

ARTICLE 28. EFFECTS OF CONTROLLED
SUBSTANCE ABUSE

28A. Utilization of Employee Assistance Program (EAP)

Unit members who avail themselves of the services of the EAP shall have the following protections:

28A.1 Privacy Rights

The unit member shall be guaranteed the right to confidentiality and privacy.

Pursuant to California Government Code Section 53202.25, when in the possession of the local agency, applications, claims and all individual records of persons entitled to benefits from any policies or plans established pursuant to this Article shall be confidential and shall not be disclosed to anyone except to the extent expressly authorized in the applicant, claim or policy insofar as it may be necessary for the administration of the EAP or upon order of a court of competent jurisdiction.

- a. The EAP participation shall not be placed in the unit member's Personnel File or alluded to therein.
- b. Records of the EAP contacts shall be kept at the appropriate treatment facility and may not be released without the unit member's written consent, except where required by law.
- c. All EAP interactions among personnel will be afforded strict confidentiality.

28A.2 Unit member participation in EAP is voluntary.

28A.3 Effect of Disclosure of EAP Contact to District

If the unit member's EAP contact is disclosed to the District, then:

- a. The District shall not discipline the unit member for said treatment;
- b. The unit member shall be held harmless by the District with respect to job security. The unit member may be placed in an accommodated position if necessary;
- c. The unit member shall receive necessary ADA accommodations to class schedule in order to attend medically prescribed treatment;
- d. The unit member shall be allowed to use available paid and unpaid Leave time, including Disability Leave, for extended medical treatment when necessary;
- e. The unit member shall not be barred from promotion or the granting of leaves or other reasonable job benefits because of this treatment; and

- f. The unit member's health insurance provider will not be notified of said treatment by the District.

28A.4 District Discipline Rights and Limits

The District still maintains the right to discipline unit members for actual drug or alcohol use but not for participation in EAP.

28B. Mandatory Drug and Alcohol Testing of Unit Members Driving District Vehicles

Pursuant to 49 Code of Federal Regulations, unit members who drive District vehicles which require a Class B driver's License must be randomly tested for drug and/or alcohol use. The following guidelines will be followed:

28B.1 Privacy Rights

The unit member/driver shall be guaranteed the right to privacy and confidentiality as to the results of the test.

Pursuant to 49 Federal Code of Regulations, Section 382.405(a), the District shall not release driver information that is contained in the medical record of the test except as required by law.

- a. The test results shall not be placed in the unit member/driver's Personnel File.
- b. All test results shall be placed in a secure location in the District with limited access and shall only be revealed to authorized agents of the District or the Federal Highway Administration.
- c. Tests shall take place in a secure location that affords visual and aural privacy to prevent unauthorized persons from seeing or hearing test results.
- d. Urine specimens shall be kept within sight of the unit member/driver and the collection site person until they are ready for shipment.

28B.2 Notice of Test

The test shall not proceed until the unit member/driver is provided reasonable notice of the test.

- a. Pursuant to 49 Federal Code of Regulations, Section 382.113, before performing a mandatory alcohol or controlled substance test, the District shall notify the unit member/driver that the test is required.

28B.3 Identification of Driver

The test shall not proceed until positive identification is made of the unit member/driver.

- a. If the unit member/driver refuses to sign the test form or fails to provide an adequate amount of breath for the alcohol test without a reasonably valid medical reason, the District may determine the circumstances to be a refusal to test.

- b. If the unit member/driver fails to provide an adequate amount of breath for the alcohol test, and the unit member/driver claims a medical reason for the inadequacy, the unit member/driver shall provide the District with an evaluation from a licensed physician, who is acceptable to the District, concerning the unit member/driver's ability to provide adequate breath.
 - (1) If the physician determines there is a valid medical reason precluding the unit member/driver from providing adequate breath for alcohol testing, then the unit member/driver's failure to provide the adequate breath for alcohol testing shall not be deemed a refusal to test.
 - (2) If the physician is unable to determine a valid medical reason for the unit member/driver to have inadequate breath for alcohol testing, then the unit member/driver's failure to provide adequate breath for alcohol testing shall be considered to be a refusal to test.
- c. If a unit member/driver refuses to take the test without giving a valid medical excuse from a physician, the District shall view this refusal as a positive test result.

28B.4 Right to Test Results

The unit member/driver shall have the right to the results of the test.

- a. Pursuant to 49 Code of Federal Regulations, Section 405(b), the unit member/driver is entitled, upon written request, to obtain copies of any records pertaining to the unit member/driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substance tests. The District shall promptly provide these records to the unit member/driver. Access of the records shall not be contingent upon payment of a fee.
- b. The unit member/driver shall have the opportunity to verify the results of the test to make sure the result printed by the testing unit matches the result displayed visually.

28B.5 Impact of Positive Test Results

If the results of the test are positive, the following shall apply:

- a. The unit member/driver shall have the right to have the body fluid sample retested at a reputable control laboratory to ascertain the possibility of a false positive. The District shall pay for one such retesting;
- b. The unit member/driver shall receive all appropriate due process notices and procedures for any potential disciplinary action which arises from this finding. This due process notice shall include, but not be limited to, a hearing to adjudicate the issues. The hearing shall be attended by a representative of the Faculty Association as well as appropriate members of management;
- c. The unit member/driver shall be held harmless by the District with regard to job security. The unit member/driver may be placed in an accommodated position which does not require the unit member/driver to drive a District vehicle;

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- d. The unit member/driver shall receive class schedule accommodations in order to attend medically prescribed drug or alcohol abuse treatment when such treatment can only be obtained during the unit member's scheduled work day;
- e. The unit member/driver shall be allowed to use paid and unpaid Leave time, including Disability Leave, for extended medical treatment when necessary;
- f. The unit member/driver shall not be barred from promotion or the granting of Leaves or other reasonable job benefits because of these test results; and
- g. The unit member/driver's health insurance provider shall not be notified of the test results by the District.