

Drug Free Workforce Program



International Brotherhood of Electrical Workers Local 234

and

**Monterey Bay California Chapter
National Electrical Contractors Association**

Effective

June 1, 2014

Program Administrator

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DRUG FREE WORKFORCE PROGRAM

I. INTRODUCTION

In order to protect workers and enhance the safety and productivity of the workplace, the International Brotherhood of Electrical Workers Local 234 (IBEW) and the Monterey Bay California Chapter National Electrical Contractors Association (NECA) are adopting area-wide substance abuse testing policies that are in accordance with required minimum policy standards, ensuring scientific validity, fairness, and confidentiality, along with a strong rehabilitative component, and are consistent with applicable federal, state, and local laws and regulations. Therefore, the IBEW and NECA have adopted the following Drug Free Workforce Program for contractors employing IBEW members, consistent with the mandatory IBEW/NECA minimum standards and in compliance with the law.

The procedures and guidelines contained in this document detail essential information about the administration of the IBEW/NECA Drug Free Workforce Program (referred to hereafter as "The Program"). This document is also a resource to assist in the day-to-day matters that may emerge in the course of implementing the Drug and Alcohol Policy (Drug Free Workforce Program). It is recognized that no set of standards and guidelines, however complete, can accommodate all possible combinations of circumstances, which may arise. Instead, these procedures are designed to be a working tool and foundation for use, and are to be applied using basic fairness, good judgment, and common sense. Any reference herein to one gender is intended to include both genders.

II. BACKGROUND

There is a vital interest by all electrical construction industry partners in maintaining the highest standards for the employee work environment in order to ensure the efficient operations necessary to provide reliable products and services to customers. Therefore, it is desirable to establish a strong policy to promote a safe and secure work environment free of the use of illicit drugs, unauthorized use of controlled substances, and the abuse of ethyl alcohol.

III. DEFINITIONS

A. Breath Alcohol Concentration (BrAC)

Means alcohol, ethanol, or any other term which describes the intoxicating agent in beverage alcohol.

B. Active Status

An Applicant or Employee who has met all requirements of the Program is in Active Status. Active Status occurs upon passing the initial drug test and is renewed with passing any subsequent approved test. Active Status shall not exceed one year from test date. Reciprocity of Active Status may be granted when the requirements of this Program are met via a similar program.

Active Status is invalidated for any violation of the Drug and Alcohol Policy, including failing to take any test required under this Program. When approved to return to work by the Member Assistance Program (MAP), the employee with an Inactive Status must pass a Return to Work test to obtain Active Status.

If an employee fails to meet any of the requirements of the Drug and Alcohol Policy, resulting in failure to qualify for Active Status or the invalidation of a previously Active Status, the only means by which the Employee may take a recognized test is if the MAP authorizes it.

C. Controlled Substances

Means any substance listed in Schedules I – V of the Controlled Substances Act of 1970, as amended. This Act divides drugs into five schedules according to the legitimacy of medical use and potential for abuse. By definition, drugs listed in Schedule I have no legitimate medical usage and a high potential for abuse. Schedules II – V include all those drugs which are required to be controlled under federal law and dispensed either by a qualified physician and/or under state law.

D. Employer

Means any Employer who is required or permitted to make contributions to the IBEW Local 234 Health & Welfare Plan and is a participant in the IBEW/NECA Drug Free Workforce Program.

E. Participating Employer

Means any Employer, who signs a Participation Agreement, shall follow the terms and conditions of the Drug Free Workforce Program.

F. Employee

Means all bargaining unit employees working for a Participating Employer who are required to be tested by this Policy.

G. Federal Standards

Means guidelines and requirements established by the U.S. Department of Transportation in 49 CFR Part 40, as amended, which establishes standards for the collection, testing, and medical review of urine specimens for drugs and the collection and testing of breath specimens for alcohol. Federal standards are to be applied in all drug and alcohol testing required by this Policy.

H. Illicit Drugs

Means any mind-altering or psychoactive substance, which has no legitimate medical use under Federal law (such as Schedule I drugs) or has been manufactured and/or distributed illegally.

I. Medical Review Officer (MRO)

Means a specially trained licensed physician or associate who receives all test results (negative and positive) from the laboratory and verifies them before reporting. The MRO may also have other administrative and technical duties associated with the Drug Free Workforce Program. For the Policy and these Procedures, MRO may also refer to a professional company under contract with the Drug Free Workforce Program to provide these services.

J. On Duty

Means any time the Employee is either performing work for the Participating Employer, under the supervision of the Participating Employer, in a Participating Employer's vehicle, on Participating Employer equipment, or on Participating Employer business.

K. Program Manager

Means the IBEW/NECA Drug Free Workforce Committee which consists of the Committee Members of which will oversee the administration of the Drug Free Workforce Program.

L. Program Administrator

Day to day administration functions are performed by Bensinger, DuPont & Associates.

M. Designated Employer Representative (DER)

The Designated Employer Representative (DER) is the Employer's confidential point of contact between the employee and the Medical Review Officer (MRO)/Administrator for all Drug Free Workforce Program matters.

The DER is legally bound to adhere to strict confidentiality in the carrying out of their responsibilities.

IV. RESPONSIBILITY FOR INTERPRETATION AND CHANGES

The IBEW and NECA are solely responsible for the appropriate interpretation and administration of their Policies and Procedures. Any questions should be directed to the appropriate Program Manager. Modifications or amendments must be mutually agreed upon by the committee, and shall be in writing. This policy will be open to discuss modification.

V. EFFECTIVE DATE

The effective date of this Program is June 1, 2014.

VI. DRUG AND ALCOHOL POLICY NOTIFICATIONS

The following guidelines will be used to implement the Drug Free Workforce Program:

A. Apprentices

All applicants for the apprenticeship program will receive a copy of the Drug Free Workforce Program prior to their initial employment and sign a statement acknowledging their understanding and acceptance of the policy. Signed statements will be retained by the Joint Apprenticeship Training Committee (JATC) for the duration of training and then by the Program Manager (or their designee) for as long as the individual remains a Program participant.

B. Participating Employees Rights and Responsibilities

All participating employees will receive a copy of the Drug Free Workforce Program. Information on the Policy must be communicated to Employees on a periodic basis by the Program Administrator.

No discrimination as to wages, hours, or benefits (including without limitation access to the Member Assistance Program benefits) shall arise from the employee's participation with this program including participation in a member assistance program.

C. Employer Rights and Responsibilities

Employers must be signatory contractors in good standing to participate in the Program. Participating signatory contractors under the Program require that all bargaining unit employees comply with the Program. Participation in this Program may be cancelled as a result of the grievance procedure, through the Bargaining Parties.

D. Posting of the Drug Free Workforce Program

The Drug Free Workforce Program must be posted in one or more prominent locations accessible to Employees with each Participating Employer and at the IBEW.

VII. MEMBER STATUS

Violation of any provision of the Drug Free Workforce Program shall invalidate an Employee's Active status.

Every Participating Employer will be provided with confidential and secure web site access which will allow 24 hours per day/365 days per year computer verification of member status. Access to the system will be by a unique security code. When an employee is hired, the Participating Employer must verify the member's status by accessing the web site. If the Employee does not have Active Status (whether because of a positive test, a failure to appear for a required test, being declared ineligible, or testing is not yet complete), the system will not have any reportable information on the individual. Questions by the Participating Employer must be directed to a Program client services representative in the MRO/Program Administrator's office.

VIII. DRUG AND ALCOHOL TESTING

Employees will be tested for drugs on the following occasions:

- A. Initial-hire Testing
- B. Random Testing
- C. Post Accident
- D. Return to Work
- E. Reasonable Suspicion

The testing method will be by urine test, unless changed by the Drug Free Workforce policy committee. For post-accident testing, breath testing for alcohol will also be conducted in addition to the collection of a urine sample.

A. Initial-hire Testing

- i. On June 1, 2014, initial-hire testing will be implemented.
- ii. An employee who returns to work whose status was invalidated within the past 12 months must receive approval from the MAP to take an authorized test to renew Active Status in order to return to work.

The MAP will identify to the MRO/Administrator those for whom a drug test is authorized under section (b), above.

If the Medical Review Office/Program Administrator receives an unauthorized test result on behalf of an Employee, the MRO/Program Administrator will advise the Employee that the test result will not be recognized, unless it was negative, and that the member must contact the MAP to make arrangements to take an authorized test in order to be permitted to return to work.

If the MAP authorizes an employee to take a test to qualify for Active Status, that test must be taken by no later than the end of the day following the day in which such authorization was granted. Any test taken after the prescribed time period has elapsed will not be recognized as a valid test, unless the result is positive, and a new authorization must be issued by the MAP.

B. Random Testing

Twenty-five percent (25%) of all employees working for Participating Employers will be subject to random testing annually. Each month individuals who are subject to random testing will be selected by the MRO/Administrator for urine testing from a pool of all eligible members from Participating Employers. The pool will be updated each month. Each member in the pool must have an equal chance of selection during each random draw. Participating Employers will be notified by phone or email during the target month for any of their current employees who have been selected for such testing. Individual Participating Employer notifications will be spread throughout the month to ensure unpredictability for employees. For that same reason, some Participating Employers may be contacted more than one time in the month for employee random testing.

Once notified, Participating Employers will be asked to immediately inform the selected employees as soon as practical by an authorized representative of the Participating Employer, either in person or via telephone, that they are to appear for a urine test within forty-eight (48) hours of their notification. Once the Employee notification has been confirmed, the Participating Employer will fax or email back the notification form documenting the notification process to the MRO/Administrator. Employers shall be responsible for wages and benefits of employees only while conducting the test, which includes travel directly to and from the testing facility. The cost of the test shall be borne by the Program.

Employees who are out ill, on vacation, or temporarily off work for some other legitimate reason are to be notified upon their return to work.

If the employee is unable to be contacted in a timely manner (i.e., no longer working for the Participating Employer, an illness likely to last more than three days, or a scheduled vacation), the Participating Employer will fax or email that information to the MRO/Administrator and the Employee will be removed from that month's selections for that Participating Employer.

If an employee fails to provide a urine sample following notification, the employee's existing Active Status will be invalidated and the Participating Employer's Designated Employee Representative will be notified that the employee no longer has Active Status. An employee whose Active Status is invalidated due to a failure to comply with the notification, must contact the MAP in order to be authorized to take a test to reinstate their Active Status.

Employees are subject to being tested randomly. It is possible for an employee to be randomly tested not at all, once, or more than one time each year under the random selection procedure.

C. Post Accident

In the event of a work-related accident, the participating Employer shall promptly determine if:

The accident involved a reportable injury as defined by OSHA regulations, or involved an injury which required medical treatment which could not be handled at the accident scene, or involved damage to company property or other, or the employee's performance may have either caused or contributed to the severity of the accident.

Any employee who meets these criteria must be tested for drugs and alcohol. Alcohol testing should be completed within two (2) hours of the accident if at all possible. Drug testing must be completed within twenty-four (24) hours of the accident.

i. The Policy-Triggering Event. The Participating Employer is responsible for making a good faith determination whether an employee is subject to the post-accident requirement. This means that a knowledgeable, authorized Participating Employer representative has made the decision to test based on the relevant facts immediately available (time being of the essence). Employees should be tested as long as their performance or decision-making cannot be completely discounted as either being the cause or a contributing factor to the accident. Participating Employers must be prepared to document the reasonableness of their decisions based solely on the criteria described at the beginning of this section.

ii. Participating Employer Responsibilities. Once the decision has been made to test, the participating Employer is responsible for ensuring that the specimens (breath for alcohol and saliva or urine for drugs) are collected as soon as possible. If the breath-alcohol test cannot be completed within two (2) hours, the Participating Employer should make a written record of the reasons for the delay and retain them on file. If the breath-alcohol test is not administered within eight (8) hours following the accident, the Participating Employer will cease all attempts to conduct the test and shall prepare and retain on file written documentation indicating why the test could not be conducted. A drug test, however, must proceed under any circumstances. The Participating Employer is responsible for directly contacting the designated facility, which will conduct the post-accident drug and alcohol test.

The Participating Employer must ensure that the site is properly informed at the time of collection that the reason for the test is “post-accident.” Whenever possible, the Participating Employer should escort the employee to the collection facility. The breath-alcohol specimen must be collected first.

Post-accident specimens collected at the designated site will be paid for by the Program for all eligible Employees.

iii. Employee Responsibilities. Employees may not refuse a post-accident test on the grounds that they believe the criteria necessary to establish a testable work related accident have not been met. An employee subject to testing who fails to remain readily available to have specimens collected may be deemed by the Participating Employer to have refused to submit to the test. Employees may leave the accident scene to seek medical assistance or emergency medical care as necessary to protect and preserve their health and safety or that of an accident victim.

iv. Medical Issues. When an employee is injured in a qualifying accident, the highest priority must be to ensure that he/she is properly treated and medically stabilized before any thought is given to collecting specimens under the Program.

It is not permitted to take specimens from an employee through extraordinary means when the sole purpose of the invasive procedure is compliance with the drug and alcohol testing portions of this rule. Specimens may be collected only when approved by the attending physician.

A blood or breath test for alcohol for law enforcement authorities or the medical facility will be accepted as meeting the alcohol requirements of this section.

The post-accident alcohol analysis collection must also be consistent with the protocols established by federal standards. An evidential-level breath-testing device must confirm all presumptively positive alcohol positives. All breath alcohol devices employed for confirmation must be on the National Highway Transportation Safety Administration’s (NHTSA’s) DOT approved products list.

The alcohol testing cutoff concentrations employed in the NECA/IBEW Drug Free Workforce Program are 0.04% BrAC for both screening and confirmation tests. Employees regulated by the Department of Transportation will be subject to cutoffs found in applicable regulations.

D. Return to Work

An employee who has been directed to the MAP by the Medical Review Officer/Program Administrator for any reason related to failing to qualify for Active Status, or having Inactive Status at any time, may only appear at a recognized collection site for a Return to Work test if authorized to do so by his counselor at the MAP.

When the MAP authorizes an Employee to take a test to qualify for Active Status, that test must be taken no later than the end of the day following the day in which such authorization was granted. Any test taken after the prescribed time period has elapsed will not be recognized as a valid test, unless the result is positive and a new authorization must be issued by the MAP.

If an Employee takes a test that has not been authorized by the MAP, the cost of each unauthorized test will be billed to the Employee.

E. Reasonable Suspicion

An employee on the job site will be required to submit to a chemical test which demonstrates prohibited drug use if a reasonable objective basis exists to believe that the employee is using a prohibited drug. A reasonable objective basis will exist under the following circumstances:

- a. A firsthand observation by a trained supervisor is made of the employee's job performance and documented in writing prior to any tests.
- b. The employee's conduct or actions indicating alleged prohibited drug use shall be observed and documented in writing by two trained supervisors on the job site. For employers with fourteen (14) or fewer employees, only one trained supervisor is required to substantiate the decision to test.
- c. A written report describing the employee's condition shall be completed, dated and signed by the observer(s), and copies made available to the employee and the Union.
- d. Third party reports that an employee is impaired in his duties due to the use of prohibited drugs shall not constitute reasonable cause, but may be cause for observation of the employee:

Persons refusing to submit, under the aforementioned circumstances, to a test shall be refused employment up to and including discharge, whichever is applicable.

Responsibility of Trained Supervisor

In the event any supervisor or other individual on two (2) separate occasions reports that he has reasonable cause to have the same employee tested for substance abuse and the test proves negative, that supervisor or other reporting individual shall be relieved of any responsibility or authority for determining reasonable cause to having an employee tested and shall be barred from the job site for two calendar weeks, and shall be retrained to become an accurate observer.

Wellness Benefit

The MRO will advise the Health and Welfare Plan Administrator (Benesys) of all negative tests. Each applicant, who is a covered participant in the program at the time of their negative test, will receive a wellness benefit check for \$50.00 provided they are not employed. This payment is applicable to each negative result authorized drug test and may be applied in whole or in part to reimburse the NECA/IBEW Drug-Free Workforce Program for the full cost of any outstanding unauthorized test(s).

However, in the event the Employee's test does not constitute an authorized test under the NECA/IBEW Drug-Free Workforce Program, there will be no payment of a wellness benefit even if the result is negative.

IX. SPECIMEN TESTING

Only urine tests which are directly authorized in conjunction with the Program will generally be recognized in accordance with this Drug and Alcohol Policy. If an employee takes an unauthorized test, the test result will be forwarded to the Medical Review Office. However, the result will only be recognized as a valid test under this Program if it is positive. Further, the employee will be required to reimburse the full amount of the cost of the unauthorized test.

Body fluid specimens will be collected from Employees utilizing standardized procedures which ensure both individual privacy for the donor (unless an attempt is made to dilute or adulterate a sample) and proper chain-of-custody of the non-negative sample until, if necessary, it is sealed and transported to the laboratory. Collection procedures will be consistent with Federal Standards for collection. However, a non-federal Custody and Control Form or a urine collection test form must be used to collect the specimen. Employees caught attempting to dilute or adulterate their specimen at an authorized collection facility may be required to have a second sample collected under direct observation before the employee leaves the collection facility. Should the employee refuse to provide the second sample as required the original sample will be treated as a positive test.

The laboratory utilized in the Program must be certified by the Department of Health and Human Services/Substance Abuse and Mental Health Services Administration (DHHS/SAMHSA) National Laboratory Certification Program. Saliva or urine samples may be screened at the collection site. Non-negative samples will be confirmed by gas chromatography/mass spectrometry (GC/MS). Five drug groups will be tested for: marijuana, cocaine, the amphetamines, the opiates, and phencyclidine (PCP).

The drug testing cutoff concentrations employed in the Program shall be per DOT Rule 49 CFR Part 40 Section 40.87.

Note: Under no circumstances will a physician's statement authorizing the compassionate use of marijuana be accepted as a valid medical explanation for a positive test result for marijuana.

Non-negative test results are to be forwarded to the Medical Review Officer (MRO) who will verify the results and initiate issuance of Inactive Status. MRO duties will be conducted in accordance with federal standards.

All confirmed drug positive or substituted/adulterated donors must be given the opportunity to provide to the MRO any legitimate medical reason(s) they wish to offer for the positive test or untestable specimen. If the MRO's determination is that there is a legitimate, verifiable medical explanation for the positive test or composition of the specimen, the result will be treated as equivalent to a negative laboratory test for Active Status purposes. If not, it will be considered a verified positive result. Use of another person's medication will not be an acceptable reason and will be considered a verified positive.

For the purpose of this section, and any other reference to a drug test administered under the Program, the following definitions apply:

Adulterated – An adulterated specimen is one that contains a substance or chemical which can only have been added to the specimen, after it has been voided (as determined by either its presence or its concentration if a urine specimen.)

Canceled/Reject/Rejected – A specimen may be rejected for testing if it does not meet recognized minimum standards either for urine concentration or for documentation of the collection. Ordinarily, a rejected specimen will require the employee to provide a new specimen.

Dilute/Diluted – A dilute specimen contains less than 1.003 specific gravity and the creatinine level is below 20 mg/dl. A dilute specimen does not meet the minimum urine concentration standards for the Program and will be rejected and a re-test will be required. If the laboratory determines that a urine specimen has been substituted or adulterated, the specimen will be rejected under the Program and will be treated as a positive test.

Substituted – A substituted specimen is one which has been brought into the collection facility and is not the donor's void. Such a specimen will be rejected under the Program and will be treated as a positive test.

X. POSITIVE DRUG AND ALCOHOL TEST

In the case of a verified positive drug or alcohol test, the Program Administrator will immediately notify the Designated Employer Representative that the employee no longer has Active Status. In the case of Apprentices, the Joint Apprenticeship Training Committee (JATC) will also be notified.

Employees are entitled to copies of verified positive results, which they may request in writing from the Program Administrator. Communication with the MRO or Program Administrator may only be conducted by telephone or in writing. An employee may not visit the offices of the MRO to discuss the results of any test administered under the Program.

Once a positive MRO determination has been made, the MRO/Program Administrator will refer the verified positive member to the MAP for evaluation and counseling and/or treatment. Once the MAP has qualified the employee for return to work, the MRO/Program Administrator will be contacted and a return-to-work drug and/or alcohol breath test will be scheduled. If the test is not taken when scheduled a new authorization must be issued by the MAP. Any otherwise unauthorized test taken prior to the MAP rescheduling the employee to take a return-to-work test will not be recognized as a valid test, unless the result is positive. Once a negative result is obtained, the employee will be assigned Active Status. The MRO/Program Administrator will work closely with the MAP to ensure that the employee is considered a low risk to return to drug and/or alcohol use. The MAP may require follow-up drug and/or alcohol tests for a period of up to two years, the cost of which will be borne by the Program. Drug and/or alcohol tests required by the MAP will be considered to have equal consequences with all other forms of testing required by this Policy.

XI. FEDERAL HIGHWAY ADMINISTRATION (FHWA) REQUIRED TESTING POLICIES

Some Participating Employers have employees who are covered under FHWA regulations found in 49 CFR Part 382, as amended. These employees are also considered part of the Program and will maintain their Active Status in a similar manner to non-federally regulated Employees. Although they have somewhat different federal testing categories, (which include more alcohol testing requirements) they must also participate in the Program. However, employees must be clearly informed whenever they are taking a federal test, and have different return-to-work requirements if they are positive. Participating Employers must be notified of FHWA test results by the MRO in a different manner, must themselves maintain special test records, must have supervisors of FHWA drivers trained to make reasonable suspicion determinations, must provide drug and alcohol information to their covered drivers in accordance with the rule, and must be prepared for both state and federal inspection of their FHWA drug and alcohol testing program.

Note: a medicinal use letter is not considered a valid medical explanation for positive test result for marijuana.

XII. CONFIDENTIALITY REQUIREMENTS

All drug and alcohol test-related information maintained in connection with the Drug Free Workforce Program is considered confidential. Those personnel having legitimate access to know this information are required to restrict conversations to only those on a minimum need-to-know basis, but must otherwise maintain total confidentiality of test results and Drug Free Workforce Program violations.

Willful failure to abide by these requirements, or negligence in maintaining written or oral confidentiality, may result in administrative action up to and including termination by the Participating Employer or prosecution under federal or state law.

However, pursuit of a grievance arising out of the use of this policy will necessitate the release of all pertinent information, including drug test results. Such information will be exposed only to the extent necessary to properly process the grievance.

Note: Any increase of costs for funding and administering the Drug Free Workforce Program may be contributed by the employer at any time or shall be negotiated as a separate allocation designated for the purpose of administering the Drug Free Workforce Program and will not be subject to contributions from any future negotiated wage and or benefit package.

Drug Free Workforce Program

International Brotherhood of Electrical Workers Local 234

and

**Monterey Bay California Chapter
National Electrical Contractors Association**

SIGNED FOR THE CHAPTER:

**Monterey Bay California Chapter National
Electrical Contractors Association**

Sign:


Jerri L. Champlin
Executive Manager

Print:

3/1/14

Date

SIGNED FOR THE UNION:

**International Brotherhood of Electrical
Workers Local 234**

Sign:



Andy Hartmann
Business Manager/Financial Secretary

Print:

3.10.2014

Date

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