Borough premises and/or during work hours, unless carrying a weapon is a function of your job duties.

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- Violation of established safety and fire regulations.
- Unscheduled absence, and chronic or excessive absence.
- Chronic tardiness.
- Unauthorized absence from work area, and/or roaming or loitering on the premises, during scheduled work hours.
- Defacing walls, bulletin boards or any other Borough or supplier property.
- Failure to perform duties, inefficiency or substandard performance.
- Unauthorized disclosure of confidential Borough information.
- Gambling on Borough premises.
- Horseplay, disorderly conduct and use of abusive and/or obscene language on Borough premises.
- Deliberate delay or restriction of your work effort, and/or incitement of others to delay or restrict their work effort.
- Conviction of a crime or disorderly persons offense.
- Violating any Borough rules, procedures, regulations, or policies.
- Violation of Borough policies, procedures and regulations.
- Violation of Federal, State or Borough laws, rules or regulations concerning drug and alcohol use and possession.
- Misuse of public property, including motor vehicles.
- Unauthorized use of computers, Internet, email, voicemail, telephone, or cellular phone.
- Other sufficient cause.

These are mere examples and not an exhaustive list or binding on the Borough. Additionally, the Borough reserves the right to use any and all forms of discipline on a case-by-case basis and

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is not obligated to use progressive discipline. Employment with the Borough may be terminated at any time with or without cause or reason by the employee or Employer.

**Neither this manual nor any other Borough guidelines, policies or practices create an employment contract. Employment with Borough may be terminated at any time with or without cause or reason by the employee or Borough.**

Probationary, part-time employees, and volunteers may be terminated at any time with or without cause, including for any of the above-referenced reasons, and without any appeal process. Nothing in this Policy should be interpreted as conferring any appeal or hearing rights upon probationary, part-time employees, or volunteers.

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## **SECTION TWO**

### **Workplace Policies**





### **Attendance Policy**

All employees are expected to be at work and ready to assume their duties at the beginning of the scheduled workday. Lateness and absence will be tolerated only in emergencies or when the supervisor gives prior approval. All absences must be reported to the supervisor prior to the start of the normal workday. The normal working hours for administrative departments are 8:00 AM to 4:00 PM. The working hours for other departments are established by departmental procedures and bargaining unit agreements.

This policy applies to all personnel, regardless of employment status.

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### **Early Closing and Delayed Opening Policy**

In the event of unsafe conditions, the Administrator may authorize Department Heads to close operations earlier than the normal working hours. If conditions exist prior to scheduled openings, the Administrator shall notify Department Heads of a delayed opening and a new opening time. Each Department will have a calling system in place. If the employee chooses not to report to work, a full vacation day or compensating time will be charged. Sick time will only be charged for a legitimate illness. If work is called off for the day, no time will be charged for the day. This provision does not apply to the Department of Public Works, Police, Fire, or any personnel who may be required to assist in an emergency.

This policy does not apply to part-time personnel or volunteers.

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### **Break Policy**

Administrative personnel are entitled to a one (1) hour lunch that is to be arranged by the supervisor so that offices continue to function. Administrative personnel are entitled to a fifteen (15) minute break in the morning and in the afternoon. Administrative personnel must arrange breaks so that offices continue to function. Lunch and breaks for non-administrative employees will be scheduled by the supervisor and/or governed by any applicable collective bargaining agreements.

This policy does not apply to part-time personnel or volunteers.

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### **Dress Code Policy**

Dress, grooming and personal hygiene must be appropriate for the position. Uniforms are required for certain jobs and are to be worn in accordance with applicable departmental standards. All other employees are required to dress in a manner that is normally acceptable in similar business establishments and consistent with applicable safety standards. Employees should be mindful that they represent the Borough of Clayton and should be presentable for that purpose. Employees violating this policy shall be required to take corrective action or will be sent home without pay.

This policy applies to all personnel, regardless of employment status.

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### **No Smoking Policy**

The New Jersey Legislature has declared that in all governmental buildings the rights of non-smokers to breathe clean air supersedes the rights of smokers. In accordance with State law, the Borough has adopted a smoke-free policy for all buildings. Borough facilities shall be smoke-free and no employee or visitor will be permitted to smoke anywhere in Borough buildings. Employees are permitted to smoke only outside Borough buildings and such locations as not to allow the re-entry of smoke into building entrances. Borough vehicles shall be smoke-free and no employee or visitor will be permitted to smoke in any Borough vehicle. This policy shall be strictly enforced and any employee found in violation will be subject to disciplinary action.

This policy applies to all personnel, regardless of employment status.

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### **Use of Borough Vehicles Policy (Non-Law Enforcement)**

The Borough owns and maintains a fleet of vehicles that are used in furtherance of the business of the Borough. The following policy governs the use of all Borough Vehicles (with the exception of vehicles utilized for law enforcement purposes), and supersedes all other vehicle policies previously in effect. Any employee violating the provisions contained herein will be subject to disciplinary action, up to and including termination, in accordance with applicable laws and regulations. Violations of this policy may also result in the denial of indemnification and/or defense by the Borough to the employee in any civil or criminal matter brought in any Court arising from improper use of a Borough vehicle. The Borough also expressly reserves its right to seek indemnification and/or contribution from employees (including their personal automobile insurance policies) found to have acted in violation of this policy to the maximum extent permitted by law.

**Driving Privileges and Licensure.** The use of a Borough Vehicle by an employee is subject to the approval and discretion of the Administrator. Any employee operating a Borough Vehicle must have, in his or her possession, a valid driver's license issued by a state regulatory body within the United States. Licenses issued by any territory or possession of the United States, the District of Columbia, or any international agency (including any province of the Dominion of Canada) must be expressly approved by the Borough's insurance carrier before an employee will be permitted to operate a Borough Vehicle.

- A. Employees shall comply in all respects with the Borough's Motor Vehicle Records Policy ("MVR Policy"). Failure to do so will result in disciplinary action up to and including termination.
- B. Employees are required to file a copy of a valid driver's license with the Borough prior to the use of a Borough Vehicle.
  - 1. Upon request, an employee must provide a copy of their driver's license or other required documents within twenty-four (24) hours of said request.
  - 2. Employees shall inform the Borough within twenty-four (24) hours of any changes in the status of their driving privileges.
  - 3. Failure to comply with the requirements of this section will result in an immediate suspension of an employee's privilege to operate a Borough vehicle and may also result in the denial of indemnification and/or defense by the Borough to the employee in any civil or criminal matter brought in any Court arising from the use of a Borough vehicle while said employee's driving privileges were suspended or revoked.



- C. The Borough reserves the right to obtain a driving abstract record from the New Jersey Motor Vehicle Service Commission or other regulatory and law enforcement agencies.
  - 1. The Borough reserves the right to suspend an employee's Borough driving privileges if the Borough deems necessary based on the employee's driving record.
  - 2. The Borough shall utilize information obtained pursuant to this section only for the purposes of furthering the objectives of this Policy and for no other reason, and will not reveal personal or other information contained in an employee's driving abstract record to any party except where required by applicable law.
- D. The Borough reserves the right to compel employee attendance at such courses.
- E. The Borough reserves the right to compel an employee to undergo a simulated road test to determine his/her fitness to safely operate a vehicle.
- F. In the event that the employee is under the influence of any medication (prescribed or over-the-counter) that might impair his/her ability to safely operate a vehicle, he/she must refrain from driving until he/she notifies the Borough and await clearance to resume driving.

Official Use Only. The use of Borough Vehicles is restricted to official Borough business only. Employees shall not be permitted to use Borough vehicles for travel or activity unrelated to Borough business. Likewise, no supervisor may authorize such use or any use of a Borough Vehicle for other than Borough business or use which is otherwise inconsistent with this policy.

Borough Vehicles assigned to employees under this policy are to be operated only by the employee while acting within the scope of their employment. No employee shall authorize or permit any other non-Borough employee, including but not limited to family members of the employee, to operate or ride as a passenger in an assigned Borough Vehicle, unless said passengers are assisting in the official business of the Borough.

An employee who is also employed by another governmental entity may use a Borough vehicle for that employment only if the employment is pursuant to an inter-local agreement between the Borough and the other jurisdiction.

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Location of Vehicles. Vehicles may be taken home only with the advance approval of the Administrator except a Mayor or CFO may also grant temporary approval to facilitate responses to after-hours emergency calls. When an employee takes home a Borough vehicle, it is to be used only for official Borough business; any other use is not permitted.

Accidents and Incidents. Prior to operation of any Borough vehicle, employees must consult their Department Head as to the appropriate steps to take if they become involved in an accident (filling out accident reports, obtaining witness names, etc.)

- A. In the event of an incident or accident involving the use of a Borough Vehicle, employees must immediately contact their supervisor and/or Department Head. All required reports and documentation must be submitted to the Administrator within two (2) business days of receipt.
- B. An employee may be required to submit to an alcohol or drug screening test following an accident or incident if there is a reasonable suspicion to believe that the employee's use of drugs or alcohol may have contributed to the cause of the accident or as otherwise required by law or other policy of the Borough.

Citations and Violations. Operators of Borough Vehicles are expected to follow all laws, regulations and rules proscribed by any applicable laws and regulations. Drivers are responsible for paying any moving violation tickets and MUST notify the Borough of said violations within forty-eight (48) hours of receipt of said ticket (regardless of the employee's decision to contest such ticket in municipal court). Drivers are responsible for paying all parking tickets incurred. The Borough should be notified of the receipt of a parking ticket within 48 hours of receipt of said ticket.

Drivers are responsible for all "Notice of Delinquent Toll Payment Violations" (including but not limited to EZ-Pass). Upon having been notified of said violation, either by direct mail or notice from the Borough, an employee shall, within ten (10) business days of such notice, provide acceptable proof to the Borough that the outstanding toll and any related fees have been paid.

General Policies and Procedures. Employees authorized to use a Borough Vehicle for official business must adhere to the policies and procedures set forth in this Policy. Failure to comply with the provisions below will result in a loss of privileges:

- A. Drivers must ensure that all required documents (driver's license, LD. badge/card, registration, insurance card) are in their possession while operating the vehicle. Vehicle registration and insurance cards should be kept in a locked compartment of the vehicle when not in use.

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- B. Employees are to be cognizant of any issue that occurs with any vehicle they drive and follow departmental procedures for having the vehicles repairs and/or maintained.
- C. Vehicles are to be kept clean at all times, and should be washed and vacuumed regularly (unless prohibited by the New Jersey Department of Environmental Protection or other similar regulatory body).
- D. No smoking is allowed in Borough Vehicles at any time.
- E. In accordance with N.J.S.A. 39:4-97.3 and any other applicable statutes and regulations, the use of hand-held phones or electronic devices (BlackBerry, navigation systems, etc...) while driving Borough Vehicles is prohibited. This prohibition includes the sending or reading of e-mails, text messages and other similar communications.
- F. All occupants must wear seat belts at all times when the vehicle is in use and observe all road safe rules and regulations, such as "Wipers On, Lights On."
- G. Employees are expected to operate vehicles in a safe and courteous manner at all times and are expressly reminded to avoid tailgating or other unsafe practices.
- H. Employees are reminded of the risks inherent from driving while drowsy. In the event that a driver becomes tired while operating a vehicle, they should pull off the road and seek appropriate assistance.

Violation of this policy may result in disciplinary action up to and including the suspension of the employee's privilege to operate a Borough Vehicle and/or termination.

This policy applies to all personnel, regardless of employment status.

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## **Motor Vehicle Records (MVRs) Policy**

The Borough is committed to providing a safe work environment. The Borough is equally concerned about the safety of the public. Consistent with these principles, the Borough will conduct a review of Motor Vehicle Records (MVRs), at a minimum on a yearly basis, for all employees who drive Borough vehicles or their own personal vehicles in conducting work activities or Borough business. In addition, the Borough will conduct an MVR check on a job candidate who is offered employment with the Borough prior to, and as a condition of, the candidate beginning work at the Borough.

Any employee who is required to drive a Borough vehicle in order to carry out his or her work duties must have valid driver's license, with the proper class (es) and endorsements required for his or her position. If an employee's license becomes suspended or revoked, the employee must immediately report it to his or her supervisor. Failure to do so will result in disciplinary action up to and including termination.

The Borough will review Motor Vehicle Records, at least once a year, for current employees who drive Borough vehicles and prospective employees who have been offered positions with the Borough to assess their status as outlined below. The results will be kept confidential.

### **ACCEPTABLE**

The Borough determines an individual is eligible to drive a Borough vehicle while conducting Borough business if:

- 1) his or her license is valid; and
- 2) his or her driving record indicates:
  - a) not more than two moving violation in the past 12 months and not more than three in 24 months; and
  - b) not more than one "at fault" accident in the past 24 months in which there was not bodily injury.

### **UNACCEPTABLE**

The Borough determines an individual is ineligible to drive a Borough vehicle while conducting Borough business if any of the following are discovered during an MVR check:

- 1) the employee does not have a valid driving license (non-renewed, suspended or revoked).
- 2) the employee has been in one or more "at fault" accidents in which there was bodily injury in the past 24months.



If the results from a MVR check of a current employee, who is required to drive to accomplish his or her job functions, determine the employee's status to be unacceptable, the employee may be disciplined.

**POTENTIAL EMPLOYEES – New Hires**

As part of its post-offer conditional background checks, the Borough will run an MVR check for any job applicant offered employment for any position that involves driving a Borough vehicle. The applicant shall not have a driving record which shows any of the following violations:

- Suspended or revoked license.
- Three or more moving violations in the past 24 months.
- Driving under the influence (alcohol, controlled substances, etc.) within the past 24 months.
- An "at fault" accident within the last 24 months.
- Leaving the scene of an accident within the past 24 months.
- Reckless driving within the past 24 months.
- At fault in an accident resulting in fatality or serious injury within the past five years.
- At fault in an accident with other compelling reasons.
- Any other aspect of the candidate's driving record which, in the discretion of the Borough, renders the candidate unfit for employment.

The Borough will rescind an offer of employment to any applicant who is found to have any of the violations of the type outlined above, who does not have a valid driver's license, or whose driving history reveals other circumstances that the Borough deems unacceptable.

This policy applies to all personnel, regardless of employment status.

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## **Computer Use, Electronic Mail, and Internet Policy**

The Borough's e-mail, voicemail, computer systems and Internet service are for official Borough business and use for all other non-business purposes during working time is prohibited.

"Working time" shall be defined as any time in which the employee is engaged in or required to be performing work tasks for the Borough. Working time excludes times when employees are properly not engaged in performing work tasks, including break periods and meal times. This includes, but is in no way limited to, the use of computers or Borough-issued mobile devices, use of social networking, gaming or TV/video.



The Borough operates in an environment where the use of computers, e-mail and the Internet are essential tools for certain employees. Those employees are encouraged to use computers, e-mail and the Internet; however, it is the responsibility of the employee to guarantee that these systems are solely used for business-related purposes during working time, (as defined above) and are used in a proper and lawful manner at all times.

- Employees are advised that all computers owned by the Borough are to be used for business purposes only during working time (as defined above), and that they have no expectation that any information stored on a Borough computer is private. Because e-mail messages are considered as business documents, the Borough expects employees to compose e-mails with the same care as a business letter or internal memo.
- Downloading or misusing software available through the Internet could violate copyright laws or licensing requirements.
- Personal use of any computer during working time (as defined above) is prohibited, unless expressly authorized by the employee's supervisor.
- The Borough reserves the right to block or cancel an employee's access to Internet sites or the Internet as a whole while using business computers or on the Borough's time.
- The e-mail, telephone, and Internet systems, as well as the messages thereon, are the property of the Borough.
- The Borough reserves its right to monitor its computer systems, including but not limited to, e-mail messages, computer files and Internet usage, with or without notice, at any time, at the Borough's discretion. The Borough also reserves the right to access and disclose such communications and recordings to third parties in certain circumstances. Therefore,



employees shall have no expectation of privacy in any transmissions made or received using Borough computers or email accounts.

- Employees must be aware that the mere deletion of a file or message may not fully eliminate that file or message from the system.
- The existence of personal access codes, passwords and/or "message delete functions," whether provided by the Borough or generated by the employee, do not restrict or eliminate the Borough's access to any of its electronic systems as the employees shall be on notice that they should not have any expectation of privacy when using these systems.
- Employees shall not share personal access codes or passwords, provide access to an unauthorized user, or access another's e-mail or Internet account without authorization.
- The Borough's network, including its connection to the Internet, is to be solely used for business-related purposes during working time (as defined above). If permission is granted, an employee's personal use of the Borough's computer, e-mail and connection to the Internet shall not interfere with the employee's duties and shall comply with the Borough's policies and all applicable laws.
- Any messages or transmissions sent outside of the organization via e-mail or the Internet will pass through a number of different computer systems, all with different levels of security. Accordingly, employees must not send privileged and/or confidential communications (i.e. Social Security numbers, medical and/or HIPAA protected information, dependent information or other information protected from unlawful disclosure), via e-mail or the Internet unless the message is properly encrypted, and should consider a more secure method of communication for such data.
- Because postings placed on the Internet may display the Borough's address or other Borough-related information, and thus reflect on the Borough, make certain before posting such information that it exhibits the high standards and policies of the Borough.
- Under no circumstances shall data of a confidential nature (i.e. Social Security numbers, medical and/or HIPAA protected information, dependent information or other information protected from unlawful disclosure) be posted on the Internet.
- If you identify yourself as an employee in any manner on any internet posting or blog, comment on any aspect of the Borough's business or post a link to the Borough, you must include the following disclaimer in an openly visible location: "the views expressed on this post are mine and do not necessarily reflect the views of the Borough or anyone associated/affiliated with the Borough."
- Subscriptions to news groups or mailing lists are permitted only when the subscription is for a work-related purpose and authorized by Borough. Any other subscriptions are prohibited.
- All files downloaded from the Internet, e-mail attachments or the like should be checked for possible viruses. If uncertain whether your virus-checking software is current, you must check with the Borough's Network Administrator before downloading.



- Any "unauthorized use" of e-mail or the Internet is strictly prohibited while at work or while using a Borough computer. "Unauthorized use" includes, but is not limited to: connecting, posting, or downloading obscene, pornographic, violent, sexually suggestive, or discrimination based material; attempting to disable or compromise the security of information contained on the Borough's computer systems; or sending or receiving obscene, violent, harassing, sexual or discrimination based messages. If an employee receives a message that is representative of an "unauthorized use" of the Borough's electronic media from someone outside of the Borough, it is the employee's duty to immediately inform the sender of such materials that he or she must refrain from sending such materials.
- Your Internet postings SHOULD NOT VIOLATE ANY OTHER APPLICABLE BOROUGH POLICY, including but not limited to anti-harassment or discipline policies.
- Borough business which is conducted by an employee on his or her personal computer or device is subject to this policy and may be subject to the provisions of OPRA.
- Any employee who violates this policy shall be subject to disciplinary action, up to and including termination. This policy shall not be construed to restrict employees' rights to share information about their employment terms and conditions communicate with each other; or engage in other concerted activities for their mutual aid and protection.

#### Social Network Postings

For purposes of this policy, a social network is defined as a site that uses internet services to allow individuals to construct a profile within that system, define a list of others users with whom they share some connection, and view and access their list of connections and those made by others within that system. The type of network and its design vary from site to site. Examples of the types of internet based social networking activities include: blogging, networking, photo sharing, video sharing, microblogging, podcasting, as well as posting comments on the sites. The absence of, or lack of explicit reference to a specific site or activity does not limit the extent of the application of this provision.

The use of the internet and social networking sites, including but not limited to Snapchat, Facebook, and Twitter, is a popular activity; however, employees must be mindful of the negative impact of inappropriate or unauthorized postings upon the Borough and its relationship with the community. This provision identifies prohibited activities by employees on the internet where posted information is accessible to members of the general public, including, but not limited to, public postings on social networking sites.

Specifically, the Borough reserves the right to investigate postings, private or public, that violate work-place rules, such as the prohibition of sexual harassment and other discriminatory



conduct, where such postings lawfully are made available to the Borough by other employees or third parties. Employees should use common sense in all communications, particularly on a website or social networking site accessible to anyone. If you would not be comfortable with your supervisor, coworkers, or the management team reading your words, you should not write them.

Be advised that employees can be disciplined for commentary, content, or images that are defamatory, pornographic, proprietary, harassing, libelous, or that can create a hostile work environment. You can also be sued by agency employees or any individual who views your commentary, content, or images as defamatory, pornographic, proprietary, harassing, libelous or creating a hostile work environment. What you say or post on your site or what is said or posted on your site by others could potentially be grounds for disciplinary action, up to and including termination. However, nothing in this social networking policy is designed to interfere with, restrain, or prevent social media communications during non-working hours by employees engaging in protected concerted activities regarding wages, hours, or other terms and conditions of employment pursuant to the New Jersey Employer-Employee Relations Act or to prevent communications which are protected by the First Amendment freedom of speech clause, unless such communications are made as part of the employee's official job duties.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



## **Telephone and Personal Communication Usage Policy**

**Land-line Telephones.** Borough telephones are for official business use only during working time. Charges for all other usage, including personal calls and unauthorized use of such devices, must be reimbursed to the Borough. Working time shall be defined as any time in which the employee is engaged in or required to be performing work tasks for the Borough, and excludes times when employees are properly not engaged in performing work tasks, including break periods and meal times.

**Employer-Issued Mobile Phones/Devices.** Borough-issued mobile devices may be issued to certain employees in the course of their employment with the Borough. Such Borough-issued devices are the sole and exclusive property of the Borough and are only to be utilized by employees in the course and scope of their employment during working time (any time in which the employee is engaged in or required to be performing work tasks for the Borough not to include times when employees are properly not engaged in performing work tasks, including break periods and meal times.) Employees will be charged for costs incurred due to their personal use of such devices. Accordingly, the Borough reserves the right to monitor the use of the Borough-issued cell-phones without notice, at any time, and any such data collected from the mobile device equipment is the sole and exclusive property of the Borough to be used for any purpose.

Similarly, the Borough reserves the right to review the manner and use of these mobile devices and physically inspect the equipment at any time with or without notice. Accordingly, the employee shall have no reasonable expectation of privacy in any transmissions made or received using an Borough-issued mobile device.

Employees are expected, at all times, to respect the integrity of the Borough-issued mobile devices and to maintain the equipment in proper working condition. If an employee discovers or recognizes that the mobile device is not in proper working condition, it is the employee's responsibility to bring this fact to the attention of his or her supervisor immediately.

Upon termination of employment or in the instance of an upgrade to the employee's phone or service, the employee must return the Borough-issued device to the Borough.

**Prohibited Use of Personal Communication Devices.** To alleviate distraction and disruption of regular work routines, personal communication devices are strictly prohibited from use during working time (any time in which the employee is engaged in or required to be performing work tasks for the Borough not to include times when employees are properly not engaged in performing work tasks, including break periods and meal times.) while in work areas, except where the





Borough has provided such device(s) to employees for business use, or in case of an emergency (such as illness, accident, and calls of a similar emergent nature).

Employees are prohibited from using their personal communication device to copy and/or upload any, confidential information (i.e. Social Security numbers, medical and/or HIPAA protected information, dependent information or other information protected from unlawful disclosure). Employees must make reasonable efforts to obtain supervisor approval prior to making emergency calls during working time. Personal communication devices are defined as, but not limited to, cellular or two-way phones, text-messaging devices, iPhones, Android-enabled devices, BlackBerrys and pagers.

Other Personal Electronic Devices. Employees are not permitted to utilize electronic devices such as personal laptops, game systems, MP3 players, portable DVD players or any other type of personal entertainment systems while at work.

Violation of this policy may subject an employee to disciplinary action up to and including termination.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



## **Video Surveillance Policy**

The Borough may install video surveillance camera systems within public buildings and throughout public areas within the Borough, primarily as visual deterrents of criminal behavior and for the protection of employees and municipal assets. In implementing these video camera systems, the Borough will ensure compliance with federal, state and local laws governing such usage.

The Borough's video surveillance camera systems are a significant tool to which the employees of the Borough will avail themselves in order to complete the goals and objectives of the Borough. Employees are only permitted to use the video surveillance camera systems for a legitimate purpose and with proper authorization. The Borough's designee will be responsible for authorization of users. The improper use of these systems can result in discipline up to and including termination.

No employee is permitted to view, continually watch, search, copy or otherwise use of the Borough's video surveillance camera systems or tamper with access, archive, alter, add to, or make copies of any data that has been recorded and stored within any of these systems with (1) a special legitimate purpose and (2) permission for the designee of the Borough.

The Borough shall designate a person to be responsible for the maintenance and administration of the video surveillance camera system. Such designee will be responsible for maintaining a user access log detailing the date and name of individuals who view/access a stored recording.

Any employee who becomes aware of any unauthorized disclosure of a video record in a contravention of this policy and/or a potential privacy breach has the responsibility to ensure that the administrator is immediately informed of such breach.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



### **Bulletin Board Policy**

The bulletin boards located in the Borough administrative building and other facilities are intended for official notices regarding policies, procedures, meetings and special events. Only personnel authorized by the Administrator may post, remove, or alter any notice.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



## **Employee Dating Policy**

The Borough recognizes the right of employees to engage in social relationships with each other, including relationships of a romantic or intimate nature. However, the municipality also recognizes that such relationships can be a problem in the workplace. They may result in favoritism, discrimination, unfair treatment, friction among coworkers, or the perception that they generate such problems.

To try to achieve a balance between employee rights and workplace needs, the Borough has adopted the following policy on the subject of supervisor/subordinate dating. If such a relationship exists or develops, both parties involved shall report the fact to A) their immediate supervisor or B) human resources.

For the purposes of this policy, a supervisor/subordinate status means a situation where one employee, irrespective of job title, makes or has the authority to make decisions or to take action concerning another employee's compensation, promotion, demotion, discipline, daily tasks, or any other terms, conditions or privileges of employment with the municipality.

If the employees involved in the relationship are also in a supervisor/subordinate status, management may take any action which it deems appropriate, up to and including transferring one of the parties so that there is no longer a supervisor/subordinate relationship between them. In addition, management reserves the right to address any workplace issues that may result from that relationship in the manner it deems appropriate.

Any employee who violates this policy will be subject to disciplinary action, up to and including discharge. The municipality regards a violation of this policy as particularly serious because such workplace relationships can cause favoritism, discrimination, unfair treatment for other interference with municipal operations.

Nothing in this policy alters an employee's at will status.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



### **Protection and Safe Treatment of Minors**

All employees are mandated to comply with the Borough's separately-issued Policy on the Protection and Safe Treatment of Minors. The entire Policy is incorporated herein.

This policy applies to all personnel, regardless of employment status.

*Version: October 2021*



## **SECTION THREE**

### **Paid and Unpaid Time Off Policies**



## **Paid Time Off Policy**

### **Section One Applicability**

This Policy does not apply to probationary, part-time or voluntary personnel, except that: (1) probationary and part-time personnel are eligible for sick leave as stated in Section Four, Part D; and (2) probationary and part-time personnel are eligible for jury duty pay as set forth in Section Seven.

Represented employees are covered by their relevant collective bargaining agreement as applicable.

### **Section Two Holidays**

Holidays are determined annually by the governing body at its reorganization meeting in January.

Employees are entitled to the following paid holidays:

- New Year's Day
- Martin Luther King's Birthday
- President's Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Floater Day (to be agreed upon with Government Workers Union members)
- Veterans Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

A holiday falling on a Saturday will be observed on the preceding Friday, and a holiday falling on a Sunday will be observed on the following Monday.



Represented employees should consult with their collective bargaining agreement for any differences in the list of holidays.

### **Section Three** **Vacation Leave**

(1) Employees shall be entitled to the following annual vacation benefits, with pay, the scheduling of which must be approved by the Borough Administrator in order to provide for the efficient operation of the Borough business:

- (a) 6 months through 1 year of service, one week.
- (b) Beginning 1 year through 4 years of service, two weeks.
- (c) Beginning 5 years through 9 years of service, three weeks.
- (d) Beginning 10 years through 14 years of service, four weeks.
- (e) Beginning 15 years through 19 years of service, five weeks.
- (f) Beginning 20 through 25 years of service, six weeks.
- (g) Beginning 25 years of service, seven weeks.

Sections (f) and (g) do not apply to anyone hired after November 1, 2021. For new hires, the maximum vacation time available shall be five (5) weeks.

(2) Employees may not carry over vacation days from year to year.

(3) Upon termination of employment, an employee shall receive payment for all vacation leave not used in the current year.

(4) Whenever an employee dies having to his/her credit any vacation leave, there shall be paid to his/her estate a sum of money equal to the amount of vacation leave owed in the current year.

(5) Employees may sell back to the Borough up to 10 days of unused vacation time.

(6) You must work or be paid to earn vacation. Time absent without pay will reduce vacation days. Time off with pay greater than 20 days will also reduce the number of vacation days.

(7) Supervisors are responsible for so allocating individual vacation days or weeks that the activities of the Borough will be carried on with a minimum of delay or inconvenience. Insofar as is possible, the employee with the longest continuous service shall have preference in the assignment of vacation periods. To guarantee a particular week(s), the vacation request must be made by March 1.





(8) Unless specifically authorized by the proper Borough Council committee, in advance, extra compensation or carry-over will not be allowed in lieu of unused vacation, as it is desired that each employee take advantage of the authorized annual vacation period for health, rest, relaxation and pleasure. This section does not apply to an employee who resigns or dies. Any vacations approved for carry-over must be taken before March 31 of the next year.

#### **Section Four** **Sick Leave**

- A. **Purpose.** The purpose of this section is to establish guidelines for the accrual and use of sick leave for personal illness and on-the-job injuries for Borough employees or other circumstances as specified herein.
- B. **Statement of policy.** Unless otherwise set forth in a collective bargaining agreement or employment contract, sick leave is hereby defined to mean the absence of an employee from duty because of (1) personal illness that prevents his/her doing the usual duties of his position; (2) exposure to contagious disease; or (3) any other circumstance described below.
- C. **Sick Leave Circumstances.** An employee may take sick leave with pay for the following reasons:
  - 1. The employee is unable to perform his or her assigned duties because of personal illness, injury or other health condition. This includes time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee.
  - 2. To enable an employee to obtain care or treatment of a health condition if such services could not reasonably have been scheduled outside working hours.
  - 3. To aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member. "Family member" means a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner, or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.



4. Due to circumstances resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence, if the leave is to allow the employee to obtain for the employee or the family member: medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence; services from a designated domestic violence agency or other victim services organization; psychological or other counseling; relocation; or legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic or sexual violence.
  5. Due to the employee not being able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others.
  6. For time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability
  7. Sick leave claimed by reason of quarantine or exposure to contagious disease may be approved upon certification of the county Department of Health.
  8. Benefits are not payable for an illness or accident that is (a) deliberately self-inflicted; (b) the result of injury to another person; (c) the result of committing a crime; or (d) a consequence of working for another employer or any other work for wage or profit and the individual is entitled to Workmen's Compensation benefits from that employer.
  9. An employee shall not receive sick leave benefits for an illness or injury if the employee is entitled to Workers' Compensation benefits for such illness or injury.
- D. **Sick Leave Conditions.** The following conditions shall apply regarding the use of sick leave.
1. Newly-hired full-time employees, after completion of 120 days of employment until December 31, shall be entitled to sick leave on the basis of one hour for every 30 hours worked.
  2. Full-time employees who have completed 120 days of employment and their probationary period, and who are in their second calendar year of employment and thereafter, shall



receive 12 working days of sick leave per year. If a full-time employee is still on his/her probationary period in his/her second calendar year, then the employee, upon completion of probation, will receive the pro-rated sick leave available to full-time employees for the remainder of that calendar year.

3. Sick time for full-time employees may be sold back to the Borough as follows:
  - a. Upon retirement, any employee may sell back to the Borough, at his/her current rate of pay, any unused days at the rate of one day for one day. Employees must be eligible for state retirement to qualify under this section. The sell back of sick time for employees not covered by a collective bargaining agreement is capped at \$10,000.
  - b. Upon termination of employment for any reason not listed in subsection 3(a), an employee may sell back any unused sick days at the rate of three sick days for one day's current pay rate.
  - c. If an employee is laid off for any reason, the employee may sell back any unused sick days at the rate of one (1) sick day for one (1) day's current pay.
  - d. The sell-back provisions of this section are subject to any applicable statutory maximums or restrictions for sick leave reimbursement. In no event shall the Borough be responsible to pay more than such statutory maximums.
4. A part-time employee, after completion of 120 days of employment, shall be entitled to sick leave on the basis of one hour for every 30 hours worked for a maximum of 40 hours per year. Sick leave for part-time employees shall accumulate from year-to-year to a maximum of 40 hours less the amount utilized in the given year. Sick leave for part-time employees shall not be compensable on separation.
5. An employee who is absent for unforeseeable reasons that entitle him/her to sick leave shall notify his supervisor promptly, but not later than 15 minutes before the employee's usual starting time, except in cases of extreme emergency, where the employee is unable to do so. In the absence of the supervisor, employees shall contact the Borough Administrator. Failure to give such notice may be cause for denial of the use of sick leave for that absence and may constitute cause for disciplinary action.
6. If an employee's need to use earned sick leave is foreseeable, the employee shall provide seven (7) calendar days of notice prior to the date the leave is to begin, of the intention to use the leave and its expected duration, and shall make a reasonable effort to schedule the



use of earned sick leave in a manner that does not unduly disrupt the operations of the Borough. The Borough may prohibit an employee from using foreseeable earned sick leave on certain dates, and require reasonable documentation if sick leave that is not foreseeable is used during those dates.

7. For sick leave of three working days or more, or for any amount of sick leave taken before or after a scheduled vacation or holiday, reasonable documentation shall be required.
  - a. If sick leave is taken under Sections (C)(1), (2), or (3) above, documentation signed by a health care professional who is treating the employee or the family member of the employee indicating the need for the leave and, if possible, number of days of leave, shall be considered reasonable documentation.
  - b. If sick leave is taken under Section (C)(4) above because of domestic or sexual violence, any of the following shall be considered reasonable documentation of the domestic or sexual violence: medical documentation; a law enforcement agency record or report; a court order; documentation that the perpetrator of the domestic or sexual violence has been convicted of a domestic or sexual violence offense; certification from a certified Domestic Violence Specialist or a representative of a designated domestic violence agency or other victim services organization; or other documentation or certification provided by a social worker, counselor, member of the clergy, shelter worker, health care professional, attorney, or other professional who has assisted the employee or family member in dealing with the domestic or sexual violence.
  - c. For leave under Section (C)(5) above, a copy of the order of the public official or the determination by the health authority shall be considered reasonable documentation.
  - d. Failure to produce documentation when reasonably required may be cause for denial of sick leave but shall not constitute a disciplinary infraction.
8. In all cases of reported sickness, the Borough reserves the right to send a visiting nurse or Borough medical examiner to examine and report on the condition of the patient to the Borough Council.
9. No employee, while on sick leave from the Borough, shall be elsewhere (out of town, unless approved by the department head) or otherwise employed or engaged in any outside employment whatsoever.
10. Sick leave with pay will not be allowed if the employee, when under medical care, does not carry out orders of the attending physician or if, in the opinion of the Borough medical

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physician, the sickness is not sufficient severity to warrant the employee's absence from duty.

11. The Borough may require the employee to be examined by a medical doctor and certified as fit for duty before returning to work.
12. In case of pregnancy, a doctor's letter stating the employee's ability to work and duration of employment must be presented to the Borough Administrator commencing on or about the 6<sup>th</sup> month of pregnancy. Also, any employee on leave of absence due to pregnancy shall not be permitted to return to work until the postpartum examination has been completed and a letter from the doctor is presented to the Borough Administrator stating that the employee is able to commence work.
13. Abuse of sick leave will be cause for disciplinary action.
14. Sick leave benefits shall not accrue during any leave of absence without pay.
15. Sick leave shall not accrue during any disciplinary action which exceeds 30 days.
16. Sick leave can accrue while an employee is on a probationary period. Any sick days taken while on probation, and prior to any statutory eligibility for paid sick leave, will be unpaid.

#### **Section Five** **Personal Time Policy**

Non-represented employees who have successfully completed their probationary period shall receive four (4) personal days per year. Except in emergencies, all requests for personal leave shall be made in writing to each employee's immediate supervisor at least one (1) day prior to taking the leave.

Non-represented employees who have completed five (5) years of full-time employment with the Borough shall be entitled to one (1) extra personal day off.

An employee shall be able to take a personal day in conjunction with any holiday or vacation day so long as such personal day is preapproved.

All personal days shall be "use-it or lose-it" and shall not be carried over into a subsequent year. Personal days shall have no cash value on retirement.

#### **Section Six** **Bereavement Leave**

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In the event of death in an employee's immediate family, the employee shall be granted time off without loss of regular pay of five consecutive days.

The term "immediate family" shall include mother, father, spouse or significant other, civil union partner, mother-in-law, father-in-law, children, parental guardians, brother, sister, grandmother, grandfather, grandchildren, sister-in-law and brother-in-law.

Employees shall be granted one day with pay in the event of a death of the following relatives: aunt, uncle, first cousin, niece and nephew.

#### **Section Seven** **Jury Duty**

An employee required to render jury service shall be entitled to be absent from work during that service and will be paid the employee's regular salary.

*Version: September 2021*



### **Leave of Absence Policy**

Employees may be granted a personal leave of absence for up to six months at the sole discretion of the Administrator if the leave does not cause undue operational disruption. The leave must include the use of any accrued vacation and sick leave time, regardless of the length of leave requested. The portion of the leave that runs beyond the exhaustion of vacation and sick leave will be without pay or longevity credit. In exceptional circumstances, the Administrator may extend a leave of absence for an additional six months, if such extension is considered in the best interests of the Borough.

Personal leaves are not granted for the purpose of seeking or accepting employment with another employer, or for extended vacation time. Employees on personal leave of absence for more than two weeks in any month will not receive holiday pay, and will not accrue personal leave, sick leave or vacation time for that month. Health benefits may also be impacted. Refer to the Borough Health Benefits Policy. A personal leave is granted with the understanding that the employee intends to return to work for the Borough. If the employee fails to return within five business days after the expiration of the leave, the employee shall be considered to have resigned.

This policy does not apply to part-time personnel or volunteers.

*Version: September 2021*



### **Family and Medical Leave Act Policy**

In accordance with the federal Family and Medical Leave Act ("FMLA"), the Employer provides eligible employees with up to twelve (12) weeks of unpaid medical and family leave during any twelve (12) month period and up to twenty-six (26) workweeks to care for a Covered Service member. At the conclusion of the leave, subject to some exceptions, an employee generally has a right to return to the same or an equivalent position. The following outlines employees' rights and obligations under the FMLA and the Employer's policies implementing the FMLA.

**Leave Available.** Eligible employees may take up to a total of twelve (12) weeks of unpaid leave during any twelve (12) month period for any one or more of the following reasons:

- The birth, adoption or placement for foster care of the son or daughter of an employee, and to care for such child;
- A serious health condition of a spouse, son, daughter or parent of an employee if the employee is needed to care for such family member; or
- A serious health condition of an employee that makes an employee unable to work. Generally, the incapacity must result in the employee's inability to work for more than three (3) consecutive days (although there are certain exceptions to this rule);
- Any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is a member of the Regular Armed forces, National Guard or Reserves on active duty status during the deployment to a foreign country, and or has been notified of an impending call to active duty status as such in support of a contingency operation.

In addition, eligible employees who are either spouse, son, daughter, parent or next of kin of a Covered Servicemember shall be entitled to a total of twenty-six (26) workweeks of unpaid leave during a single twelve (12) month period to care for the Covered Servicemember. During this single twelve (12) month period, an eligible employee who qualifies for leave to provide care for the Covered Servicemember shall be entitled to no more than a combined total of twenty-six (26) workweeks of leave.

#### **Definitions.**

"Covered Servicemember" means a member of the Armed Forces, including a member of the National Guard or Reserves, or a recent veteran who has been discharged, other than dishonorably, within the five years preceding the family member's initial request for leave, who has a serious





injury or illness who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

“Eligible Employee” means an individual who has been employed by the Employer for at least twelve (12) months, has worked at least 1,250 hours during the preceding twelve (12) month period, and is employed at a worksite with at least fifty (50) employees within seventy-five (75) miles of that worksite.

“Next of kin” means the nearest blood relative of the individual.

“Qualifying Exigency” covers a number of broad categories of reasons and activities, including short-notice deployment to a foreign country, military events and related activities, child care and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities agreed to by the employer and the employee.

“Serious Health Condition” means an illness, injury, impairment or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. It generally includes a period of incapacity due to pregnancy, prenatal care, a chronic health condition, a permanent or long-term health condition, or restorative or preventive treatment.

“Serious Injury or Illness” means an injury or illness incurred by a Covered Service member in the line of duty or on active duty in the Armed Forces, National Guard or Reserves, incurred in the line of duty on active duty or whose pre-existing condition has been aggravated by his/her active duty service, that may render the service member medically unfit to perform the duties of the member’s office, grade, rank or rating.

Eligibility. Any employee who has been employed by the Employer for twelve (12) months or more and worked 1,250 hours or more in the twelve (12) month period preceding the first day of the requested leave may be eligible for an unpaid leave of absence of up to twelve (12) weeks during any twelve (12) month period. The 12-month period will be determined according to governing regulations.

Leave to care for a child after birth, adoption, or foster care must conclude within twelve (12) months of the child's birth or placement. If both spouses work for the Employer, they may only take a total of twelve (12) weeks between them during the twelve (12) month period in order to care for a child after birth, adoption, or foster care or to care for a parent with a serious health condition and a combined twenty-six (26) weeks in a single twelve (12) month period for military caregiver leave or a combination of military caregiver leave and other FMLA qualifying reasons.



Each spouse may be entitled to additional leave for other qualifying reasons under the FMLA, such as the employee's own illness or for the serious illness of the employee's child.

Specific situations, and the availability of leave, will be determined by the Administrator in consultation with applicable law.

Notice. When the leave is foreseeable, at least thirty (30) days' advance notice to the Employer, in writing, is required. If thirty (30) days' notice cannot be provided, as much notice as is practical should be provided. Failure to give reasonable notice may delay the availability of the leave.

Certification. Where leave is taken to care for a family member with a serious health condition or because of the employee's own serious health condition, medical certification is required and periodic recertification may be required. In addition, where the leave is taken because of the employee's own serious health condition, a certification of fitness to return to work will be required.

The Employer, at its expense, may require an examination by a second healthcare provider designated by the Employer. If the second healthcare provider's opinion conflicts with the original medical certification, the Employer, at its expense, may require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion.

For military exigency leave, an employee may be required to provide certification that the covered military member is a member of the regular Armed Forces, National Guard or Reserves who is on active duty or called to active duty in support of a contingency operation, as well as certification from the employee about the nature and details of the specific exigency, the amount of leave needed, and the employee's relationship to the military member. For military caregiver leave, the employee may be required to provide information from the health care provider and employee and/or Covered Service member to support such leave.



Failure to provide requested documentation may result in denial of leave. The Employer may attempt to clarify or authenticate the certification or may require additional certifications to support the need for leave. When leave is taken to care for a family member, the Employer may require the employee to provide documentation or a statement of family relationship (e.g., birth certificate or court document) and proof of the need to care for the family member.



Utilization of Paid Leave. Generally, FMLA leave is unpaid. However, depending upon the circumstances, employees may be entitled to receive short-term disability, workers' compensation benefits, paid family leave benefits, or other state-sponsored wage replacement benefits which pay a portion of normal compensation. These benefits will run concurrently with the employee's unpaid leave. An employee who is eligible for these benefits may also choose to use accumulated paid leave during their approved unpaid leave. Employees may not receive more than 100% of salary at any time.

The Borough reserves the right to require the use of certain forms of accrued time as may be allowed under the FMLA.

Coordination with other Leave Policies. The period of time attributable to the employee's absence due to any workers' compensation, disability, or sick leave, will be counted against available leave under this policy to the extent permitted by law. In the event that additional family, medical or sick leave is available pursuant to state laws, this leave will also run concurrently with FMLA leave to the extent permitted by law.

Intermittent Leave. When medically necessary, leave taken because of a serious health condition of an employee or family member or to care for a Covered Service member may be taken on an intermittent or reduced work schedule basis. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the employee's health care provider. The Employer may require an employee taking intermittent or reduced work schedule leave to transfer temporarily to an alternative position with equivalent pay and benefits that is better suited to the leave schedule.

Employment and Benefits Protection. During the leave, health benefits will continue for up to twelve (12) weeks in each rolling twelve (12) month period under the same conditions as if the employee continued to work. Employees must, however, pay the same amount for any benefits continued as they do prior to the leave. Other benefits, if any, will continue during the leave under the same conditions as if the employee continued to work.

If paid leave is substituted for unpaid FMLA leave, the Employer will deduct the employee's portion of the health plan premium as a regular payroll deduction. If the employee's FMLA leave is unpaid, the employee must pay his/her portion of the premium in accordance with a payment method that is devised and mutually agreed upon between the employee and the Employer.

Employees should consult with their Department Head and human resources official prior to taking an approved leave. If you fail to return to work after your FMLA leave for any reason except for



circumstances beyond your control, you must pay back all unpaid health insurance premiums. With regard to the employee's contribution portion of his/her health benefits pursuant to Chapter 78, P.L. 2011 and any voluntary supplemental benefits that the employee may have, the employee is solely responsible for making payment arrangements with the Employer or for any voluntary benefits, to the respective insurance company. Your healthcare coverage may cease if your premium payment is more than thirty (30) days late. With regard to any pension contribution that you may have, you must contact the human resources official to make payment arrangements concerning contributions or credits paid toward your pension benefits. If you fail to return to work after your FMLA leave for any reason except for circumstances beyond your control, you must pay back all unpaid health insurance premiums.

Before returning to work following a medical leave (except for intermittent or reduced schedule leave) due to the employee's own serious health condition, the employee will be required to present a fitness for duty certification from his/her health care provider that he/she is medically able to resume work. In addition, the employee may be required to undergo a functional capacity evaluation. If so, the Borough will arrange and pay for the examination. The employee will also continue to receive pay if there is a delay from when the employee is released by his/her doctor and the scheduling of the exam.

If the date on which the employee is scheduled to return to work from FMLA leave changes, the employee is required to give notice of the change, if foreseeable, to the Employer within two (2) business days of the change.

Subject to some exceptions, most employees will be returned to the position they left or to a position equivalent in pay, benefits and other terms of employment. Individuals identified as "key employees" (the highest paid 10% of salaried employees at the work site or within a seventy-five (75) mile radius of that work site) at the beginning of their leave may not be returned to their former or equivalent position if restoration will cause substantial economic injury to the Employer. Employees will be informed of their key employee status at the beginning of the leave period.

A failure to return from FMLA leave for reasons other than the employee's own serious health condition may result in termination of employment. In the event that an employee cannot return to work at the end of FMLA leave due to a continuation of his/her own serious health condition, they must contact the Employer before the expiration of the leave to discuss their options under state and federal law. State leave laws may provide additional leave similar to that provided under the FMLA. The Employer will comply with these state law provisions to the extent they provide for more generous benefits. State leave law benefits will run concurrently with FMLA benefits to the extent permitted by law.



Family Temporary Disability. During a period of unpaid leave to care for a family member with a serious health condition or a newborn or adopted child or child placed into foster care with the employee, the employee may be eligible for up to twelve (12) weeks of Family Leave Insurance ("FLI") payments through the State in a twelve (12) month period. FLI is a monetary benefit paid by the State and not a separate leave entitlement, and will thus run concurrently with FMLA and/or NJFLA leaves.

**Employees seeking leave under this Policy should contact the Administrator directly for purposes of further instructions, including any necessary forms for completion.**

This policy applies only to those persons meeting minimum FMLA eligibility requirements.

*Version: September 2021*



## **New Jersey Family Leave Act Policy**

The Employer provides eligible employees with up to twelve (12) weeks of unpaid, job-protected leave for specified family reasons under the New Jersey Family Leave Act (NJFLA).

**Eligible Employees.** To be eligible for NJFLA leave, an employee must have worked at least twelve (12) months for the Employer and have worked at least 1,000 hours for the Employer over the previous twelve (12) months.

**Qualifying Reasons for Leave.** An employee may take NJFLA leave to care for:

- A newly born or adopted child or a child placed into foster care with the employee, but the leave must start within twelve (12) months of the birth of the child or the placement of the child.
- A family member (sibling, grandparent, grandchild, child, spouse, domestic partner, civil union partner, parent-in-law, or parent of a covered individual, or any other individual related by blood to the employee, and any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship) with a serious health condition.

Leave taken for reasons above must be consecutive and must begin by the end of the twelve (12) month period after the birth or placement for adoption or foster care.

**Leave Benefits.** An employee may take up to a maximum of twelve (12) weeks of NJFLA leave in a twenty-four (24) month period, which is measured as a rolling twenty-four (24) month period that commences with the first day of NJFLA leave taken.

You may take NJFLA leave to care for a seriously ill family member:

- As a single block of time.
- By reducing your normal weekly, [but not daily,] work schedule for no more than twenty-four (24) consecutive weeks in a twenty-four (24) month period.
- Intermittently in increments lasting at least one week, but less than twelve (12) weeks in a consecutive twelve (12) month period, when medically necessary.

Employees permitted to take intermittent or reduced-schedule leave must try to schedule their leave so that it will not unduly disrupt the Employer's operations. The total time within which an intermittent leave is taken may not exceed a twelve (12) month period, if such leave is taken in connection with a single serious health condition.



Intermittent leaves taken in connection with more than one serious health condition episode must be taken within a consecutive twenty-four (24) month period, or until such time as the employee's twelve (12) week family leave entitlement is exhausted, whichever is shorter. An employee taking a family leave on a reduced leave schedule shall not be entitled to such leave for more than a consecutive twenty-four (24) week period. An eligible employee shall be entitled to only one leave on a reduced leave schedule during any consecutive twenty-four (24) month period. Any remaining family leave to which the employee is entitled subsequent to the expiration of a leave taken on a reduced leave schedule may be taken on a consecutive or intermittent basis.

Depending on the purpose of the employee's leave, the employee may choose to use accrued paid leave, concurrently with some or all of his/her NJFLA leave. The employee will not be eligible to accrue seniority or benefits, including vacation and holidays, during any period of NJFLA leave. The Employer will notify employees of their options to continue to participate in our group health plans during NJFLA leave.

Required Notice and Certifications. When requesting NJFLA leave, an employee must provide the Employer thirty (30) days' advance written notice. If advance written notice is not possible because of an emergency, the employee must provide the Employer with reasonable oral notice and then follow up with written notice.

The employee also must give the Employer a medical certification supporting the need for leave. The Employer reserves the right to require second or third medical opinions and periodic recertifications. The employee must also provide periodic reports during the leave regarding the employee's status and intent to return to work as deemed appropriate by the Employer. If an employee fails to provide the required documentation, the Employer may delay the start of the employee's NJFLA leave, withdraw any designation of NJFLA leave or deny the leave, in which case the absences will be treated in accordance with the Employer's standard leave of absence and attendance policies and the employee may be subject to discipline up to and including termination of employment.

If an employee provides false or misleading information or omits material information about an NJFLA leave, the employee will be subject to discipline up to and including immediate termination of employment.

Benefits Protection. During a family leave of absence, the employee's health benefits will be maintained under the same conditions as if the employee continued to work. If the employee decides to return to work when his/her family leave of absence ends, the employee may be reinstated to the same or equivalent job with the same pay, benefits, and terms and conditions of



employment. If the employee decides not to return to work when the family leave of absence ends, the employee may be required to reimburse the Employer for the health insurance premiums paid on his/her behalf during the leave of absence (except if the failure to return to work was caused by the continuation, recurrence, or onset of serious health condition which would entitle the employee to a leave of absence under the law or other circumstances beyond the employee's control).

With regard to any pension contributions, the employee must contact the human resources official to make payment arrangements concerning contributions or credits paid toward his/her pension benefits. Employees should consult with the Employer prior to taking an approved leave.

Returning to Work after NJFLA Leave. On returning to work after NJFLA leave, eligible employees will typically be restored to their original job or to an equivalent job with equivalent pay, benefits and other employment terms and conditions. Any employee who fails to return to work as scheduled after NJFLA leave or exceeds the twelve (12) week NJFLA entitlement will be subject to the Employer's standard leave of absence and attendance policies. This may result in termination if the employee's continued absence is unauthorized (for example, if the employee has no other Employer-provided leave available to him/her).

Retaliation Prohibited. The Employer and the NJFLA prohibit the interference with, restraint of or denial of any right provided under the NJFLA and/or discharge or discrimination against any person for opposing any practice made unlawful by the NJFLA or for involvement in any proceeding under or relating to the NJFLA. The Employer encourages employees to bring any concerns or complaints about retaliation or compliance with the NJFLA to the attention of the human resources official.

New Jersey Family Leave Insurance. During a period of unpaid leave to care for a family member with a serious health condition or a newborn or adopted child or child placed into foster care with the employee, the employee may be eligible for up to six (6) weeks (twelve (12) weeks, effective July 2020) of Family Leave Insurance ("FLI") payments through the State in a twelve (12) month period. FLI is a monetary benefit paid by the State and not a separate leave entitlement, and will thus run concurrently with FMLA and/or NJFLA leaves.

An employee's job is not protected while receiving FLI benefits – unless the employee is eligible for leave under the FMLA, NJFLA, or is otherwise designated for an approved family leave of absence.

Employees must provide the Employer with advance notice of need for leave, as follows:

**BOROUGH OF CLAYTON – PERSONNEL POLICIES AND PROCEDURES  
THIS IS NOT A CONTRACT**





- At least thirty (30) days before leave to bond with a newborn or newly adopted child, unless the time of the leave is unforeseeable or the time of the leave changes for unforeseeable reasons.
- In a reasonable and practicable manner for leave to care for a seriously ill family member on a continuous, non-intermittent basis, unless an emergency or other unforeseen circumstance precludes advance notice.
- At least fifteen (15) days before leave to care for a seriously ill family member or leave to bond with a newborn or newly adopted child on an intermittent basis unless an emergency or other unforeseen circumstance precludes advance notice.

**Employees seeking leave under this Policy should contact the Administrator directly for purposes of further instructions, including any necessary forms for completion.**

This policy applies only to those persons meeting minimum New Jersey FLA eligibility requirements.

*Version: September 2021*



## **Domestic Violence Abuse Leave Policy**

### **PURPOSE**

The purpose of this policy is to incorporate the State of New Jersey Domestic Violence Policy for Public Employers. The purpose of this policy is also to encourage employees who are victims of domestic violence, and those impacted by domestic violence, to seek assistance from their human resources officers and provide a standard for human resources officers to follow when responding to employees.

### **DEFINITIONS**

The following terms are defined solely for the purpose of this policy:

**Domestic Violence** - Acts or threatened acts, that are used by a perpetrator to gain power and control over a current or former spouse, family member, household member, intimate partner, someone the perpetrator dated, or person with whom the perpetrator shares a child in common or anticipates having a child in common if one of the parties is pregnant. Domestic violence includes, but is not limited to the following: physical violence; injury; intimidation; sexual violence or abuse; emotional and/or psychological intimidation; verbal abuse; threats; harassment; cyber harassment; stalking; economic abuse or control; damaging property to intimidate or attempt to control the behavior of a person in a relationship with the perpetrator; strangulation; or abuse of animals or pets.

**Abuser/Perpetrator** - An individual who commits or threatens to commit an act of domestic violence, including unwarranted violence against individuals and animals. Other abusive behaviors and forms of violence can include the following: bullying, humiliating, isolating, intimidating, harassing, stalking, or threatening the victim, disturbing someone's peace, or destroying someone's property.

**Human Resources Officer (HRO)** –An employee of a public employer with a human resources job title, or its equivalent, who is responsible for orienting, training, counseling, and appraising staff. Persons designated by the employer as the primary or secondary contact to assist employees in reporting domestic violence incidents.

**Intimate Partner** - Partners of any sexual orientation or preference who have been legally married or formerly married to one another, have a child or children in common, or anticipate having a child in common if one party is pregnant. Intimate partner also includes those who live together or have lived together, as well as persons who are dating or have dated in the past.



Temporary Restraining Order (TRO) - A civil court order issued by a judge to protect the life, health or well-being of a victim. TROs can prohibit domestic violence offenders from having contact with victims, either in person or through any means of communication, including third parties. TROs also can prohibit offenders from a victim's home and workplace. A violation of a TRO may be a criminal offense. A TRO will last approximately 10 business days, or until a court holds a hearing to determine if a Final Restraining Order (FRO) is needed. In New Jersey, there is no expiration of a FRO.

Victim - A person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present household member or was at any time a household member. A victim of domestic violence is also any person, regardless of age, who has been subjected to domestic violence by one of the following actors: a person with whom the victim has a child in common; a person with whom the victim anticipates having a child in common, if one of the parties is pregnant; and a person with whom the victim has had a dating relationship.

Workplace-Related Incidents - Incidents of domestic violence, sexual violence, dating violence, and stalking, including acts, attempted acts, or threatened acts by or against employees, the families of employees, and/or their property, that imperil the safety, well-being, or productivity of any person associated with a public employee in the State of New Jersey, regardless of whether the act occurred in or outside the organization's physical workplace. An employee is considered to be in the workplace while in or using the resources of the employer. This includes, but is not limited to, facilities, work sites, equipment, vehicles, or while on work-related travel.

#### **RESPONSIBILITY OF EMPLOYERS TO DESIGNATE A HUMAN RESOURCES OFFICER**

The Employer hereby designates the following employees as the Primary HRO and Secondary HRO, to assist employees who are victims of domestic violence.

**Primary HRO:       Borough Administrator**

**Secondary HRO:    Chief Financial Officer**

The designated Primary and Secondary HRO shall receive training on responding to and assisting employees who are domestic violence victims in accordance with this policy.



Managers and supervisors are often aware of circumstances involving an employee who is experiencing domestic violence. Managers and supervisors are required to refer any employee who is experiencing domestic violence or who report witnessing domestic violence to the designated HRO. Managers and supervisors must maintain confidentiality, to the extent possible, and be sensitive, compassionate, and respectful to the needs of persons who are victims of domestic violence.

The name and contact information of the designated HRO will be provided to all employees.

This policy does not supersede applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General Directives and guidelines that impose a duty to report. For example, if there is any indication a child may also be a victim, reporting is mandatory to the Department of Children and Families, Child Protection and Permanency, under N.J.S.A. 9:6-8.13.

### **DOMESTIC VIOLENCE REPORTING PROCEDURES**

Employees who are victims of domestic violence are encouraged to seek immediate assistance from their HRO. Employees who have information about or witness an act of domestic violence against an employee, are encouraged to report that information to the designated HRO, unless the employee is required to report the domestic violence pursuant to applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General directives and guidelines that impose a duty to report, in which case the employee must so report to the appropriate authority in addition to reporting to the designated HRO. Nothing in this policy shall preclude an employee from contacting 911 in emergency situations. Indeed, HROs shall remind employees to contact 911 if they feel they are in immediate danger.

Each designated HRO shall:

- A. Immediately respond to an employee upon request and provide a safe and confidential location to allow the employee to discuss the circumstances surrounding the domestic violence incident and the request for assistance.
- B. Determine whether there is an imminent and emergent need to contact 911 and/or local law enforcement.
- C. Provide the employee with resource information and a confidential telephone line to make necessary calls for services for emergent intervention and supportive services, when appropriate. The HRO or the employee can contact the appropriate Employee Assistance Program to assist with securing resources and confidential services.
- D. Refer the employee to the provisions and protections of The New Jersey Security and



Financial Empowerment Act, N.J.S.A. 34:11C-1 et seq. (NJ SAFE Act), referenced in this policy.

- E. If there is a report of sexual assault or abuse, the victim should be offered the services of the Sexual Assault Response Team.
- F. Maintain the confidentiality of the employee and all parties involved, to the extent practical and appropriate under the circumstances, pursuant to this policy.
- G. Upon the employee's consent, the employee may provide the HRO with copies of any TROs, FROs, and/or civil restraint agreements that pertain to restraints in the work place and ensure that security personnel are aware of the names of individuals who are prohibited from appearing at the work location while the employee who sought the restraining order is present. All copies of TROs and FROs shall be maintained in a separate confidential personnel file.

## **CONFIDENTIALITY POLICY**

In responding to reports of domestic violence, the HRO shall seek to maintain confidentiality to protect an employee making a report of, witnessing, or experiencing domestic violence, to the extent practical and appropriate under the circumstances and allowed by law. Thus, this policy does not supersede applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General Directives and guidelines that impose a duty to report. This confidentiality policy shall not prevent disclosure where to do so would result in physical harm to any person or jeopardize safety within the workplace. When information must be disclosed to protect the safety of individuals in the workplace, the HRO shall limit the breadth and content of such disclosure to information reasonably necessary to protect the safety of the disclosing employee and others and comply with the law. The HRO shall provide advance notice to the employee who disclosed information, to the extent possible, if the disclosure must be shared with other parties in order to maintain safety in the workplace or elsewhere. The HRO shall also provide the employee with the name and title of the person to whom they intend to provide the employee's statement and shall explain the necessity and purpose regarding the disclosure. For example, if the substance of the disclosure presents a threat to employees, then law enforcement will be alerted immediately.

This policy does not supersede applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General Directives and guidelines where mandatory reporting is required by the appointing authority or a specific class of employees.



## **CONFIDENTIALITY OF EMPLOYEE RECORDS**

To ensure confidentiality and accuracy of information, this policy requires the HRO to keep all documents and reports of domestic violence in confidential personnel file separate from the employee's other personnel records. These records shall be considered personnel records and shall not be government records available for public access under the Open Public Records Act. See N.J.S.A. 47:1A-10.

## **THE NEW JERSEY SECURITY AND FINANCIAL EMPOWERMENT ACT**

The New Jersey Security and Financial Empowerment Act, N.J.S.A. 34:11C-1, et seq. (NJ SAFE Act), is a law that provides employment protection for victims of domestic or sexual violence.

The NJ SAFE Act allows a maximum of 20 days of unpaid leave in one 12-month period, to be used within 12 months following any act of domestic or sexual violence. To be eligible, the employee must have worked at least 1,000 hours during the 12-month period immediately before the act of domestic or sexual violence. Further, the employee must have worked for an employer in the State that employs 25 or more employees for each working day during 20 or more calendar weeks in the current or immediately preceding calendar year. This leave can be taken intermittently in days, but not hours.

Leave under the NJ SAFE Act may be taken by an employee who is a victim of domestic violence, as that term is defined in N.J.S.A. 2C:25-19 and N.J.S.A. 30:4-27.6, respectively. Leave may also be taken by an employee whose child, parent, spouse, domestic partner, civil union partner, or other relationships as defined in applicable statutes is a victim of domestic or sexual violence.

Leave under the NJ SAFE Act may be taken for the purpose of engaging in any of the following activities, for themselves, or a child, parent, spouse, domestic partner, or civil union partner, as they relate to an incident of domestic or sexual violence:

- 1) Seeking medical attention;
- 2) Obtaining services from a victim services organization;
- 3) Obtaining psychological or other counseling;
- 4) Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase safety;
- 5) Seeking legal assistance or remedies to ensure health and safety of the victim; or
- 6) Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence.



## **PUBLIC EMPLOYER DOMESTIC VIOLENCE ACTION PLAN**

The Employer has developed the following action plan to identify, respond to, and correct employee performance issues that are caused by domestic violence, pursuant to N.J.S.A. 11A:2-6a, and in accordance with the following guidelines:

- A. Designate an HRO with responsibilities pursuant to this policy.
- B. Recognize that an employee may need an accommodation as the employee may experience temporary difficulty fulfilling job responsibilities.
- C. Provide reasonable accommodations to ensure the employee's safety.
- D. Advise the employee of information concerning the NJ SAFE Act; Family and Medical Leave Act (FMLA); or Family Leave Act (FLA); Temporary Disability Insurance (TOI); or Americans with Disabilities Act (ADA); or other reasonable flexible leave options when an employee, or his or her child, parent, spouse, domestic partner, civil union partner, or other relationships as defined in applicable statutes is a victim of domestic violence.
- E. Commit to adherence to the provisions of the NJ SAFE Act, including that the employer will not retaliate against, terminate, or discipline any employee for reporting information about incidents of domestic violence, as defined in this policy, if the victim provides notice to their Human Resources Office of the status or if the Human Resources Office has reason to believe an employee is a victim of domestic violence.
- F. Advise any employee, who believes he or she has been subjected to adverse action as a result of making a report pursuant to this policy, of the civil right of action under the NJ SAFE ACT. And advise any employee to contact their designated Labor Relations Officer, Conscientious Employees Protection Act (CEPA) Officer and/or Equal Employment Opportunity Officer in the event they believe the adverse action is a violation of their collective bargaining agreement, the Conscientious Employees Protection Act or the New Jersey Law Against Discrimination and corresponding policies.
- G. Employers, their designated HRO, and employees should familiarize themselves with this policy. This policy shall be provided to all employees upon execution and to all new employees upon hiring. Information and resources about domestic violence are encouraged to be placed in visible areas, such as restrooms, cafeterias, breakrooms, and where other resource information is located.

## **RESOURCES**

The Administrator, on request, will be available to direct the employee to outside resources and program information which may be readily available to assist victims of domestic violence.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



## **Military Leave Policy**

The Employer provides military leave in accordance with applicable State and Federal law. In all cases involving military leave, the employee must, as soon as possible, provide his or her Department Head with a certificate verifying the call to military duty prior to beginning the military leave.

Organized Militia. Any permanent or full-time temporary officer or employee, who is a member of the organized reserve of the Army of the United States, United States Naval Reserve, United States Air Force Reserve or United States Marine Corps Reserve, or other affiliated organization, including the National Guard of other states, shall be entitled to a leave of absence without loss of pay or time on all work days on which he or she is engaged in any period of Federal active duty, up to thirty (30) work days in any calendar year. A military leave of absence is in addition to the employees' regular vacation or other accrued leave.

Any leave of absence for such duty in excess of thirty (30) work days will be without pay but without loss of time. A full-time temporary officer or employee who has served under such temporary appointment for less than one year will receive military leave without pay but without loss of time.

New Jersey Organized Militia. New Jersey's organized militia consists of the National Guard (Army and Air), the Naval Militia, and the State Guard. Any permanent or full-time officer or employee who is a member of the New Jersey organized militia shall be entitled, in addition to pay received, if any, as a member of the organized militia, to a leave of absence without loss of pay or time on all days during which he or she shall be engaged in State or Federal active duty, up to ninety (90) work days in any calendar year.

Any leave of absence for such duty in excess of ninety (90) work days will be without pay but without loss of time. A full-time temporary officer or employee who has served under such temporary appointment for less than one year will receive military leave without pay but without loss of time.

Reinstatement. To be reinstated by the Employer without loss of privileges or seniority, the employee must report for duty with the Employer within the time required by law following release from active duty under honorable circumstances.

In accordance with legal requirement, employees who take military leave are required to:

- Provide the Employer with proper notice of the leave;





- Apply for reinstatement within the time required by law;
- Have a creditable military record including completion of all required training and fulltime service and be discharged under honorable conditions.

On return from a military leave of absence, the employee will be reinstated as required by law. See The Uniformed Services Employment and Reemployment Act ("USERRA"). Failure to comply with the requirement enumerated above or as required by law will jeopardize an employee's reemployment rights.

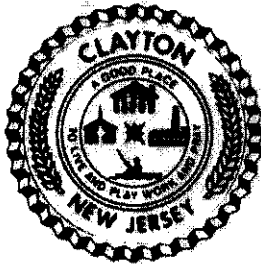
This policy applies to any employee meeting the minimum requirements of USERRA or New Jersey state law governing military leave.

*Version: September 2021*



## **SECTION FOUR**

### **Compensation & Employee Benefits Policies**



### **Payroll Policy**

Salary ranges are established by ordinance, and the salary must fall within the minimum and maximum ranges for the employee's title. Employees are paid every two weeks.

The Borough of Clayton will not accept responsibility for any employee's personal finances. The Borough will acknowledge judgments against an employee's pay, but will not act as a mediator between the employee and creditors.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



## **Overtime Compensation Policy**

The Borough complies with all applicable federal and state laws with regard to payment of overtime work, including the New Jersey Wage and Hour Law and the federal Fair Labor Standards Act ("FLSA").

Under the FLSA, certain employees in managerial, supervisory, administrative or professional positions are exempt from overtime. Exempt employees are not eligible to receive overtime compensation and are required to work the normal workweek and any additional hours needed to fulfill their responsibilities. Time off consideration for large amounts of additional hours may be provided with the Borough Administrator's prior approval and at the sole discretion of the Borough Administrator.

All other employees are classified as non-exempt and are subject to the provisions of the Act. Depending on work needs, non-exempt employees may be required to work overtime. Non-exempt employees are not permitted to work overtime unless the overtime is budgeted and approved by the Department Head and the Borough Administrator. Non-exempt employees working overtime without prior approval will be subject to disciplinary action.

Non-exempt employees will receive overtime compensation for hours worked in excess of forty in a weekly period at the rate of one and one-half times the regular rate of pay. Employees may choose overtime compensation in the form of overtime pay or compensatory time off to the extent allowable by law. A request for compensatory time must be made to the supervisor within a reasonable period in advance. Such a request may be denied in management's sole discretion where such time would create an undue hardship on the Borough or for any other reason allowable by law.

## **FLSA SAFE HARBOR NOTICE AND PROCEDURE**

It is our policy and practice to accurately compensate employees and to do so in compliance with all applicable laws. To ensure that you are paid properly for all time worked and that no improper deductions are made, you must record correctly all work time and review your paychecks promptly to identify and to report all errors. You also must not engage in off-the-clock or unrecorded work.

### **1. Review Your Pay Stub**

We make every effort to ensure our employees are paid correctly. Occasionally, however, inadvertent mistakes can happen. When mistakes do happen and are called to our attention, we promptly will make any correction that is necessary. Please review your pay stub to make sure it is correct. If you believe a mistake has occurred or if you have any questions,



please use the reporting procedure outlined below.

## **2. Non-Exempt Employees**

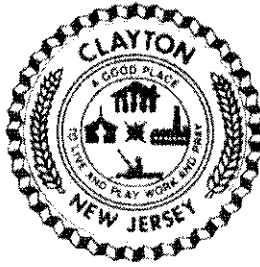
If you are eligible for overtime pay or extra pay (including pay due under our handbook or a collective bargaining agreement), you must maintain a record of the total hours you work each day. These hours must be accurately recorded on a time card that will be provided to you. Each employee must sign his or her time card to verify that the reported hours worked are complete and accurate (and that there is no unrecorded or "off-the-clock" work). Your time card must accurately reflect all regular and overtime hours worked, any absences, early or late arrivals, and early or late departures. At the end of each week, you should submit your completed time card for verification and approval. When you receive each pay check, please verify immediately that you were paid correctly for all regular and overtime hours worked each workweek.

## **3. Exempt Employees**

If you are classified as an exempt salaried employee, you will receive a salary which is intended to compensate you for all hours that you may work for the Borough. This salary will be established at the time of hire or when you become classified as an exempt employee. While it may be subject to review and modification from time to time, such as during salary review times, the salary will be a predetermined amount that will not be subject to deductions for variations in the quantity or quality of the work you perform.

You will receive your full salary for any workweek in which work is performed. However, under federal law, your salary is subject to certain deductions. For example, absent contrary applicable law, your salary can be reduced for the following reasons in a workweek in which work was performed:

- Full day absences for personal reasons, including vacation.
- Full day absences for sickness or disability, since we have a sick day pay plan and short-term disability insurance plan.
- Full day disciplinary suspensions for infractions of safety rules of major significance (including those that could cause serious harm to others).
- Family and Medical Leave absences (either full or partial day absences).
- Unpaid disciplinary suspensions of one or more full days for significant infractions of major workplace conduct rules set forth in written policies.



- The first or last week of employment in the event you work less than a full week.

Your salary may also be reduced for certain types of deductions, such as: your portion of health, dental or life insurance premiums; state, federal or local taxes; social security; or voluntary contributions to a 457 or pension plan.

In any workweek in which you performed any work, your salary will not be reduced for any of the following reasons:

- Your absence because the facility is closed on a scheduled work day.
- Absences for jury duty, attendance as a witness, or military leave in any week in which you have performed any work.
- Any other deductions prohibited by applicable law.

*Please note:* You will be required to use accrued vacation, personal, sick or other forms of paid time off for full or partial day absences for personal reasons, sickness or disability. If you do not have accrued paid time off available, you will not be paid for full or partial day absences. Similarly, you will not be paid for full or partial day absences if you have accrued paid time off but did not seek permission to use it, or if you sought to use it and you were denied. Finally, you will not be paid for full or partial day absences if you choose to leave work without pay.

#### **4. To Report Violations of This Safe Harbor Policy, Communicate Concerns, or Obtain More Information**

It is a violation of our policy for any employee to falsify a time card, or to alter another employee's time card. It is also a serious violation of our policy for any employee or manager to instruct another employee to incorrectly or falsely report hours worked or alter another employee's time card to under- or over-report hours worked. If any manager or employee instructs you to (1) incorrectly or falsely under- or over-report your hours worked, (2) alter another employee's time records to inaccurately or falsely report that employee's hours worked, or (3) conceal any falsification of time records or to violate this policy, do not do so. Instead, report it immediately to the Administrator in person or at 856-881-2882.

You should not work any hours outside of your scheduled work day unless your supervisor has authorized the unscheduled work in advance. Do not start work early, finish work late,



work during a meal break or perform any other extra or overtime work unless you are authorized to do so and that time is recorded on your time card. Employees are prohibited from performing any “off-the-clock” work. “Off-the-clock” work means work you may perform but fail to report on your time card. Any employee who fails to report or inaccurately reports any hours worked will be subject to disciplinary action, up to and including discharge.

If you have questions about deductions from your pay, please contact the Administrator immediately. If you believe your wages have been subject to any improper deductions or your pay does not accurately reflect all hours worked, you should report your concerns to a supervisor immediately. If a supervisor is unavailable or if you believe it would be inappropriate to contact that person (or if you have not received a prompt and fully acceptable reply within three business days), you should immediately contact the Administrator or Chief Financial Officer in-person or at 856-881-2882. If you have not received a satisfactory response within five business days after reporting your concern to the Administrator or Chief Financial Officer, and you are unsure who to contact to correct the problem, please immediately contact the Clerk at 856-881-2882, the Borough Solicitor, or the United States Department of Labor at 215-861-5100.

Every report will be fully investigated and corrective action will be taken, up to and including discharge of any employee(s) who violates this policy.

In addition, we will not allow any form of retaliation against individuals who report alleged violations of this policy or who cooperate in our investigation of such reports. Retaliation is unacceptable. Any form of retaliation in violation of this policy will result in disciplinary action, up to and including discharge.

This policy applies to all personnel, regardless of employment status.

*Version: October 2021*



### **Health Insurance Policy**

- A. All full-time employees will be entitled to medical coverage as currently provided through the New Jersey State Health Benefits Program.
- B. All full-time employees will be entitled to vision and eyeglass care coverage as currently provided by the Borough of Clayton.
- C. All full-time employees will be entitled to prescription coverage as currently provided by the Borough.
- D. All full-time employees will be entitled to dental benefits as currently provided by the Borough.

This policy does not apply to part-time personnel or volunteers.

*Version: September 2021*





## **Workers Compensation Policy**

Employees who suffer job related injuries and illnesses may be entitled to medical expenses, lost income and other compensation under the New Jersey Workers Compensation Act. The Borough covers workers compensation benefits (through its membership in a joint insurance fund). Any occupational injury or illness must be immediately reported to the supervisor or Department Head. All required medical treatment must be performed by a Workers Compensation Physician appointed by the joint insurance fund and payment for unauthorized medical treatment may not be covered pursuant to the Act.

Unless explicitly provided for in a bargaining agreement, the Borough will only pay, either directly or through its Workers' Compensation insurer, those benefits that are specifically provided for under the Workers' Compensation Act and will not supplement these benefits with additional benefits pursuant to NJSA 11A:6-8.

Eligibility for Workers' Compensation benefits is determined in accordance with applicable law.

*Version: September 2021*



## **Timesheets**

Non-exempt employees are required to accurately record their work time on the designated time record, sign it and return into his/her supervisor. Non-exempt employees and exempt employees are required to report their sick time, vacation time and holiday time on the designated time record. Non-exempt and exempt employees should turn the time record into his/her supervisor.

The supervisor shall review the record for accuracy and approve it and submit it to the designated payroll representative.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



### **Payment for Accumulated Absence**

To the extent that a local ordinance, collective bargaining agreement, or an employment agreement provides for the payment of compensation for pay while absent from work, the Borough shall only make such payment if the Chief Financial Officer or Administrator certifies that such amount is due and that proper documentation establishing that the amount of the accumulated absence has been provided and funds are available to pay. Proper Documentation includes:

- A copy of the agreement, ordinance and/or resolution;
- Documentation of the amount of accumulated absence time; and
- The total value of the compensation due.

Nothing in this section grants employees compensation for absences from work.

This policy does not apply to part-time personnel or volunteers.

*Version: September 2021*



### **Conference and Seminar Policy**

Requests to attend a conference or seminar must be approved by the Department Head and the Borough Administrator. Requests shall be made sufficiently in advance to take advantage of discounts for early registration, and must be submitted to the Department Head at least thirty days before the event. Requests must be in writing including the conference schedule, registration information and estimated costs. The Department Head is responsible to detail all training requests during the budget formulation process. Approval of any conference or seminar request is conditioned upon the availability of funds.

This policy does not apply to part-time personnel or volunteers.

*Version: September 2021*



### **Flexible Spending Account**

The Borough does provide for employees to enroll for flexible spending accounts.

This policy does not apply to part-time personnel or volunteers.

*Version: September 2021*



## **SECTION FIVE**

### **Additional Policies and Procedures**



## **Employment Hiring Procedure**

### **Recruitment**

The Borough Administrator in conjunction with the Borough Clerk will coordinate the employment recruitment process for all vacancies to ensure compliance with contractual, legal, and Equal Employment Opportunity Commission ("EEOC") requirements. When a vacancy occurs, it is the responsibility of the Department Head to notify the Borough Administrator who will distribute notification of the vacancy to all departments. The Borough Administrator will undertake to recruit qualified applicants in accordance with applicable Federal and State law. Where positions are advertised, the media or other periodical utilized must have as wide circulation as possible to encourage applications from candidates from diverse backgrounds and must prominently state that the Borough of Clayton is an equal opportunity employer.

### **Applications**

All candidates must fully complete an application form. A resume will not be considered as a substitute for this form. The application is a confidential document and will not be available to anyone who is not directly involved in the hiring process, except as required by law. The Borough Council must formally approve the creation of any new position and authorize the filling of it, prior to the initiation of action to do so. In addition, there must be provided in the proper current budget account specific and adequate funds to compensate the appointee.

### **Interviews**

The Borough Administrator or Department Head will coordinate the interview process including the scheduling of applicants, development of interview questions and standards to measure candidate responses. All questions must be in accordance with the New Jersey Division of Civil Rights Guidelines for Pre-Employment Inquiries. The Borough will make reasonable accommodations to known physical and mental limitations of all applicants with disabilities, provided that the individual is otherwise qualified to safely perform the essential functions of the job and also provided the accommodation does not impose an unreasonable hardship on the Borough.

### **Job Offers**

The final decision will be made by the Borough Council after all references and other information has been verified. Every effort shall be made to offer reasonable accommodations to known physical and mental limitations of all applicants with disabilities, provided that the individual is otherwise qualified to safely perform the essential functions of the job and also provided that the

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accommodation does not impose an unreasonable hardship on the Borough. The employment offer must be made in a letter to the candidate outlining all terms and conditions of the offer. The letter will also establish a deadline for acceptance.

### **Criminal Background Checks**

Criminal background checks are required of all candidates, 18 years old and older, whether paid or volunteer. Such checks will be conducted in accordance with the time frames of New Jersey's "Ban-the-Box" law.

### **Physical Examinations**

Pursuant to the Americans with Disabilities Act, after an offer of employment is made and prior to commencing employment, the Borough Administrator may require applicants to pass a physical examination in order to insure that they can perform the duties of their position without injury to themselves or others. The same post-offer physical examination must be performed on all applicants for a particular position. The Administrator may require periodic physical examinations to determine the employee's continued ability to perform the duties of the position. All physical examinations must be performed by a physician chosen by the Borough at the expense of the Borough. All medical records of employees and prospective employees are confidential and are to be maintained by the Borough Clerk separate from the employee's official personnel file. Medical exams may include tests for drugs and alcohol use.

### **Acceptances and Rejections**

If the first offer is rejected, the Borough Council will decide to hire another candidate or re-open the position. Once a candidate accepts the employment offer, all other candidates will be notified in writing that they were not accepted for the position.

### **Employability Proof**

After acceptance, but before starting employment, all new employees shall be required to fill out an employment verification form (19) and to provide acceptable proof of right to employment in the United States.





### **Record Retention**

All applications, notes made during interviews and reference checks, job offers and other documents created during hiring process must be returned to the Borough Clerk. Documents related to the successful candidate will be placed in the employee's official personnel file except medical records including physical examinations must be maintained in a separate file. All records documents related to other candidates must be retained for at least one year. Records and documents created during the hiring process are confidential and must be retained in a locked cabinet.

### **Probationary Period**

Except where State requirements direct otherwise, new full-time employees (or present full-time employees transferring to new positions) will be hired subject to an initial employment period of six (6) months. During this initial employment period, the new employee or transferee will be provided with training and guidance from the supervisor.

Employment may be terminated at any time during the probationary period for any reason and the employee shall be considered at-will. Termination may be with or without cause.

At the end of the initial employment period, the supervisor will conduct an employee evaluation. New employees may be discharged at any time during this period if the Borough Administrator concludes that the employee is not progressing or performing satisfactorily. Under appropriate circumstances, the Borough Administrator may extend the initial employment period.

Nothing in the procedure set forth in this section shall alter Borough's employment at will policy. Employment with Borough is at will and may be terminated at any time with or without cause or notice by the Borough or the employee.

Unless otherwise specified by collective bargaining agreement or applicable law, part-time employees or volunteers may be terminated at any time with or without cause.

### **Driver's License**

All personnel who may drive a Borough vehicle at anytime must have a valid driver's license. Department heads are to check every January and July to verify the status of the driver's license. Anyone who drives an emergency vehicle can carry no more than three points. Anyone who has their license revoked must notify their supervisor immediately. In certain Borough positions (i.e. highway, park and recreation and water and sewer), the securing of a CDL license may be a



requirement for continued employment. The securing of the CDL shall be on the employee's time and at their expense. The respective department heads will determine which positions will require a CDL license.

### **Rehiring**

Any former employee of the Borough who is rehired after leaving the Borough's employment shall have the prior employment time counted, subject to the following conditions:

- (1) The employee must have left Borough employment of his own volition.
- (2) Before the benefit herein provided shall take effect, the employee must have been back in the Borough's employment for one full year.
- (3) An employee who has been a part-time employee shall receive credit for prior employment on a pro rata basis, determined by the following formula:

$$\frac{WE}{54} \times \frac{HW}{40} = WPS$$

Where:

WE = Number of full weeks' previous service.

HW = Hours per week worked.

WPS = Weeks of prior service to be credited to the employee.

- (4) Seniority shall not be granted for prior service.
- (5) Prior employment time counted shall apply to vacation time only.

### **Anti-Nepotism**

Unless otherwise provided by law or collective bargaining unit agreements, immediate relatives shall not be hired, promoted or transferred to a regular full-time or regular part-time position where:

- One relative would have the authority to appoint, remove, discipline or evaluate the performance of the other;
- One relative would be responsible for auditing the work of the other; or
- Other circumstances exist that place the relatives in a situation of actual or reasonably foreseeable conflict of interest.

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For purposes of this policy, immediate relative includes spouse or significant other, child, parent, stepchild, sibling, grandparents, daughter-in-law, son-in-law, grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an employee's household.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



### **Resignation Procedure**

An employee who intends to resign must notify the Department Head in writing at least two weeks in advance. After giving notice of resignation, employees are expected to assist their supervisor and co-employees by providing information concerning their current projects and help in the training of a replacement. During the last two weeks, the employee may not use paid time off except paid holidays. The Borough Administrator or designee will conduct a confidential exit interview to discuss benefits including COBRA options, appropriate retirement issues and pay due, as well as any other issues that the parties wish to address. On the last day of work, and prior to receiving the final paycheck, the employee must return all Borough property, including but not limited to any ID cards, keys and equipment.

This policy does not apply to part-time personnel or volunteers.

*Version: September 2021*



### **Retirement Procedure**

Under State law, all employees must enroll in the New Jersey Public Retirement System or the Police and Fire Fighters Retirement System as applicable. The employee's contribution to the Plan will be deducted from the employee's pay. An employee who has completed the required number of years and who has reached the required age under the Plan may retire by notifying the Administrator in writing. The State retirement plans request six months advance notice to process the application. After giving notice of retirement, employees are expected to assist their supervisor and co-employees by providing information concerning their current projects and help in the training of a replacement.

On or before the last day of work, and prior to receiving the final paycheck, the employee must return all Borough-issued property, including all IDs, keys and equipment.

The Borough will address COBRA applicability as appropriate.

This policy does not apply to part-time personnel or volunteers.

*Version: September 2021*



### **Work Force Reduction Policy**

The Borough of Clayton may institute layoff actions for economy, efficiency or other related reasons, but will first consider voluntary alternatives. Seniority, lateral or other re-employment rights for employees will be determined by the Administrator.

Applicability of this policy to part-time personnel or volunteers will be determined in accordance with governing law.

*Version: September 2021*



## **Employment Reference Policy**

To ensure that individuals who work for the Employer are well-qualified and have a strong potential to be productive and successful, it is the policy of the Employer to check the employment references of all applicants at the Employer's discretion.

Employees should not, under any circumstances, provide another individual with information regarding a current or former employee. Any employee, including Department Heads, who receives a request for reference information should forward the request to the human resources official. Generally, unless otherwise required by law, the Employer will only confirm employees' name, title, salary, compensation, dates of service, reason for separation, if applicable, and specific educational or medical qualifications required for employment. The Employer's response to a request for reference information shall be communicated in writing only. The Employer does not honor oral requests for employment references.

A current or former employee may also authorize the Employer to release additional information. Unless otherwise required by law, the Employer will only release additional information if the current or former employee provides authorization, in writing.

This policy applies to all personnel, regardless of employment status.

*Version: September 2021*



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

The Borough of Clayton is committed to maintaining a safe, pleasant, and productive working environment. You have the right to come to work without fear of interacting with someone under the influence of drugs or alcohol. This policy highlights the Borough's New Jersey Drug-Free Workplace Policy. The Borough's Designated Employer Representative (DER) is the Administrator. The Alternative DER is the Chief of Police.

The Borough recognizes the prime importance to the Borough of protecting the safety, health and welfare of its employees and others with whom we interface such as citizens, contractors and members of the public. The objective of this policy is to maintain a working environment free from the adverse effects of substance abuse. While the Borough has no intention of intruding into the private lives of its employees, the Borough does expect employees to report to work unimpaired able to perform the duties of their job safely and effectively. In addition to absenteeism and accidents, substance abuse can adversely affect performance, productivity and workplace morale. Co-workers may feel that they have to cover up, or work harder because of someone's substance abuse. Ultimately an employee with an alcohol or drugs problem may lose their job and/or suffer devastating effects on their health. The Borough has a duty to safeguard its employees and the public from the risk of harm from employees who work under the influence of alcohol and drugs. Similarly, employees who are working under the influence, and employees who know that a fellow employee is working under the influence, owe such a duty. The failure to honour that duty by taking the right steps to prevent this risk can result in legal liability. All employees and contractors are responsible and accountable for ensuring that they, and their employees, are not under the influence of alcohol or drugs when carrying out work for the Borough. Managers and supervisors are responsible for taking appropriate action where they identify individuals who are at work while under the influence of alcohol or drugs. They should also take appropriate action to protect the health and safety of individuals who may be affected.





All testing information is considered confidential information by the Borough and will be maintained in a separate file along with the employee's medical records, separate from other personnel files. An employee has the right to inspect and obtain a copy of his or her drug test results. Drug testing information will only be released to those employees of the Borough with a job related need to know, the DER and Alternate DER, to defend against any administrative action brought by the employee against the Borough, in grievance or arbitration proceeding under the terms of a collective bargaining agreement, in a court of law under subpoena, as released by the employee in writing, the MRO, Borough insurers, rehabilitation programs and as otherwise required by law. We do not tolerate the abuse of drugs or alcohol in the workplace. Understand that this policy prohibits illegal drug use on or off the job. We encourage any employee suffering from a substance abuse problem to seek help.

Our program can help improve your health and help you avoid trouble with the law. Even if you do not use drugs or alcohol, this program will make your workplace safer and more productive, the Borough safer, and will help your friends and co-workers get the help they need.

### **WHO DO WE TEST?**

All employees performing safety-sensitive functions, and all final applicants for positions where safety-sensitive functions are performed, and all other employees where reasonable suspicion exists. All DOT regulated employees are also subject to testing under this policy. Elected officials who are not otherwise classified as employees are not subject to testing under this Policy.

### **SAFETY-SENSITIVE CLASSIFICATIONS**

Safety-sensitive employees are those employees who discharge duties fraught with risks of injury to others that even a momentary lapse of concentration can have disastrous consequences. Factors which have been considered in determining whether a position is safety sensitive include handling of potentially dangerous machinery, sharp objects, working at heights, positions requiring a high level of cognitive function, mostly unsupervised responsibility for children, and handling of hazardous substances in an environment where others could be injured. Positions which have been found to be safety-sensitive include firefighters, emergency medical technicians, law enforcement officials who carry firearms, fire and police dispatchers, 911 operators, heavy machinery operators, forklift operators, bus drivers, some (but not all) transportation workers, pipeline operators, gas meter repairmen, jail officers, and those involved in security functions. All Department of Transportation (DOT) regulated employees are determined to be safety-sensitive by those regulations. Unless an employee comes under drug testing regulations of some federal agency, each position, job classification or department, should be individually evaluated to determine whether the employee is safety-sensitive in accordance with the above guidelines.



## **HOW DO WE TEST?**

Drug and alcohol testing is done through chemical analysis which determines without question if a person has drugs or alcohol in his or her system and in conformity with applicable regulations. Specimens subject to testing include urine, breath, hair, oral fluids, or blood. Specimen collections, chain of custody and drug and alcohol tests will be in substantial compliance with the U.S. Department of Transportation (DOT) procedures if applicable to the type of specimen being tested. To ensure accuracy, urine lab test procedures shall include a preliminary drug screening, two highly sophisticated scientific tests including adulterant detection, and are reported to an independent certified Medical Review Officer prior to being released to the Borough. Observed urine collections will only be conducted with the consent of the donor, and the observer will be by a person whose gender matches the donor's gender as identified by the donor at the beginning of the observed collection. Observed collections will be conducted in a professional manner that minimizes discomfort to the donor, and a medical professional may serve as the monitor, regardless of gender. The Medical Review Officer may recommend the collection of an alternate specimen (e.g., oral fluid) when a donor is unable to provide a sufficient amount of urine specimen at the collection site. The MRO will verify that chain of custody procedures were adhered to, use of a certified laboratory and that the test results were valid. The Borough provides reasonable accommodations to employees and/or applicants in the alcohol and drug testing program whose physical condition prevents them from producing a urine specimen suitable for testing. You may contact the DER if you wish to make an accommodation request. A test result reported by the laboratory as a negative dilute urine test is not considered a negative test but subjects the donor to immediate retesting; and a second negative dilute urine test will render an applicant ineligible for hire and current employees, where a negative test is required, not currently fit for duty. FDA approved on-site screening devices may be utilized with all initial positive results confirmed by laboratory testing.

All positive initial tests are confirmed by GC/MS at established DOT cut off levels. An Alcohol content of 0.04 or higher using a DOT approved alcohol screening device, or breath alcohol device, is classified as a positive test. The drugs tested for may include all or some of the following: (1) Amphetamines; (2) Cannabinoids; (3) Cocaine; (4) Phencyclidine (PCP); (5) Opioids, designer drugs, or a metabolite of any of the above substances and mind altering synthetic narcotics or designer drugs, or impairing effect medications or substances, taken by employees working in a safety-sensitive classified position, in order for the employer to fulfill its duty to provide a safe place to work as a safety rule. The term "illegal use of drugs" includes any controlled or scheduled drug not used in accordance with a health care provider's lawful prescription for the user, or any substances banned by Federal or applicable State laws.



### **WHAT IF YOU TEST POSITIVE?**

The Medical Review Officer will contact you confidentially to give you an opportunity to discuss your results before reporting them to the Borough as a verified positive. You may discuss the result with the MRO up to seventy-two (72) hours after a positive result and ask questions of the MRO about prescription and non-prescription medications, rebut or explain the test results to the MRO, and provide supporting documentation. During this 72-hour period, any applicant or employee may request that their split specimen be tested at a second laboratory and if positive, they will be responsible for that expense and that cost may be deducted from their paycheck, depending upon the result and, if negative, the employee will be reimbursed by the Borough for the cost of the test and any lost time. Under federal regulations, the MRO has the discretionary authority to notify the Borough that an employee is temporarily medically disqualified from the performance of safety-sensitive work during this evaluation period and also has the duty to notify the Borough if the employee is taking an impairing effect medication. A positive drug or alcohol test is classified as willful misconduct and a violation of the Borough's Policy. Any employee who tests positive, or refuses to be tested, may be subject to appropriate disciplinary action for engaging in willful misconduct connected with work, up to and including immediate termination, for gross misconduct connected with work, and violation of a safety rule for those employees working in a safety-sensitive position and/or forfeit eligibility for Worker's Compensation benefits if post-accident and may adversely affect an employee's eligibility to receive unemployment benefits. Any applicant made a conditional offer that tests positive, or refuses to be tested, will be denied employment or have their offer withdrawn.

### **WHAT IF YOU FAIL TO FOLLOW SAFETY GUIDELINES?**

Impairment from drugs or alcohol will often cause an employee to fail to adhere to safety guidelines and other common sense safe working practices. Failure to wear a seatbelt, failure to use Borough provided or required safety equipment, failure to follow safety guidelines, or removal (or disabling) of a safety guard will be willful misconduct connected with work, and subject the employee to discipline, up to and including discharge for violation of Borough Policy.

### **WHAT ABOUT IMPAIRING EFFECT MEDICATIONS OR SUBSTANCES?**

Any employee working in a safety-sensitive position as defined by Borough Policy is required, as a safety rule, to pre-duty disclosure that they are taking or using ANY impairing effect prescription, including medical marijuana, over-the-counter medications, mind altering synthetic or designer drugs or other substance which may have an effect on performance of safety-sensitive duties. This includes medical and recreational Marijuana, the use of which the Borough, for safety reasons, will not be able to accommodate employees working in safety-sensitive positions. However, for



employees who are qualifying medical marijuana cardholders reporting to work in those states which have statutory anti-discrimination against the use of medical marijuana laws, qualifying employees, and applicants, may request a reasonable accommodation by contacting the DER and such request will be considered. If the fact that the employee is taking or using an impairing effect medication or substance is not disclosed pre-duty by a safety-sensitive employee and the employee tests positive, is otherwise determined to be taking or using such, or is determined by the MRO to be a potential safety risk due to taking or using an impairing effect medication or substance, that employee will be subject to discipline, up to and including termination, for violation of this safety rule. If disclosure is made, the Borough reserves the right to send the employee for a Fitness-for-Duty evaluation to evaluate the medication or substance and its effects on the performance of safety-sensitive duties. In advance of testing, employees are encouraged to have their own doctor make an individualized assessment of any safety-related risks of the medications or substances which they are taking or using, providing the doctor a copy of their job description and having the doctor render an opinion on the safety-related risks. The employee need not disclose to the Borough the medication or medical condition involved to fulfill the disclosure obligation of this Policy. All information provided will be kept separate from personnel files and in a confidential manner. The MRO, or another Medical Professional selected by the Borough, will make the final determination on the safety-related risks of any particular medication or substance.

#### **WHAT IF AN ADULTERANT IS FOUND?**

The use of an adulterant (something added to a specimen to attempt to hide drug use) is considered a refusal to test and a policy violation. The same would be true if you attempted to substitute a specimen. Any employee who is found to have violated this policy by attempting to defraud a drug or alcohol test may be subject to appropriate disciplinary action, up to and including termination for willful misconduct connected with work, or withdrawal of a job offer. No last chance opportunity is available under such a circumstance. It is a criminal offense to substitute or adulterate a test specimen. It also is a criminal offense in New Jersey to manufacture, sell, give away, or possess any device or substance designed or commonly used to substitute or adulterate a test specimen. The MRO may declare a urine specimen to be adulterated or substituted based on the laboratory report.

#### **WHAT IF I REFUSE?**

A refusal to provide a specimen for testing, unless the MRO agrees a medically valid reason exists for your inability, will be considered willful misconduct connected with work. Such willful misconduct connected with work will cause an applicant's offer to be withdrawn and will subject an employee to immediate termination for cause. Under New Jersey law, unemployment compensation benefits may not be available in such a circumstance. Failure to report for specimen



collection within a reasonable time, two (2) hours, of being directed to do so is also classified as a refusal.

## **DRUG EDUCATIONAL INFORMATION**

Valuable substance abuse education materials are available through the internet and other public resources. Employees with a substance abuse problem are strongly encouraged to consider these resources and seek appropriate consultation.

## **WHY AND WHEN DO WE TEST?**

- Pre-employment: Drug testing will be performed on all final applicants for safety-sensitive positions, or who transfer into a safety-sensitive position, as a condition of their employment.
- Routine Fitness-for-Duty: Safety-sensitive employees may be required to submit to a drug test as part of a routine Fitness-for-Duty examination and may be based on a particular job classification.
- Reasonable Suspicion: All employees will be required to submit to a drug and/or alcohol test if the Borough has a reasonable suspicion that an employee is under the influence of drugs or alcohol, which adversely affect or could adversely affect the employee's job performance. Employees selected for testing shall be suspended until a negative drug/alcohol screen or laboratory test result is received. If a negative result, the employee will not suffer a loss of pay.
- Post-Accident/Incident Testing: Testing of a safety-sensitive employee may be conducted under any of the following circumstances: 1) the employee involved in the incident/accident was actively engaged in the activity which objectively could have caused or contributed to the injury or damage; or 2) the employee was operating, controlling, or repairing any machinery, tool, device, equipment or vehicle that was involved in the incident/accident; or 3) the employee's action or inaction was likely a contributing factor to the incident/accident or cannot be completely discounted as a contributing factor based on current info; or 4) testing is being conducted as part of the Borough's Post Incident/Accident Investigation related to possible Workers' Compensation Disqualification; or 5) testing is being conducted for other non-injured employees whose actions, or inaction, could have contributed to the incident/accident as part of a root cause investigation; or 6) post-accident drug testing is required by the Workers' Compensation Carrier or Fund.
- Random: Employees in safety-sensitive positions are subject to random drug testing. Those subject to testing are randomly selected, using scientifically valid methods, from a "pool" of



covered employees. Non-DOT safety-sensitive employees may be included in a Non-DOT testing "pool." DOT regulated employees should only be placed in a DOT testing "pool."

- Rehabilitation/Follow-up: An employee who has voluntarily requested rehabilitation prior to a positive drug test may be subject to unannounced drug and/or alcohol testing under a work continuation agreement, to determine whether he or she is under the influence of alcohol or drugs after successful completion of the rehabilitation program. The testing will be without notice in conjunction with a referral for treatment.

## **POLICY PROHIBITIONS**

Employees are strictly prohibited from engaging in the following conduct:

1. With respect to illegal drugs, by engaging in the following conduct, whether or not during work time or on Borough premises or property:
  - a. Testing positive in a confirmed drug or alcohol test, or refusing to be tested.
  - b. Bringing and/or storing (including in a desk, locker, automobile, or other repository) illegal drugs or drug paraphernalia on Borough premises or property, including Borough-owned or leased vehicles, or vehicles used for Borough purposes.
  - c. Having possession of, being under the influence of, testing positive for, or being in close proximity to persons using illegal drugs, or otherwise having in one's system illegal drugs.
  - d. Using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling, or dispensing illegal drugs. In addition, the Borough will refer such matters to the appropriate police authority.
  - e. A conviction or plea of guilty relative to any criminal drug offense occurring in the workplace. All employees must notify Borough in writing of any criminal drug conviction no later than five (5) calendar days after such conviction. Drug use off-the-job which adversely affects an employee's performance on the job, or which has the potential to jeopardize the health or safety of other employees, the public or the Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action will be taken against employees who are convicted for an off-the job drug offense. In deciding what action will be taken, the incident



will be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough.

- f. Abuse of prescription drugs which includes exceeding the recommended prescribed dosage or using others' prescribed medications. Such prescriptions brought to work should remain in the original labeled container and show both the prescribing doctor's name and the prescription's expiration date.
  - g. Switching, tampering with, diluting, or adulterating any specimen or sample collected under this policy, or attempting to do so.
  - h. Refusing to cooperate with the terms of this Policy which includes submitting to questioning, drug testing, medical or physical tests or examinations, when requested or conducted by Borough or its designee. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.
  - i. Failure to advise pre-duty the Borough of the use of a prescription or over-the-counter drug which may alter the employee's ability to safely perform the essential functions of his or her job.
  - j. Failure of an employee to notify his or her supervisor before reporting to work if he or she believes that he or she is under the influence of drugs.
  - k. Any other action deemed in the judgment of the Borough to constitute conduct which warrants disciplinary action under the circumstances.
2. With respect to alcohol, employees violate this policy by engaging in the following conduct during work time or on Borough premises or property:
- b. Bringing and/or storing (including in a desk, locker, automobile, or other repository) alcohol on Borough premises or property, including Borough owned or leased vehicles, or vehicles used for Borough purposes.
  - c. Having possession of, being under the influence of, testing positive for or having in one's system, alcohol. Using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling, or dispensing alcohol. *Exceptions to the policy*



*concerning alcohol consumption or possession may be made only upon the prior explicit approval of senior management for specifically identified circumstances.*

- d. A conviction or plea of guilty relative to any alcohol offense occurring in the workplace. All employees must notify Borough in writing of any alcohol conviction not later than five calendar days after such conviction. Alcohol use off-the-job which adversely affects an employee's performance on the job, or which has the potential to jeopardize the health or safety of other employees, the public or Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action will be taken against employees who are convicted for an off-the job alcohol offense. In deciding what action will be taken, the incident will be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough.
- e. Switching, tampering with, or adulterating any specimen or sample collected under this policy, or attempting to do so.
- f. Refusing to cooperate with the terms of this policy which includes submitting to questioning, alcohol testing, medical or physical tests or examinations, when requested or conducted by Borough or its designee. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.
- g. Failure of employee to notify his or her supervisor before reporting to work if he or she believes that he or she is under the influence of alcohol.
- h. Any other action deemed in the judgment of the Borough to constitute conduct which warrants disciplinary action under the circumstances.

#### **USE OF PRESCRIBED AND OVER-THE-COUNTER MEDICATION**

- 1. An employee whose medical treatment requires the use of prescription or over-the-counter medication that is reasonably likely to cause physical impairment and could compromise work safety or job performance must report such use to his/her supervisor prior to the performance of Borough business. An employee may continue to work when using a prescription or over-the-counter medication if Borough management has determined, and as allowed by applicable Federal or State medical standards, that such use does not pose a threat to safety and that the





employee's job performance is not significantly affected. Otherwise, the employee may be required to take leave or comply with other appropriate action as determined by Borough management. Management shall be required to maintain the confidentiality of any information regarding an employee's medical condition in accordance with the Health Insurance Portability and Protection Act.

2. The undisclosed use of any medication or substance by any employee while performing Borough business or while on Borough premises, which poses a threat to safety or significantly affects the employee's job performance, is prohibited.
3. The Borough at all times reserves the right to judge the effect that a prescription or over-the-counter medication may have on job performance and to restrict the employee's work activity or presence in the workplace accordingly.
4. No prescription drug should be used by any person other than the individual to whom it is prescribed. Such substances or nonprescription (over-the-counter) drugs should be used only as prescribed or indicated. Employees are prohibited from consuming prescription drugs that are not prescribed in their name on Borough property or while performing Borough business. Soliciting or distributing prescription drugs for or to other employees is also strictly prohibited.
5. New Jersey law provides for the controlled use of medical marijuana that is prescribed by a qualified physician. While employees of the Borough may obtain a medical marijuana registry identification card from the New Jersey Department of Health ("NJDOH") which lawfully entitles them to possess and consume certain quantities of medically prescribed marijuana, doing so is not permitted on Borough property or at Borough events, regardless of the location of same. Marijuana is classified as a "Schedule I" drug according to the Federal Controlled Substances Act. As such, the use, possession, cultivation, or sale of marijuana in violation of federal law is prohibited and violation of same may result in the appropriate discipline. Under no circumstances shall any employee be permitted to work if under the influence of marijuana, even if same is medically prescribed. Any employee who is prescribed medical marijuana shall conform to the above requirements with respect to supervisor reporting. For the purpose of this Policy, if an employee tests positive for any intoxicant, including but not limited to medical marijuana, he or she may be subject to the appropriate discipline, including but not limited to termination.



6. Nothing in this policy shall permit any employee to use legally prescribed medication which has not been specifically prescribed for the employee.

*Version: September 2021*



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

### **Drug Educational Information Alcohol (Depressant)**

|                             |  |
|-----------------------------|--|
| <b>Common Forms:</b>        | Beer, wine, hard liquor  |
| <b>How Used:</b>            | Oral ingestion, patterns of use vary.  |
| <b>Desired Effect:</b>      | People drink to relax, to socialize, as a part of a religious ceremony, for the control of physical and emotional pain, or for a variety of other reasons. Its depression of the central nervous system is progressive and continuous. It is a mood-modifying drug that usually provides a temporary feeling of mild euphoria and stimulation. This is a result of the initial depression of the higher centers of the brain which control inhibition. The more you drink, the more sedated you then become. |
| <b>Time in body:</b>        | Depends on many factors, such as body size, amount of alcohol consumed within an hour, and other individual factors. Performance is effected in relation to the amount consumed. Generally, a medium-sized person eliminates the equivalent of one drink per hour. However, "hangover" effects of alcohol have been documented for as long as 14 hours after consuming an intoxicating dose, well after the blood alcohol levels have returned to zero.  |
| <b>Observable effects:</b>  | Staggering gait<br>Slurred speech<br>Odor of alcoholic beverage<br>Shaky hands<br>Poor eye-hand coordination<br>Slowed reaction time<br>Eyes react slowly to light - wears sun glasses   |
| <b>Work behavior:</b>       | Arrive late, leave early, mis-outs<br>Neglect of physical appearance<br>Restlessness<br>Tremors (hands, face, fingers, lips tongue)<br>Slurred speech<br>Uninhibited - makes inappropriate remarks   |
| <b>Material Indicators:</b> | Empty liquor bottles, cans, often in paper bags<br>Flasks, sometimes disguised as other things   |
| <b>Slang Terms</b>          | Booze, juice, hooch, grape, eye-opener, hair-of-the-dog, brew, suds, etc   |

### **Amphetamines (Amphetamine and Methamphetamine) Stimulant**

|                         |  |
|-------------------------|--|
| <b>Common forms:</b>    | Amphetamine - usually capsules or white, flat, double-scored pills. Methamphetamine - white or granular powder, often packaged in aluminum foil or plastic bags.   |
| <b>How used:</b>        | Orally, sniffed up the nose, or injected.  |
| <b>Desired effects:</b> | Most commonly sought after effects include euphoria, postponement of fatigue, increased energy, alertness and feelings of personal power. Repeated or chronic use often causes a strong dependence reaction and a schizophrenic loss contact with reality. Users coming off the drug |



|                             |   |
|-----------------------------|---|
|                             | experience extreme fatigue-induced sleep ("crash"), often followed by continued fatigue and depression.   |
| <b>Time in body:</b>        | Injection or sniffed up the nose; "rush" felt within 1 minute. Orally, effects felt within about ½ hour. Single doses detectable for about 48 hours.  |
| <b>Observable effects:</b>  | Dilated pupils. Flushed face, rapid respiration, profuse sweating. Hyper-excitability, talkativeness, restlessness. "Stereotypic" behavior often seen: person engages in repetitive tasks or mannerisms for extended periods of time. In large doses, inability to concentrate, confusion, panic. |
| <b>Work behavior:</b>       | Try to do job beyond competence level. Impaired ability to operate equipment. Takes chances, risks.   |
| <b>Material Indicators:</b> | Pills, capsules, white powder, granular crystals<br>Foil wrapped tubes, baggies. Hypodermics and paraphernalia for injections   |
| <b>Slang terms:</b>         | Defies, bennies, speed, crank, ice, crystal, white crosses, black beauties  |

#### Cocaine - A Stimulant

|                             |  |
|-----------------------------|--|
| <b>Common forms:</b>        | Cocaine - White crystalline powder. Free-base cocaine (crack) - white granular "rocks"   |
| <b>How used:</b>            | Cocaine--usually snorted up the nose through a straw or from a "coke spoon" after being chopped to a fine powder with a razor blade. "Crack" -- freebase cocaine--is a processed version which is vaporized in a pipe and inhaled. Either form may also be injected.   |
| <b>Desired effect:</b>      | Most commonly sought after effects are euphoria, stimulation, postponement of fatigue and feelings of personal power. The "high" lasts approximately one hour, with a "down" follow-on period. Psychological and physical dependence to "crack" after one to two uses; dependency to snorted coke takes longer to develop. |
| <b>Time in Body:</b>        | Single doses detectable for 12-24 hours  |
| <b>Observable effects:</b>  | Dilated pupils. Talkativeness, restlessness. Sniffing, runny nose, irritated or bloody nose. Dramatic mood swings, from "down" to "up" in minutes. Sense of power sometimes manifested in aggressiveness   |
| <b>Work issues:</b>         | Frequent trips "to the restroom"—secluded place. Frequent sick-outs and unexplained absences. Hyper-excitability and over-reaction to stimulus. Isolation/withdrawal from friends and activities. Financial problems--borrows, steals and/or sells to support habit. Insomnia, restlessness, lack of sleep                 |
| <b>Material Indicators:</b> | Small folded paper envelopes (bindles), plastic bags, small vials used to store drug. Razor blades, mirrors, cut off straws, coke spoons. Small glass pipes, and heat sources used to volatilize crack.  |
| <b>Slang terms:</b>         | Coke, snow, toot, crack, blow, happy dust, "C"   |



### Marijuana

|                             |  |
|-----------------------------|--|
| <b>Common forms:</b>        | Dried green-brown flowers and leaves of the hemp (cannabis) plant--also as compressed tar like lumps (hashish) and sometimes as an oil to be spread on cigarettes (hash oil).  |
| <b>How used:</b>            | Generally smoked in hand-rolled cigarettes (joints) or a small pipe, sometimes eaten in baked goods or steeped to make a tea.  |
| <b>Desired effects:</b>     | Effects are somewhat dependent on the user and potency of the plant. Low doses tend to produce a dreamy state of relaxation and euphoria with changes in sensory perceptions (usually intensified) and alteration in thought formation and expression. Higher doses intensify these reactions with fragmentation of thought, memory impairment, shortened attention span, and illusions of insight. Marijuana currently sold on the street is 10 times more potent today than in past years. |
| <b>Time in body:</b>        | Marijuana dissolves in body fat cells and is detectable for extended periods of time--up to seven (7) days for occasional users and four (4) weeks or longer for chronic users   |
| <b>Observable effects:</b>  | Red bloodshot glassy eyes (users often wear dark glasses and use eye drops to combat). Poor muscular control. Rambling, disconnected speech patterns. Euphoria--as laughing out of context. Getting "hung up" - i.e. going into the bathroom to comb your hair and coming out two hours later. Distinctive odor in air and/or on clothing.   |
| <b>Work issues:</b>         | Lack of attention, vision and auditory changes, and poor muscular control. Inability to respond to emergencies and sudden situational changes. Frequent sick-outs and mis-outs. Lackadaisical "I don't care" attitude about person and work. Chronic health problems for frequent users--persistent cough, fatigue, frequent sickness.   |
| <b>Material indicators:</b> | Baggies of green-brown vegetable matter; rolling papers; small pipes (for marijuana) and very small pipes (for hashish); "roach clips" to hold the burned end of the marijuana cigarette; "roaches" discarded on the floor or in ash trays; distinctive odor of marijuana in the air.  |
| <b>Slang terms:</b>         | Dope, grass, reefer, weed, ganja, pot, etc.  |

### Opioids (Morphine and Codeine)--Narcotic Depressants

|                         |   |
|-------------------------|---|
| <b>Common forms:</b>    | Street forms are pills, liquids and powders. Morphine is derived from opium. Opium dissolved in alcohol, containing 10% morphine, is legally available in many states as "paregoric."<br><br>Morphine and codeine are widely used medicinally. Morphine is a naturally occurring alkaloid, and is also found in products containing poppy seeds. Heroin is a semi-synthetic derivative of morphine. |
| <b>How used:</b>        | Opium is usually smoked. Codeine is most commonly taken orally. Heroin and morphine are injected; powders can be snorted; cigarettes can be dipped in paregoric and smoked.   |
| <b>Desired effects:</b> | Most commonly effects include euphoria, relief from pain, and a feeling of dissociated well-being. Low maintenance doses allow the addict to function on a daily basis. The heroin user experiences a "rush" described as a very pleasurable whole body reaction lasting 5-10 minutes, followed by several hours of mental and physical relaxation.   |
| <b>Time in body:</b>    | Single doses are usually detectable for 48-72 hours.  |



|                             |   |
|-----------------------------|---|
| <b>Observable effects:</b>  | Pinpoint pupils. Sweating, nausea, vomiting in novice users. "Nodding off"--the head drooping toward the chest, then bobbing up. Overly calm, detached facial expression. Confusion, mental dullness and slurred speech. Needle marks over veins.   |
| <b>Work issues:</b>         | Increased sick-outs, mis-outs. Lack of interest in work, no attention to detail. Sharing of needles brings a high risk of contracting hepatitis and/or AIDS. High cost of the addiction may lead to borrowing money, stealing and selling (on or off the premises).                               |
| <b>Material indicators:</b> | Foil or paper "bindles" for holding the drug. Charred spoons or bottle caps, used to cook the drug. Multiple burned matches used to cook the drug. Needles, syringes, eye droppers used for injection. Balloons or prophylactics used to hold drug. Bloody tissue papers, blood on shirt sleeves. |
| <b>Slang terms:</b>         | Heroin, dope, smack, shit, hard stuff, "H", china, monkey dust, china white, etc.   |

#### **Phencyclidine (PCP)**

|                             |   |
|-----------------------------|---|
| <b>Common forms:</b>        | Pills, liquid, powder, and PCP cigarettes   |
| <b>How used:</b>            | Usually smoked with tobacco or marijuana, but may be injected, swallowed, eaten or snorted.   |
| <b>Desired effects:</b>     | Users report desirable feelings of immobility, numbness, and detachment. Other sought-after effects include feelings of strength, power, and invulnerability, a dream-like detachment from reality (often coupled with lack of coordination). |
| <b>Time in body:</b>        | Usually detectable 1- 8 days, but chronic users may test positive for several weeks following the last dose.  |
| <b>Observable effects:</b>  | Low doses: Sedated, euphoric, uncoordinated behavior. Wide mood swings. Sparse and purposeless speech. Muscle rigidity and jerky eye movements (nystagmus).   |
| <b>High doses:</b>          | Coma-like states with muscle rigidity and staring, half-closed eyes. Sudden stimuli may send the user into a psychotic state, with extreme agitation, violent behavior, abnormal strength, and inability to speak or comprehend.              |
| <b>Work issues:</b>         | Wide mood swings, unpredictable behavior, aggressive. Tremendous liability in the work force.   |
| <b>Material indicators:</b> | Cigarettes that look as if they have been wet. Crystals, liquids or powders in small vials. Folded aluminum foil or paper packets.  |
| <b>Slang terms:</b>         | PCP, angel dust, hog, dust, DOA, shermans, sherms, peace pills, dummy, etc.   |



## Substance Abuse Professionals

### NATIONAL RESOURCES

|   |                 |
|---|-----------------|
| A2Z Alcohol & Drug Abuse-Addiction .....  | 1-800-274-2042  |
| Al-Anon/Alateen Family Group Headquarters.....  | 1-800-356-9996  |
| Alcoholics Anonymous World Service .....  | 1-212-870-3400  |
| American Council on Alcoholism Helpline .....   | 1-800-527-5344  |
| 800 Cocaine--An Information and Referral Hotline.....   | 1-800-262-2463  |
| Nar-Anon Family Group Headquarters .....  | 1-310-547-5800  |
| Narcotics Anonymous .....   | 1-818-773-9999  |
| National Association of Alcoholism (NAADAC).....  | 1-800-548-0497  |
| <a href="http://www.naadac.org">www.naadac.org</a> Fax: .....                                   | 1-800-377-1136  |
| National Association of Addiction Treatment Professionals.....                                  | 1-717-581-1901  |
| <a href="http://www.naatp.org">www.naatp.org</a>  |                 |
| National Council on Alcoholism and Drug Dependence, Inc. ....                                   | 1-212-269-7797  |
| <a href="http://www.ncadd.org">www.ncadd.org</a>  |                 |
| Hope Line (24-hour affiliate referral).....   | 1-800-NCA-CALL  |
| Center for Substance Abuse Prevention's Workplace Hotline .....                                 | 1-800-WORKPLACE |
| National Clearinghouse for Alcohol & Drug Information.....                                      | 1-800-729-6686  |
| Center for Substance Abuse Prevention's Drug Information,<br>Treatment & referral Hotline ..... | 1-800-662-HELP  |
| (Spanish-Espanol) .....   | 1-800-66-AYUDA  |

### EMPLOYEE ASSISTANCE PROGRAM

Please see the Administrator for EAP information.

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## **CDL Drug and Alcohol Testing Policy**

**September 2021 Update**

### **SECTION A - GENERAL**

This policy and 49 CFR Part 40 Regulations of the U. S. Department of Transportation Procedures For Transportation Workplace Drug And Alcohol Testing Programs and Urine Specimen Collection Guidelines, Office of Drug and Alcohol Policy and Compliance, U.S. Department of Transportation, are integral parts of this Policy and apply to all covered employees. They may be viewed at <http://www.dot.gov/odapc> Collection procedures, laboratory procedures, MRO review, alcohol testing, record keeping and all other procedural requirements shall adhere to 49 CFR Part 40.

The Borough of Clayton shall test, in accordance with Federal regulations, employees required to have a Commercial Driver's License (CDL) for the use of controlled substances that violate law or Federal regulation and the misuse of alcohol.

#### **PURPOSE 382.101**

The purpose of this policy, in addition to meeting Federal regulations, is to establish a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

#### **APPLICABILITY 382.103**

(a) This policy applies to every person of the Borough of Clayton who operates a commercial motor vehicle in commerce in any State, and is subject to:

- (1) The commercial driver's license requirements of part 383;
- (2) All Drivers Operating Commercial Motor Vehicles for the Borough of Clayton; or
- (3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this policy that apply to employers and the requirements in this policy that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

The COVERED EMPLOYEE CERTIFICATE OF RECEIPT contains the name, address, and phone number of the responsible individual(s). The CONTROLLED SUBSTANCES AND

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ALCOHOL USE AND TESTING POLICY complies with requirements of the Department of Transportation regulations as set forth in 49 CFR § 382 and 49 CFR Part 40. The DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (random, post-accident, reasonable suspicion, etc.); maintaining a locked file system on all test results; and overseeing the referral of employees for evaluation and treatment. The Borough of Clayton shall ensure that all covered employees are aware of the provisions and coverage of the Borough of Clayton's CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY and that all employees are notified prior to testing.

#### **SERVICE AGENT CONTACT INFORMATION**

##### **DESIGNATED EMPLOYER REPRESENTATIVE (DER)**

NAME: Susan Miller  
TITLE: Administrator  
ADDRESS: 125 N. Delsea Drive, Clayton, New Jersey 08312  
PHONE: 856-881-2882  
E-MAIL: smiller@claytonnj.com  
HOURS WHEN AVAILABLE: Normal Business Hours

##### **ALTERNATE DESIGNATED EMPLOYER REPRESENTATIVE (DER)**

NAME: Andrew Davis, Chief of Police

##### **MEDICAL REVIEW OFFICER (MRO)**

Inspira Health Network  
Dr. Arthur Schultes  
200 Rowan Blvd.  
Glassboro, New Jersey 08028  
Phone: 856-582-0500  
Fax: 856-582-0163

##### **LABORATORY**

LABCORP  
69 1st Avenue  
Raritan, NJ 08869



### **SUBSTANCE ABUSE PROFESSIONAL (SAP)**

See Borough Administrator for further information.

### **CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)**

See Borough Administrator for further information.

### ***THE BOROUGH OF CLAYTON'S INDEPENDENT AUTHORITY***

***This CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY sets forth the requirements of 49 CFR Parts 382 and 40. Those areas of the policy that appear in italic print reflect the Borough of Clayton's independent authority to require additional provisions with regard to drug and alcohol testing procedures. To the extent the Borough of Clayton's state specific non-DOT the Borough of Clayton Authority Policy supplements, and does not conflict with applicable DOT Regulations, and current agreements, it is to be followed. In the event that DOT Regulations are applicable to the driver's or applicant's particular situation or issue, the DOT Regulations pre-empt conflicting State Laws, the Borough of Clayton's non-DOT Policies and all other agreements.***

### **PERIOD OF WORKDAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE**

*Safety-Sensitive Functions as covered under 49 CFR Part 382:* In accordance with 49 CFR 382 drivers who possess CDL licenses are subject to DOT regulated alcohol and drug testing at all times from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment as required by 49 CFR 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR 393.76);
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

A driver is required to be in compliance with this policy during that period of the workday when they are on-duty performing *safety-sensitive functions* (See Definitions).



#### **DRIVER FITNESS FOR DUTY 391.11**

DOT regulations provide that *the Borough of Clayton* as a DOT regulated employer makes the final determination of who is a qualified individual to drive a commercial motor vehicle. 49 CFR § 391.11(a). *the Borough of Clayton* shall not permit a person to drive a commercial motor vehicle unless the person meets all DOT minimum qualifications and such other more stringent qualifications and requirements relating to safety of operation and employee safety and health as it may decide in its judgment and discretion. *the Borough of Clayton* shall use the services of independent Certified Medical Examiners, Occupational Medicine Physicians, Medical Review Officers, as well as other medical and industry professionals to make its final fitness for duty determinations.

#### **TESTING PROCEDURES 382.105**

*The Borough of Clayton* shall ensure that all alcohol or controlled substances testing conducted under this policy complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol or controlled substances testing are made applicable to the Borough of Clayton by 382.105.

#### **DEFINITIONS 382.107**

Words or phrases used in this policy are defined in Sections 386.2, 390.5 and 40.3 of Federal regulations, except as provided herein.

Actual knowledge for the purpose of Section B of this policy means actual knowledge by the Borough of Clayton that a driver has used alcohol or controlled substances based on *the Borough of Clayton's* direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 382.307.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol's including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this policy.

Alcohol use means the drinking or swallowing of any beverage, liquid mixture, or preparation, (including any medication), containing alcohol. [Caution: Certain brands and types of cough medicines contain alcohol.]

CFR means Code of Federal Regulations.

Commerce means:

- (1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and

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- (2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in (1) of this definition.

*It is the position of the Federal Motor Carrier Safety Administrator that the above section (2) language covers all municipal vehicles which fit within the "Commercial Motor Vehicle" definition below, even if that vehicle does not cross state lines.*

Commercial driver's license Drug and Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of 49 CFR Part 382.701-727 requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations. Effective January 6, 2020, the FMCSA will establish a mandatory database and the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

- (1) A verified positive, adulterated, or substituted drug test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to any test required by subpart C of this part;
- (4) An employer's report of actual knowledge, as defined at § 382.107;
- (5) On duty alcohol use pursuant to § 382.205;
- (6) Pre-duty alcohol use pursuant to § 382.207;
- (7) Alcohol use following an accident pursuant to § 382.209; and
- (8) Controlled substance use pursuant to § 382.213;
- (9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (10) A negative return-to-duty test; and
- (11) An employer's report of completion of follow-up testing.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

- (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
- (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to



administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of Federal regulations.

Controlled substances mean those substances identified in 40.85. As of January 1, 2018, the drugs tested for may include all or some of the following: (1) Amphetamines; (2) Cannabinoids; (3) Cocaine; (4) Phencyclidine (PCP); and (5) Opioids.

Designated employer representative (DER) is an individual identified by the Borough of Clayton as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the Borough of Clayton. Service agents cannot serve as DERs.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- (1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
- (2) Exclusions:
  - i. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
  - ii. Tire disablement without other damage even if no spare tire is available.
  - iii. Headlight or taillight damage.
  - iv. Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653, and 654) in accordance with 49 CFR part 40.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed Commercial Motor Vehicle drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

Employer means an entity, *including a municipal employer*, employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this Federal regulation. The term, as used in this policy, refers to the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this policy and any applicable DOT agency regulations. Service agents are not employers for the purpose of Federal regulations.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Negative return-to-duty test means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in § 40.305.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive alcohol test means an alcohol test with an alcohol concentration of greater than or equal to 0.04.

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Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

Refuse to submit (to an alcohol or controlled substances test) means that you as a driver:

- (a)(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (see §40.61(a));
  - (2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;
  - (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;
  - (4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));
  - (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));
  - (6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, Sec.40.197 (b));
  - (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under Sec. 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or
  - (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
  - (9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
  - (10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
  - (11) Admit to the collector or MRO that you adulterated or substituted the specimen.
  - (12) For a breath alcohol test, refusing to sign the certification at Step 2 of the ATF 40.261 (a) (3).
- (b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.
- (c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. 40.191

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting servicing, or conditioning any commercial motor vehicle at any time;

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- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, using a vehicle for road clearing, snow removal, trash and recycling removal, remaining in readiness to operate the vehicle, and
- (5) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

- (1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.
- (2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Service agent means any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

#### **PREEMPTION OF STATE AND LOCAL LAWS 382.109**

- (a) Except as provided in paragraph (b) of this section, the Federal regulation requiring this alcohol and controlled substances testing preempts any State or local law, rule, regulation, order to the extent that:
  - (1) Compliance with both the State or local requirement and the Federal regulation is not possible; or
  - (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement of this Federal regulation.
- (b) This policy, and the Federal regulation requiring it, shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, the Borough of Clayton, or the general public.

#### **OTHER REQUIREMENTS IMPOSED BY THE BOROUGH OF CLAYTON 382.111**

Except as expressly provided in this policy, nothing in the Federal regulation 382 and 49 CFR part 40 shall be construed to affect the authority of the Borough of Clayton, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation. *Accordingly, the Borough of Clayton may adopt, under its own authority, a Non-DOT drug and alcohol testing program.*

#### **REQUIREMENT FOR NOTICE 382.113**

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Before performing an alcohol or controlled substances test under the Federal regulation, the Borough of Clayton shall notify a driver that the alcohol or controlled substances test is required by Federal regulation. The Borough of Clayton shall not falsely represent that a test is administered under Federal regulation.

#### **STARTING DATE FOR TESTING PROGRAMS 382.115**

- (a) All domestic-domiciled employers must implement the requirements of this policy the date the employer begins commercial motor vehicle operations.
- (b) All foreign-domiciled employers must implement the requirements of this policy on the date the employer begins commercial motor vehicle operations in the United States.

#### **PUBLIC INTEREST EXCLUSION 382.117**

The Borough of Clayton shall not use the services of a service agent who is subject to a public interest exclusion (PIE) in accordance with 49 CFR part 40, Subpart R. *This is a service agent who has been found by the DOT to be disqualified from providing services to DOT regulated employers.*

#### **EMPLOYEE ADMISSION OF ALCOHOL AND CONTROLLED SUBSTANCE USE 382.121**

- (a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this policy and 49 CFR part 40, provided that:
  - (1) The admission is in accordance with the Borough of Clayton's written voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;
  - (2) The driver does not self-identify in order to avoid testing under the requirements of this part;
  - (3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and
  - (4) The driver does not perform a safety sensitive function until the Borough of Clayton is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.
- (b) A qualified voluntary self-identification program or policy must contain the following elements:
  - (1) It prohibits the Borough of Clayton from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;
  - (2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;
  - (3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;
  - (4) It must ensure that:
    - (i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or
    - (ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and
  - (5) It may incorporate employee monitoring and include non-DOT follow-up testing.

#### **DRIVER IDENTIFICATION 382.123**

- (a) For each alcohol test performed, the Borough of Clayton shall provide the driver's commercial driver's license number and State of issuance in Step 1, Section B of the Alcohol Testing Form (ATF).

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- (b) For each controlled substance test performed under this part, the Borough of Clayton shall provide the following information, which must be recorded as follows:
- (i) The driver's commercial driver's license number and State of issuance in Step 1, section C of the Federal Drug Testing Custody and Control Form (CCF).
  - (ii) The employer's name and other identifying information required in Step 1, section A of the ATF.



#### ***EMPLOYEE ASSISTANCE PROGRAM***

***The Borough of Clayton may be able to refer employees to employee assistance program resources. This is a confidential program designed to assist in the identification and resolution of problems associated with employees impaired by alcohol or drugs, or other personal concerns that may adversely affect employee job performance.***



## **CDL Drug and Alcohol Testing Policy**

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### **SECTION B - PROHIBITIONS**

#### **ALCOHOL CONCENTRATION 382.201**

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If the Borough of Clayton has actual knowledge that a driver has an alcohol concentration of 0.04 or greater, the driver will not be permitted to perform or continue to perform safety-sensitive functions.

#### **ON-DUTY USE 382.205**

No driver shall use alcohol while performing safety-sensitive functions. If the Borough of Clayton has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, that driver shall not be permitted to perform or continue to perform safety-sensitive functions.

#### **PRE-DUTY USE 382.207**

No driver shall perform safety-sensitive functions within four (4) hours after using alcohol. If the Borough of Clayton has actual knowledge of a driver who has used alcohol within four (4) hours, that driver will not be permitted to perform or continue to perform safety-sensitive functions.

#### **USE FOLLOWING AN ACCIDENT 382.209**

No driver required to take a post-accident alcohol test under 382.303 shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.

#### **REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST 382.211**

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under 382.303, a random alcohol or controlled substances test required under 382.305, a reasonable suspicion alcohol or controlled substances test required under 382.307, or a follow-up alcohol or controlled substances test required under 382.311. the Borough of Clayton shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

#### **DISCLOSURE OF OFF-DUTY DUI AND DRUG OFFENSE ARREST AN/OR CONVICTION 382.111**

*Safety Rule requiring mandatory reporting by Drivers of off – duty DUI and Drug Offense Arrest and/or Conviction. In accordance with the authority granted to the Borough of Clayton by the DOT in 49 CFR 382.111 to imposed other requirements to prevent alcohol misuse by Drivers, it is mandatory that Drivers disclose to their supervisor by the end of the business day arrest and/or convictions for all alcohol and/or drug related offenses committed while operating any motor vehicle. This will allow the Borough of Clayton to immediately remove from safety sensitive functions, Drivers who have engaged in off– duty unsafe behavior related to alcohol or drug misuse (which is directly related to their safety sensitive functions performed for the Borough of Clayton) to make determinations as follows: 1) if the Driver is fit for duty; 2) if the Driver is still qualified under DOT regulations to operate a CMV for the Borough of Clayton; 3) if the Driver is still insurable at standard rates under the Borough of Clayton fleet policy; and 4) if the Driver can still meet the essential job functions for the position of Driver. It is an Essential Job Function of every DOT regulated Driver that they be qualified and licensed to operate a CMV without the use of a judicially ordered interlocking device, or similar device as part of a diversion or conviction for an alcohol related offence.*

#### **PRE-DUTY DISCLOSURE OF ANY IMPAIRING EFFECT MEDICATION OR SUBSTANCES 382.213**



(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) The Borough of Clayton, having actual knowledge that a driver has used a controlled substance, shall not permit the driver to perform or continue to perform a safety-sensitive function.

(c) The Borough of Clayton may require a driver to inform the Borough of Clayton of any therapeutic drug use.

***All drivers of the Borough of Clayton are required, as a safety rule and under DOT regulations, to pre-duty disclosure that they are taking ANY impairing affect therapeutic drug, prescription medication (including medical marijuana), over-the-counter medication, mind altering synthetic or designer drugs or substances which may have an effect on their ability to safely operate a commercial motor vehicle or the performance of safety-sensitive duties. It is an essential function of every driver's position at the Borough of Clayton to be able to work in a constant state of alertness and in a safe manner. If the fact that the driver is taking an impairing effect drug, medication or substance is not disclosed pre-duty by a driver, and the driver tests positive or is determined by the MRO to be a potential safety risk due to a drug, medication or substance, that driver will be subject to discipline, up to and including termination for violation of this safety rule. If disclosure is made, the Borough of Clayton, in accordance with its authority under 49 CFR Part 391.11(a), reserves the right to send the driver for a Fitness-for-Duty evaluation to evaluate the medication and its possible adverse effects on the driver's ability to safely operate a commercial motor vehicle or the performance of other safety-sensitive duties. In determining whether the employee has a legally valid prescription so as to constitute a legitimate medical explanation, consistent with the Controlled Substances Act (CSA), the MRO will use the CSA standard when conducting his medical review (49 CFR Part 40.137).***

***In advance of the operation of a commercial motor vehicle, or the performance of other safety-sensitive duties, or testing, drivers are strongly encouraged (and mandated by DOT Regulations) to have their own doctor make an individualized assessment of any safety related risks of the drug, medication or substance which they are taking, providing the doctor a copy of their job description or specific duties, and having the doctor render an opinion on the safety related risks. The driver need not disclose to their supervisor the drug, medication or substance, or the medical condition involved, to fulfill this pre-duty disclosure obligation of this safety policy, but may do so confidentially to the DER. All information provided will be kept separate from personnel files and in a confidential manner by the DER. The MRO will make the final determination on the driver's ability to safely operate a commercial motor vehicle or the safety related risks of any particular drug, medication or substance, although the Borough of Clayton shall make the final determination on whether the driver is qualified to drive/operate a commercial motor vehicle.***

#### **CONTROLLED SUBSTANCES TESTING 382.215**

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. The Borough of Clayton, having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances, shall not permit the driver to perform or continue to perform safety-sensitive functions. In accordance with 49 CFR Part 40.171, when the MRO has notified the driver that he or she has a verified positive drug test and/or refusal to test because of adulteration or substitution, the driver has 72 hours from the time of notification to request a test of the split specimen.

#### **EMPLOYER RESPONSIBILITIES 382.217**

No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

- (a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40;
- (b) The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration conducted under part 40;



- (c) The driver refused to submit to a test for drugs or alcohol required under § 382; or
- (d) The driver used alcohol prior to a post-accident alcohol test in violation of § 382.209.

**CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B** Any driver who engages in conduct prohibited by Section B of this policy will be subject to disciplinary action up to and including termination.

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## **CDL Drug and Alcohol Testing Policy**

**September 2021 Update**

### **SECTION C - TESTS REQUIRED**

#### **TESTS REQUIRED**

Required testing includes pre-employment (controlled substances required, alcohol at option of the Borough of Clayton), post-accident, random, and reasonable suspicion. Return-to-duty and follow-up-testing is also required if the Borough of Clayton allows a "positive" test employee to return to a safety-sensitive function after the required evaluation by a Substance Abuse Professional and the required rehabilitation.

#### ***THE BOROUGH OF CLAYTON RESERVES RIGHT TO CONDUCT NON-DOT DRUG AND ALCOHOL TESTING***

*In addition to drug and alcohol testing conducted by the Borough of Clayton pursuant to 49 CFR Part 40 and 49 CFR Part 382, The Borough of Clayton reserves the independent authority to screen and/or test employees under the Borough of Clayton's Policy including, but not limited to, laboratory testing and point of collection test (POCT) devices utilizing alternative body specimens including hair, urine and oral fluid (saliva), for the detection of illegal drugs, prescription and over-the-counter medications or substances which have an impairing affect and/or alcohol, taken by those who are considered safety-sensitive employees, as may be permitted and/or restricted by applicable state or local laws or regulations and applicable collective bargaining agreements. The term "illegal use of drugs" includes any mind altering synthetic or designer drugs as well as any controlled or scheduled substance not used in accordance with a health care provider's lawful prescription for the user. These collections will be performed in addition to, and not as a substitute for, DOT regulated tests and these urine specimens will not be poured from or taken from the same specimen collected for a DOT urine test or alcohol test [40.13] and will not be conducted using DOT forms [40.47, 40.227]. This may also include a "zero tolerance" policy for the use of drugs or alcohol.*

#### **PRE-EMPLOYMENT 382.301**

(a) Prior to the first time a driver performs safety-sensitive functions for the Borough of Clayton, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the Borough of Clayton uses the exception in paragraph (b) of this section. The Borough of Clayton shall not allow a driver, who the Borough of Clayton intends to hire or use, to perform safety-sensitive functions unless the Borough of Clayton has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver. *The Borough of Clayton shall require a re-collection of a urine specimen on any pre-employment, return-to-duty and follow-up drug test if the result is negative-dilute. The MRO has authority to direct the re-collection be observed. If the second test result is also negative-dilute, the Borough of Clayton shall accept the result as a negative test.*

(b) The Borough of Clayton is not required to administer a controlled substances test required by paragraph (a) of this section if:

- (1) The driver has participated in a controlled substances testing program that meets the requirements of this policy within the previous 30 days; and
- (2) While participating in that program, either--
  - (i) Was tested for controlled substances within the past 6 months (from the date of application with the Borough of Clayton), or



- (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the Borough of Clayton); and
  - (3) The Borough of Clayton ensures that no prior employer of the driver of whom the Borough of Clayton has knowledge has records of a violation of this policy or the controlled substances use rule of another DOT agency within the previous six months.
- (c) (1) If the Borough of Clayton exercises the exception in paragraph (b) of this section, the Borough of Clayton shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:
- (i) Name(s) and address(es) of the program(s).
  - (ii) Verification that the driver participates or participated in the program(s).
  - (iii) Verification that the program(s) conforms to part 40 of Federal regulations.
  - (iv) Verification that the driver is qualified under the rules of this policy, including that the driver has not refused to be tested for controlled substances.
  - (v) The date the driver was last tested for controlled substances.
  - (vi) The results of any tests taken within the previous six months and any other violations of Section B of this policy.
- (2) If the Borough of Clayton who uses, but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with 382.401. If the Borough of Clayton cannot verify that the driver is participating in a controlled substances testing program in accordance with this policy and part 40 of Federal regulations, the Borough of Clayton shall conduct a pre-employment controlled substances test.
- (d) The Borough of Clayton may, but is not required to, conduct pre-employment alcohol testing under this policy. If the Borough of Clayton chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:
- (1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
  - (2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).
  - (3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
  - (4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of Federal regulation.
  - (5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

#### **POST-ACCIDENT 382.303**

- (a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the Borough of Clayton shall test for alcohol for each of its surviving drivers:
- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
  - (2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
    - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or



(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the Borough of Clayton shall test for controlled substances for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

| <u>Type of accident involved</u>                                      | <u>Citation issued to<br/>the CMV driver</u> | <u>Test must be performed<br/>by the Borough of Clayton</u> |
|---|--|---|
| Human fatality  | YES  | YES   |
|   | NO   | YES   |
| Bodily injury with immediate medical<br>treatment away from the scene | YES  | YES   |
|   | NO   | NO  |
| Disabling damage to any motor<br>vehicle requiring tow away           | YES  | YES   |
|   | NO   | NO  |

(d) (1) Alcohol tests. If a test required by this section is not administered within two hours following the accident, the Borough of Clayton shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the Borough of Clayton shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the Borough of Clayton shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the Borough of Clayton to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) The Borough of Clayton shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(g) (1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the Borough of Clayton.

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(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the Borough of Clayton.

(h) Exception. This section does not apply to:

- (1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or
- (2) An occurrence involving only the loading or unloading of cargo; or
- (3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 571.3) by the Borough of Clayton unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 177.823.

#### **RANDOM 382.305**

(a) The Borough of Clayton shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b) (1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 25 percent of the average number of driver positions.

(c) (1) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(2) Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.

(3) Each driver selected for testing shall be tested during the selection period.

(d) (1) To calculate the total number of covered drivers eligible for random testing throughout the year, the Borough of Clayton, must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in the Borough of Clayton's random testing pool, and all covered drivers must be in the random pool. If the Borough of Clayton conducts random testing more often than once per month (e.g., daily, weekly, bi-weekly) the Borough of Clayton does not need to compute this total number of covered drivers rate more than on a once per month basis.

(2) the Borough of Clayton may use a service agent (e.g., a C/TPA) to perform random selections and covered drivers may be part of a larger random testing pool of covered employees. However, the Borough of Clayton must ensure that the service agent is testing at the appropriate percentage established for FMCSA and that only covered employees are in the random testing pool

(e) (1) The Borough of Clayton shall ensure that random alcohol and controlled substances tests conducted under this policy are unannounced.

(2) The Borough of Clayton shall ensure that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(f) The Borough of Clayton shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the Borough of Clayton shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(g) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.



(h) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the Borough of Clayton, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(i) If the Borough of Clayton is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the Borough of Clayton may--

- (1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or
- (2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the Borough of Clayton is subject.

#### **REASONABLE SUSPICION 382.307**

(a) The Borough of Clayton shall require a driver to submit to an alcohol test when the Borough of Clayton has reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning alcohol. the Borough of Clayton's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) The Borough of Clayton shall require a driver to submit to a controlled substances test when there is reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning controlled substances. the Borough of Clayton's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or an official of the Borough of Clayton who is trained in accordance with 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver. *If the employee insists on driving, the proper local enforcement authority should be notified that an employee, who we believe may be under the influence of a drug or alcohol, is leaving the Borough of Clayton premises driving a motor vehicle.*

(d) Alcohol testing is authorized by DOT/FMCSA regulations only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with the Federal regulation. A driver may be directed by the Borough of Clayton to only undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e) (1) If an alcohol test required by DOT/FMCSA regulations is not administered within two (2) hours following the determination under paragraph (a) of this section, the Borough of Clayton shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by DOT/FMCSA regulations is not administered within eight (8) hours following the determination under paragraph (a) of this section, the Borough of Clayton shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under DOT/FMCSA regulations, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of



alcohol misuse, nor shall the Borough of Clayton permit the driver to perform or continue to perform safety-sensitive functions, until:

- (i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
  - (ii) Twenty four (24) hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this policy concerning the use of alcohol.
- (3) Except as provided in paragraph (e)(2) of this section, the Borough of Clayton shall take no action under this policy against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit the Borough of Clayton with independent authority of DOT/FMCSA regulations from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or an official of the Borough of Clayton who made the observations, with 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

**RETURN-TO-DUTY 382.309**

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O, including that such tests will be collected under direct observation.

**FOLLOW-UP 382.311**

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, Subpart O, including that such tests will be collected under direct observation.



## **CDL Drug and Alcohol Testing Policy**

### **September 2021 Update**

## **SECTION D - HANDLING OF TEST RESULTS, RECORD RETENTION AND CONFIDENTIALITY**

### **RETENTION OF RECORDS 382.401**

(a) General requirement. The Borough of Clayton shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) Period of retention. The Borough of Clayton shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following records shall be maintained for a minimum of five years:

- (i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,
- (ii) Records of driver verified positive controlled substances test results,
- (iii) Documentation of refusals to take required alcohol and/or controlled substances tests,
- (iv) Driver evaluation and referrals,
- (v) Calibration documentation,
- (vi) Records related to the administration of the alcohol and controlled substances testing programs,
- (vii) Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations, and
- (viii) A copy of each annual calendar year summary required by 382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of Federal regulations) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) *Indefinite period.* Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the Borough of Clayton while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) Types of records. The following specific records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of Federal regulations and this policy. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

- (i) Collection logbooks, if used,
- (ii) Documents relating to the random selection process,
- (iii) Calibration documentation for evidential breath testing devices,
- (iv) Documentation of breath alcohol technician training,
- (v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests,
- (vi) Documents generated in connection with decisions on post-accident tests,
- (vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing and



- (viii) A copy of each annual calendar year summary as required by 382.403.
- (2) Records related to a driver's test results:
- (i) The Borough of Clayton's copy of the alcohol test form, including the results of the test,
  - (ii) The Borough of Clayton's copy of the controlled substances test chain of custody and control form,
  - (iii) Documents sent by the MRO to the Borough of Clayton, including those required by part 40, Subpart G,
  - (iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this policy and
  - (v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this policy.
  - (vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the Borough of Clayton:
    - (A) Must obtain in connection with the exception contained in 382.301 of this policy, and
    - (B) Must obtain as required by 382.413.
- (3) Records related to other violations of this policy.
- (4) Records related to evaluations:
- (i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance and
  - (ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.
- (5) Records related to education and training:
- (i) Materials on alcohol misuse and controlled substances use awareness, including a copy of the Borough of Clayton's policy on alcohol misuse and controlled substances use,
  - (ii) Documentation of compliance with requirements of 382.601, including the driver's signed receipt of education materials,
  - (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;
  - (iv) Documentation of training for breath alcohol technicians as required by 40.213(a), and
  - (v) Certification that any training conducted under these Federal Regulations complies with requirements for such training.
- (6) Administrative records related to alcohol and controlled substances testing:
- (i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, and consortia and/or with a C/TPA,
  - (ii) Names and positions of officials and their role in the Borough of Clayton's alcohol and controlled substances testing program(s),
  - (iii) Semi-annual laboratory statistical summaries of urinalysis required by 40.111 (a) of Federal regulations and
  - (iv) The Borough of Clayton's alcohol and controlled substances testing policy and procedures.
- (d) Location of records. All records required by this policy shall be maintained as required by 390.31 and shall be made available for inspection at the Borough of Clayton's principal place of business within two business days after a request has been made by an authorized representative of the FMCSA.

#### **REPORTING OF RESULTS IN A MANAGEMENT INFORMATION SYSTEM 382.403**

- (a) The Borough of Clayton shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough of Clayton or any of its drivers.



(b) If the Borough of Clayton is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the Borough of Clayton's annual calendar year summary information, the Borough of Clayton shall prepare and submit the report to the FMCSA by March 15 of that year. the Borough of Clayton shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. the Borough of Clayton must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at Sec. 40.26 and appendix H to part 40). the Borough of Clayton may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see:

<http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm>.

You must use the form at appendix H to this part. You may also view and download the updated (1.01.2018) instructions at the DOT's website: (<https://www.transportation.gov/odapc>). You must submit the MIS report in accordance with rule requirements (e.g., dates for submission, selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. the Borough of Clayton shall ensure the accuracy and timeliness of each report submitted by the Borough of Clayton or a consortium.

(d) If the Borough of Clayton has a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the Borough of Clayton), then that employee shall be counted only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. the Borough of Clayton may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., Consortia/Third party administrator as defined in 49 CFR 382.107) may prepare the MIS report on behalf of the Borough of Clayton. However, a the Borough of Clayton official (e.g., Designated employer representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

#### **ACCESS TO FACILITIES AND RECORDS 382.405**

(a) Except as required by law or expressly authorized or required, the Borough of Clayton shall not release driver information that is contained in records required to be maintained under 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests. the Borough of Clayton will promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) The Borough of Clayton shall permit access to all facilities utilized in complying with the requirements of this policy to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough of Clayton or any of its drivers.

(d) The Borough of Clayton and each service agent who maintains records for an employer, must make available copies of all results for DOT alcohol and/or controlled substances testing conducted by the Borough of Clayton and any other information pertaining to the Borough of Clayton's alcohol misuse and/or controlled substances use prevention program when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough of Clayton or any of its drivers.

(e) When requested by the National Transportation Safety Board as a part of a crash investigation:

- (i) the Borough of Clayton must disclose information related to the Borough of Clayton's administration of a post-accident alcohol and/or a controlled substances test administered following the crash under investigation; and



- (ii) FMCSA will provide access to information in the Clearinghouse (once established) concerning drivers who are involved with the crash under investigation.
- (f) When requested by the National Transportation Safety Board as part of an accident investigation, the Borough of Clayton shall disclose information related to the Borough of Clayton's administration of a post-accident alcohol and/or controlled substances test administered following the accident under investigation.
- (g) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.
- (h) The Borough of Clayton may disclose information required to be maintained under this policy pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought).
- (i) The Borough of Clayton shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in 49 CFR part 40.321(b).

#### **MEDICAL REVIEW OFFICER NOTIFICATIONS TO THE BOROUGH OF CLAYTON 382.407**

The medical review officer shall report the results of controlled substances tests to the Borough of Clayton in accordance with the requirements of 49 CFR part 40, Subpart G.

#### **MEDICAL REVIEW OFFICER RECORD RETENTION FOR CONTROLLED SUBSTANCES 382.409**

- (a) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of five (5) years for verified positive controlled substances test results.
- (b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of one (1) year for negative and canceled controlled substances test results.
- (c) No person may obtain the individual controlled substances test results retained by a medical review officer (MRO as defined in § 40.3) or a consortium/third party administrator (C/TPA as defined in 382.107), and no MRO or C/TPA may release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a MRO or a C/TPA from releasing to the employer, the Clearinghouse (once established), or to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances and alcohol testing program under this part, the information delineated in part 40, subpart G.

#### **EMPLOYER NOTIFICATIONS 382.411**

- (a) The Borough of Clayton shall notify a driver of the results of a pre-employment controlled substances test conducted under this policy, if the driver applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The Borough of Clayton shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this policy if the test results are verified positive. The Borough of Clayton shall also inform the driver which controlled substance or substances were verified as positive.
- (b) The designated employer representative (DER) shall make reasonable efforts to contact and request each driver who submitted a specimen under this policy, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.
- (c) The designated employer representative (DER) shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.



**INQUIRIES FOR ALCOHOL AND CONTROLLED SUBSTANCES INFORMATION FROM PREVIOUS EMPLOYERS 382.413**

(a) The Borough of Clayton must request alcohol and controlled substances information from previous employers in accordance with the requirements of § 40.25, except that the Borough of Clayton must request information from all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with § 382.701(a) to comply with the requirements of § 40.25 of this title with respect to FMCSA-regulated employers. **Exception:** When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the previous employer's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5).

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the Borough of Clayton must request the alcohol and controlled substances information required under this section and § 40.25 directly from those employers regulated by a DOT Agency other than FMCSA.

**NOTIFICATION TO EMPLOYERS OF A CONTROLLED SUBSTANCES OR ALCOHOL TESTING PROGRAM VIOLATION 382.415**

Each person holding a commercial driver's license and subject to the DOT controlled substances and alcohol testing requirements under § 382 who has violated the alcohol and controlled substances prohibitions under part 40 or under § 382 without complying with the requirements of part 40, subpart O, must notify in writing all current employers of such violation(s). The driver is not required to provide notification to the employer that administered the test or documented the circumstances that gave rise to the violation. The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.





## **CDL Drug and Alcohol Testing Policy**

**September 2021 Update**

### **SECTION E - CONSEQUENCES FOR DRIVERS ENGAGING IN SUBSTANCE USE-RELATED CONDUCT**

#### **REMOVAL FROM SAFETY-SENSITIVE FUNCTION 382.501**

(a) Except as provided in Section F of this policy, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by Section B of this policy or an alcohol or controlled substances rule of another DOT agency.

(b) The Borough of Clayton shall not permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the Borough of Clayton has determined that the driver has violated this policy.

(c) For the purposes of DOT/FMCSA regulations, commercial motor vehicle means a commercial motor vehicle in commerce as defined in 382.107 and a commercial motor vehicle in interstate commerce as defined in part 390.

#### **REQUIRED EVALUATION AND TESTING 382.503**

No driver who has engaged in conduct prohibited by Section B of this policy shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O. The Borough of Clayton shall not permit a driver who has engaged in conduct prohibited by Section B of this policy to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O.

#### **OTHER ALCOHOL-RELATED CONDUCT 382.505**

(a) No driver tested under the provisions of Section C of this policy who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for the Borough of Clayton, including driving a commercial motor vehicle, nor shall the Borough of Clayton permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, the Borough of Clayton shall not take any action under this policy against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit the Borough of Clayton with authority independent of this policy from taking any action otherwise consistent with law.

*The use or possession of alcoholic beverages while on the Borough of Clayton's property, or in any of the Borough of Clayton's vehicle, or on the Borough of Clayton's time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.*

*Employees who are not at work, but who could be called out are expected to be fit for duty upon reporting for work. If an employee is under the influence of alcohol, the employee must notify the Borough of Clayton's personnel when contacted. Failure to advise the Borough of Clayton of alcohol consumption may result in disciplinary action. If a covered employee is perceived to be under the influence of alcohol when reporting to work after being called in, the employee's supervisor must be notified.*



*The supervisor must objectively observe the employee's behavior and if possible, substantiate the behavior with a second supervisor. Supervisors must have received training in alcohol and/or substance abuse detection. The supervisor must follow procedures outlined in the policy. If a determination to test for reasonable suspicion is made, the employee is immediately removed from safety-sensitive duties and the DER is contacted.*

**PENALTIES 382.507**

The Borough of Clayton and/or driver who violates the FMCSA requirements of § 382 and/or 49 CFR part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. Section 521(b).



## **CDL Drug and Alcohol Testing Policy**

**September 2021 Update**

### **SECTION F – ALCOHOL MISUSE AND CONTROLLED SUBSTANCES USE INFORMATION, TRAINING, AND REFERRAL**

#### **THE BOROUGH OF CLAYTON'S OBLIGATION TO PROMULGATE A POLICY ON THE MISUSE OF ALCOHOL AND USE OF CONTROLLED SUBSTANCES. 382.601**

(a) *General requirements.* The Borough of Clayton shall provide educational materials that explain the requirements of this policy and the Borough of Clayton's policies and procedures with respect to meeting the FMCSA alcohol and drug testing requirements.

(1) The Borough of Clayton shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) The Borough of Clayton shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the Borough of Clayton to answer driver questions about the materials; (*COVERED EMPLOYEE CERTIFICATE OF RECEIPT*)

(2) The categories of drivers who are subject to the provisions of this policy; (*APPLICABILITY*)

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with the policy; (*PERIOD OF THE WORK DAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE*)

(4) Specific information concerning driver conduct that is prohibited by this policy; (*SECTION B - PROHIBITIONS*)

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this policy including post-accident testing under 382.303(d); (*SECTION C - TESTS REQUIRED*)

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by 382.303(d); (*49 CFR part 40*)

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this policy; (*REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST*)

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences; (*DEFINITIONS*)

(9) The consequences for drivers found to have violated Section B of this policy, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under 49 CFR part 40,



Subpart O; *(CERTIFICATE OF RECEIPT, CONSEQUENCES OF PROHIBITED CONDUCT; and CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B, and SECTION E)*

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04; *(OTHER ALCOHOL-RELATED CONDUCT 382.505)*

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management;

(c) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse (once established):

- (1) A verified positive, adulterated, or substituted drug test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to any test required by subpart C;
- (4) An employer's report of actual knowledge, as defined at § 382.107;
- (5) On-duty alcohol use pursuant to § 382.205;
- (6) Pre-duty alcohol use pursuant to § 382.207;
- (7) Alcohol use following an accident pursuant to § 382.209; and
- (8) Controlled substance use pursuant to § 382.213;
- (9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (10) A negative return-to-duty test; and
- (11) An employer's report of completion of follow-up testing.

(d) *Optional provision.* The materials supplied to drivers may also include information on the Borough of Clayton's additional policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the Borough of Clayton's authority independent of Federal regulation. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(e) *Certificate of receipt.* The Borough of Clayton shall ensure that each driver is required to sign a statement certifying that he/she has received a copy of these materials described in this section. The Borough of Clayton shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

#### **TRAINING FOR SUPERVISORS 382.603**

The Borough of Clayton shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

#### **REFERRAL, EVALUATION, AND TREATMENT 382.605**

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.



## **CDL Drug and Alcohol Testing Policy**

**September 2021 Update**

### **SECTION G – REQUIREMENTS AND PROCEDURES FOR IMPLEMENTATION OF THE COMMERCIAL DRIVER’S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE**

The purpose of The Borough of Clayton Policy update in advance of the Compliance Date of January 6, 2020 as mandated by § 382.601: 1) is part of the Borough of Clayton’s efforts to meet its *Employer Obligation to Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substance*; 2) to publish educational materials to drivers about the Clearinghouse and other regulatory changes contained in the Final Rule issued December 5, 2016; and 3) to notify drivers that drug and alcohol test information will be reported to the Clearinghouse beginning January 6, 2020 so as to encourage drivers to seek substance abuse treatment if they currently have a problem with the misuse of alcohol and/or use of controlled substance(s).

#### **DRUG AND ALCOHOL CLEARINGHOUSE 382.701**

##### ***(a) Pre-employment query required.***

(1) Employers must not employ a driver subject to controlled substances and alcohol testing to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213.

(2) The Borough of Clayton must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

##### ***(b) Annual query required.***

(1) The Borough of Clayton must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 382, to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of 382.701, the Borough of Clayton may obtain the individual driver’s consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the Borough of Clayton whether there is information about the individual driver in the Clearinghouse, but will not release that information to the Borough of Clayton. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of 382.701, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must



not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of 382.701.

(c) *Employer notification.* If any information described in paragraph (a) of 382.701 is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(d) *Prohibition.* No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation of § 382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with § 40.307 and specified in the SAP report required by § 40.311, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(e) *Recordkeeping required.* Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

#### **DRIVER CONSENT TO PERMIT ACCESS TO INFORMATION IN THE CLEARINGHOUSE 382.703**

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before the Borough of Clayton may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:

(1) A verified positive, adulterated, or substituted controlled substances test result;

(2) An alcohol confirmation test with a concentration of 0.04 or higher;

(3) A refusal to submit to a test in violation of § 382.211;

(4) An employer's report of actual knowledge, as defined at § 382.107, of:

(i) On duty alcohol use pursuant to § 382.205;

(ii) Pre-duty alcohol use pursuant to § 382.207;

(iii) Alcohol use following an accident pursuant to § 382.209; and

(iv) Controlled substance use pursuant to § 382.213;

(5) A SAP report of the successful completion of the return-to-duty process;

(6) A negative return-to-duty test; and

(7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of 382.703.

(d) A driver granting consent under 382.703 must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with § 382.701(a)(2) or (b)(3).



(e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with § 382.701(c).

#### **REPORTING TO THE CLEARINGHOUSE 382.705**

**(a) MROs.**

(1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:

- (i) Verified positive, adulterated, or substituted controlled substances test results;
- (ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).

(2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:

- (i) Reason for the test;
- (ii) Federal Drug Testing Custody and Control Form specimen ID number;
- (iii) Driver's name, date of birth, and CDL number and State of issuance;
- (iv) Employer's name, address, and USDOT number, if applicable;
- (v) Date of the test;
- (vi) Date of the verified result; and
- (vii) *Test result*. The test result must be one of the following:

- (A) Positive (including the controlled substance(s) identified);
- (B) Refusal to test: adulterated;
- (C) Refusal to test: substituted; or

(D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with § 40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

**(b) Employers.**

(1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

- (i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- (ii) A negative return-to-duty test result;
- (iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;
- (iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
- (v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:

- (i) Reason for the test;
- (ii) Driver's name, date of birth, and CDL number and State of issuance;
- (iii) Employer name, address, and USDOT number;
- (iv) Date of the test;
- (v) Date the result was reported; and
- (vi) *Test result*. The test result must be one of the following:



- (A) Negative (only required for return-to-duty tests administered in accordance with § 382.309);
  - (B) Positive; or
  - (C) Refusal to take a test.
- (3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:
- (i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
  - (ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
  - (iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and
  - (iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.
- (4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at § 382.107, of:
- (i) On-duty alcohol use pursuant to § 382.205;
  - (ii) Pre-duty alcohol use pursuant to § 382.207;
  - (iii) Alcohol use following an accident pursuant to § 382.209; and
  - (iv) Controlled substance use pursuant to § 382.213.
- (5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:
- (i) Driver's name, date of birth, CDL number and State of issuance;
  - (ii) Employer name, address, and USDOT number, if applicable;
  - (iii) Date the employer obtained actual knowledge of the violation;
  - (iv) Witnesses to the violation, if any, including contact information;
  - (v) Description of the violation;
  - (vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and
  - (vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.
- (6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.
- (c) *C/TPAs*. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: an employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of 382.705.
- (d) *SAPs*.
- (1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:
    - (i) SAPs name, address, and telephone number;





- (ii) Driver's name, date of birth, and CDL number and State of issuance;
- (iii) Date of the initial substance-abuse-professional assessment; and
- (iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under 382.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of 382.703 by the close of the business day following the determination that the driver has completed the return-to-duty process.

(e) *Reporting truthfully and accurately.* Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.



|  |  |
|--|--|
| Prospective/Current Employer of CDL Driver                       | <ul style="list-style-type: none"> <li>— An alcohol confirmation test with a concentration of 0.04 or higher</li> <li>— Refusal to test (alcohol) as specified in 49 CFR 40.261</li> <li>— Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191</li> <li>— Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.</li> <li>— Negative return-to-duty test results (drug and alcohol testing, as applicable)</li> <li>— Completion of follow-up testing</li> </ul> |
| Service Agent acting on behalf of Current Employer of CDL Driver | <ul style="list-style-type: none"> <li>— An alcohol confirmation test with a concentration of 0.04 or higher</li> <li>— Refusal to test (alcohol) as specified in 49 CFR 40.261</li> <li>— Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191</li> <li>— Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.</li> <li>— Negative return-to-duty test results (drug and alcohol testing, as applicable)</li> <li>— Completion of follow-up testing</li> </ul> |
| MRO  | <ul style="list-style-type: none"> <li>— Verified positive, adulterated, or substituted drug test result</li> <li>— Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191</li> </ul>   |
| SAP  | <ul style="list-style-type: none"> <li>— Identification of driver and date the initial assessment was initiated</li> <li>— Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing</li> </ul>  |

**NOTICE TO DRIVERS OF ENTRY, REVISION, REMOVAL, OR RELEASE OF INFORMATION 382.707**  
 (a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.  
 (b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.

**BOROUGH OF CLAYTON – PERSONNEL POLICIES AND PROCEDURES  
 THIS IS NOT A CONTRACT**



(c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

#### **DRIVERS' ACCESS TO INFORMATION IN THE CLEARINGHOUSE 382.709**

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

#### **CLEARINGHOUSE REGISTRATION 382.711**

(a) *Clearinghouse registration required.* Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.

(b) *Employers.*

(1) Employer Clearinghouse registration must include:

- (i) Name, address, and telephone number;
- (ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and
- (iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.

(2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.

(3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.

(c) *MROs and SAPs.* Each MRO or SAP must provide the following to apply for Clearinghouse registration:

- (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;
- (2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and
- (3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) *C/TPAs and other service agents.* Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

- (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and
- (2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.
- (3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of 382.711 annually.

#### **DURATION, CANCELLATION, AND REVOCATION OF ACCESS 382.713**

(a) *Term.* Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) *Cancellation.* FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.

(c) *Revocation.* FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the



Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

**AUTHORIZATION TO ENTER INFORMATION INTO THE CLEARINGHOUSE 382.717**

(a) *C/TPAs*. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.

(b) *SAPs*. A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

**PROCEDURES FOR CORRECTING INFORMATION IN THE DATABASE 382.17**

(a) Petitions limited to inaccurately reported information.

(1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.

(2) *Exceptions*.

(i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in § 382.705(b)(5).

(iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in § 382.705(b)(3).

(b) *Petition*. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

- (1) The petitioner's name, address, telephone number, and CDL number and State of issuance;
- (2) Detailed description of the basis for the allegation that the information is not accurate; and
- (3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) *Submission of petition*. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE, Washington, D.C. 20590.

(d) *Notice of decision*. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) *Request for expedited treatment*.

(1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

(f) *Administrative review*.

(1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.



(2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

(3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(g) *Subsequent notification to employers.* When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

#### **AVAILABILITY AND REMOVAL OF INFORMATION 382.719**

(a) Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:

- (1) The SAP reports to the Clearinghouse the information required in § 382.705(d);
- (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;
- (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and
- (4) Five years have passed since the date of the violation determination.

(b) Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) *Exceptions.*

- (1) Within 2 business days of granting a request for removal pursuant to § 382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.
- (2) Information about a particular driver's drug or alcohol violation may be removed in accordance with § 382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) *Driver information remains available.* Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

#### **FEES 382.721**

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. *Exception:* No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

#### **UNAUTHORIZED ACCESS OR USE PROHIBITED 382.723**

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at § 382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.



#### **ACCESS BY STATE LICENSING AUTHORITIES 382.725**

(a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

#### **PENALTIES 382.727**

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

#### **INVESTIGATION AND INQUIRIES 391.23**

(e) (4) As of January 6, 2023, employers subject to § 382.701(a) of § 382 must use the Drug and Alcohol Clearinghouse to comply with the requirements of this section with respect to FMCSA-regulated employers.

(i) *Exceptions.*

(A) If an applicant who is subject to follow-up testing has not successfully completed all follow-up tests, the employer must request the applicant's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5) of Part 40.

(B) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT mode other than FMCSA, the employer must request alcohol and controlled substances information required under this section directly from those employers regulated by a DOT mode other than FMCSA.

(ii) *[Reserved]*

(f) (1) A prospective motor carrier employer must provide to the previous employer the driver's consent meeting the requirements of § 40.321(b) of Part 40 for the release of the information in paragraph (e) of 391.23. If the driver refuses to provide this consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(2) If a driver refuses to grant consent for the prospective motor carrier employer to query the Drug and Alcohol Clearinghouse in accordance with paragraph (e)(4) of 391.23, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.



## **CDL Drug and Alcohol Testing Policy**

**September 2021 Update**

**Attachment A**

**The Borough of Clayton**

**Commercial Motor Vehicle Driver's**

### **Certificate of Compliance with DOT Cell-Phone/Texting Bans**

**MOTOR CARRIERS:** The restrictions in 49 CFR Part 392 on using a mobile telephone or texting while driving apply to every operator of a "commercial motor vehicle" as defined in Section 390.5, including interstate vehicles weighing or rated at 10,001 pounds or more, vehicles placarded for hazardous materials, and certain vehicles designed or used for more than 8 passengers (including the driver). In-state operations of vehicles placarded for hazardous materials are also subject to the restrictions. Other in-state-only operations may also be subject, depending on state rules.

**DRIVERS:** Part 392 of the Federal Motor Carrier Safety Regulations contains restrictions on texting and the use of hand-held mobile telephones while driving a commercial motor vehicle (CMV), including the following:

- **Texting ban (392.80):** You may not manually enter text into or read text from an electronic device while driving a CMV. This includes e-mailing, text messaging, using the internet, pressing more than one button to start or end a phone call, or any other form of text retrieval or entry for communication purposes.
- **Hand-held cell-phone ban (392.82):** You are prohibited from using a hand-held cell phone while driving a CMV. This includes talking on a phone while holding it in your hand (including push-to-talk), pressing more than a single button to dial or answer a cell phone, or leaving your normal, seated driving position to reach for a cell phone.



*Except as prohibited under the Borough of Clayton policy, you are allowed to use a hands-free phone, a CB radio, a navigation system, a two-way radio, a music player, or a fleet management system for purposes other than texting. Texting and hand-held cell-phone use are **only** allowed if you need to contact emergency services or if you have stopped in a safe location off the road.*

**Penalties (383.51, 391.15, 49 CFR 386):** CDL and non-CDL drivers can be disqualified for 60 up to 120 days and/or face fines of up to \$2,750 for each violation. The Borough of Clayton can be fined up to \$11,000 for each violation.

**It is understood that the above information is being provided to the employee in an effort by the Borough of Clayton to show good faith efforts to achieve compliance with the above-cited regulations. (49 CFR § 386.81)**