



Employment Testing and Background Checks

Sample Policies and Forms

Confidential

This packet is one of the many MTA resources available from the MTA Member Information Services Department at:

Michigan Townships Association

P.O. Box 80078, Lansing, MI 48908-0078

Phone: (517) 321-6467 **Web:** www.michigantownships.org

Michigan Townships Association Staff prepared this packet for educational purposes to assist township officials in township governance, statutory compliance, and day-to-day township administration. The examples and sample language provided are not intended as legal advice, and townships are urged to consult with their local legal counsel on questions of law.

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Cindy Davis
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Background Checks: After the Warm, Fuzzy Interview is Over ...

An employee recently asked his buddy to shoot him in the shoulder so he could postpone taking his employer's drug test. Strange, but true! With stories like this, plus an increase in security threats, workplace violence, embezzlement scandals and negligent hiring claims, it's no wonder that the Society for Human Resource Management reports that 96 percent of all employers conduct some type of applicant screening.

EMPLOYMENT APPLICATIONS

The application process is the simplest form of background check. An application may be used to verify past employment, education, licenses and felony convictions, prior to the employer making an employment offer. All applicants for township employment, including volunteers, should be required to complete an application form. (This does not include elected or appointed officials.)

The application process is low-cost, and it doesn't require conducting physical tests or gathering extensive information—but it may not be the most useful or accurate screening method since the applicant supplies the information. It is very important for the employer to verify the information by contacting previous employers, schools and references.

Employers may ask questions on an application about any pending felony charges and all criminal convictions, but

Michigan law prohibits application questions about misdemeanor arrests not resulting in a conviction. (MCL 37.2205a) An applicant may be disqualified because of a criminal conviction when it is job-related, such as where a convicted embezzler is applying for a job handling money, as opposed to a job mowing the lawn, where no money is involved.

Employers should be aware of other application and interview questions that are prohibited. The Michigan Department of Civil Rights has outlined these questions in their publication "Pre-employment Inquiry Guide." To download a copy of the guide, visit www.michigan.gov/mdcr. Click on "Publications," then "Pamphlets and Brochures," and "Pre-employment Inquiry Guide."

DRUG TESTING AND PHYSICALS

A township may require drug tests and fitness-for-duty physicals as a condition of employment after the township makes an offer of employment. A township may also require drug tests and physicals after employment, and on a recurring basis. These tests cost more than an application alone, but they help reduce an employer's liability, and may help protect the health and safety of employees and others.

State and federal laws do not prohibit drug testing, but physical testing must be in compliance with the Michigan Persons with Disabilities Civil Rights Act and the Americans with Disabilities Act. Fitness-for-duty physical testing cannot be used to screen out persons with disabilities; they must be related to the essential functions of the job description. For example, if the job description for firefighter requires the ability to carry at least 70 pounds for 100 feet, an applicant may be rejected if he or she is actually unable to perform that in a physical test. But a clerical job description that does not involve much physical activity probably does not require physical testing.

The township should dictate by policy which job descriptions are subject to drug tests or physicals, and when, how and why the tests will be administered. For sample policy language, contact MTA Member Information Services at (517) 321-6467 or e-mail cindy@michigantownships.org.

CONSUMER REPORTS

A "consumer report" is a background check done by an independent, third-party reporting agency. A consumer report can be used to collect information such as credit reports, criminal records and driving records for both applicants for employment and current employees. The information can only be used for hiring, promotion, reassignment or retention. Although they

are the most costly and time-consuming type of background check, consumer reports are also the most comprehensive.

Consumer reports are subject to the restrictions and notification requirements of the federal Fair Credit Reporting Act (FCRA), (15 U.S.C. Section 1681, *et seq.*). Before a consumer report may be ordered, 1) the township must give the individual applicant or employee written notice that a consumer report may be obtained for employment purposes, and 2) the applicant or employee must agree in writing to authorize the report.

If the township is considering an “adverse employment action,” such as not hiring an applicant, or reassigning or discharging an employee, as a result of a consumer report, the FCRA requires additional steps. A township should consult with its local legal counsel before proceeding.

IN PRACTICE

Extensive background checks are not necessary for every job position. An employer should consider the significant safety, security and loss prevention risks of each job’s essential functions. The type and level of risk will determine the method of screening to use.

Again, consider hiring firefighters. The essential job functions include wearing heavy protective gear with breathing apparatus; carrying heavy objects; climbing ladders; driving or riding in rapidly moving vehicles; interacting with vulnerable persons and property; and functioning in extremely stressful conditions with physical hazards of fire, smoke, water, falling debris, heights and low visibility. Some risk factors for an individual’s ability to perform those essential functions might include health conditions that interfere with breathing, physical strength and agility, vision, rapid decision-making; a poor driving record or history of driving while intoxicated; or criminal convictions for arson, theft, assault, molestation or stalking. Based on the risk factors, a criminal background check, driving record report, drug screen and pre-employment physical (required after offer of employment) would be prudent.

On the other hand, the essential job functions of an office position might include general clerical activities; using township computer equipment, software or other property to perform tasks; receiving or depositing checks and cash; having access to secured areas or items such as offices, desks, file cabinets or safes; and interacting with other employees and the public. The risk factors could include criminal convictions for money-related offenses, theft or personal violence, so a criminal background check or credit report might be useful. But a clerical position that does not involve money might not warrant more than verifying applications.

A township, like any other employer, must protect its reputation, property and persons. Avoid hiring an applicant based on that first warm, fuzzy interview! The consequences of not carefully evaluating job applicants and employees may come back to haunt you.

Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) spells out employer responsibilities when using consumer reports for employment purposes.

Key provisions of the FCRA include:

Written Notice and Authorization. Before you can get a consumer report for employment purposes, you must notify the individual in *writing*—in a document consisting solely of this notice—that a report may be used. You also must get the person’s *written authorization* before you ask a credit reporting agency (CRA) for the report.

Adverse Action Procedures. If you rely on a consumer report for an “adverse action”—denying a job application, reassigning or terminating an employee, or denying a promotion—be aware that:

Step 1: Before you take the adverse action, you must give the individual a pre-adverse action disclosure that includes a copy of the individual’s consumer report and a copy of “A Summary of Your Rights Under the FCRA”—a document prescribed by the Federal Trade Commission. The CRA that furnishes the individual’s report will give the summary of consumer rights.

Step 2: After you’ve taken an adverse action, you must give the individual notice—orally, in writing or electronically—that the action has been taken in an adverse action notice. It must include:

- The name, address and phone number of the CRA that supplied the report
- A statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it
- Information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days

Certifications to Consumer Reporting Agencies. Before giving you an individual’s consumer report, the CRA will require you to certify that you are in compliance with the FCRA, and that you will not misuse any information in the report in violation of federal or state equal employment opportunity laws or regulations.

This information is provided by the Federal Trade Commission. For additional information, see Using Consumer Reports: What Employers Need to Know at: www.ftc.gov/bcp/online/pubs/buspubs/credempl.pdf.

Introduction to Developing Drug, Alcohol and Fitness-for-Duty Physical Testing Policies

A township may require drug and alcohol tests and fitness-for-duty physicals as a condition of employment. A township may also require drug and alcohol tests and fitness-for-duty physicals after employment and on a recurring basis.

State and federal laws do not prohibit drug testing, but physical testing must be in compliance with the Michigan Persons with Disabilities Act (MPDA), Michigan Elliott-Larsen Civil Rights Act, the federal Americans with Disabilities Act (ADA), federal Family Medical Leave Act (FMLA) and Title VII of the federal Civil Rights Act. Fitness-for-duty physical testing cannot be used to screen out persons with disabilities; tests must be related to the essential functions of the job description.

As with all work rules, the township board should dictate by policy its intention to provide a drug-free workplace. The policy should identify any testing that will be conducted for drugs, alcohol and physical fitness-for-duty.

This may be done through:

- 1) A “Drug-Free Workplace” policy without an expressed testing policy,
- 2) Separate policies for drug and alcohol testing and fitness-for-duty physicals, or
- 3) A policy that combines drug and alcohol testing and fitness-for-duty physicals into one policy.

These policies can vary significantly depending on the township’s goals and should be developed with the township’s local legal counsel.

Drug and Alcohol Testing Policy Guidelines

In developing a policy, the following points should be considered:

Purpose

State the purpose of the policy clearly. Employees should understand that any testing requirements are not designed to infringe on their personal privacy or cause them unnecessary inconvenience, but are designed to ensure a safe and efficient workplace.

Coverage

Who will the policy apply to? For example, will the policy only apply to new hires or certain job categories? Or, will it also apply to post-accident, reasonable cause, return-to-duty or follow-up situations? How often will they be required—as a condition of employment, annually or randomly?

Drug and Alcohol Prohibitions

Define those illegal and legal drugs (prescription and non-prescription) that may impair an employee's working ability. Include a statement that an employee who is taking an over-the-counter or prescribed medication must notify the township if the medication is expected to adversely affect the essential functions of the job. This section should also state that no employee shall possess, distribute, use or be impaired by alcohol while working on township property.

Physician

Who will conduct the testing—a physician or outside licensed medical facility?

Costs

Generally the township will bear the cost of all testing. However, you may want to provide a provision for retesting at the expense of the employee.

Responsibility for Arranging Exams

Who will arrange for and ensure that tests are completed? What time frames for completing the tests will be required?

Procedures

Provide a summary of what the drug and physical exam will cover. This section can also cover how the employee will be notified of testing dates, failure to appear and enforcement of the policy. The policy should also include a statement addressing reasonable accommodations for persons with a disability.

Confidentiality

State what testing results will be received and how the testing results will be handled by the township. Describe confidentiality as it is required by the ADA and FMLA and the procedures for obtaining consent forms.

Reservation of Rights

The policy should state that it does not alter the at-will employment relationship, that the township has the right to interpret and change the policy, and that the policy is in compliance with the ADA and FMLA and other state and federal laws.

Drug and Alcohol Testing Policy Checklist

The following checklist will help you develop a testing policy or evaluate your existing one.

General	Yes	No
Do you have a written drug and alcohol policy?	<input type="checkbox"/>	<input type="checkbox"/>
Do you annually review your policy to update it?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have stated goals for your policy?	<input type="checkbox"/>	<input type="checkbox"/>
Does your policy meet those goals?	<input type="checkbox"/>	<input type="checkbox"/>
Policy		
Do you communicate your policy to your employees?	<input type="checkbox"/>	<input type="checkbox"/>
Is the policy contained in:		
Orientation sessions?	<input type="checkbox"/>	<input type="checkbox"/>
Handbooks?	<input type="checkbox"/>	<input type="checkbox"/>
Bulletin board notices?	<input type="checkbox"/>	<input type="checkbox"/>
Supervisor training?	<input type="checkbox"/>	<input type="checkbox"/>
Pay envelope stuffers?	<input type="checkbox"/>	<input type="checkbox"/>
Does your policy address off-duty conduct?	<input type="checkbox"/>	<input type="checkbox"/>
Does your policy address both legal and illegal intoxicants?	<input type="checkbox"/>	<input type="checkbox"/>
Does your policy address the issue of when you will test?	<input type="checkbox"/>	<input type="checkbox"/>
Does it state who can require a drug or alcohol test?	<input type="checkbox"/>	<input type="checkbox"/>
Does it require employees to cooperate with examinations?	<input type="checkbox"/>	<input type="checkbox"/>
Does it ensure a chain of custody for the blood or urine sample?	<input type="checkbox"/>	<input type="checkbox"/>
Does it permit retesting?	<input type="checkbox"/>	<input type="checkbox"/>
Does it allow medical records from a personal physician?	<input type="checkbox"/>	<input type="checkbox"/>
Is it coordinated with your employee assistance program?	<input type="checkbox"/>	<input type="checkbox"/>
Does it ensure confidentiality?	<input type="checkbox"/>	<input type="checkbox"/>
Is it coordinated with your medical leave of absence policy?	<input type="checkbox"/>	<input type="checkbox"/>
Do you pay for the drug or alcohol test?	<input type="checkbox"/>	<input type="checkbox"/>
Do you address when the police will be informed of illegal activity?	<input type="checkbox"/>	<input type="checkbox"/>
Legal Issues		
Are you familiar with the Drug-Free Workplace Act of 1988?	<input type="checkbox"/>	<input type="checkbox"/>
Are you a federal contractor governed by this law?	<input type="checkbox"/>	<input type="checkbox"/>
Are you a defense contractor governed by this law?	<input type="checkbox"/>	<input type="checkbox"/>
Are you regulated by any federal or state agencies that impose testing requirements?	<input type="checkbox"/>	<input type="checkbox"/>
Are you familiar with your state's drug testing laws?	<input type="checkbox"/>	<input type="checkbox"/>
Has your policy been reviewed by legal counsel?	<input type="checkbox"/>	<input type="checkbox"/>

(Source: Business Legal Reports)

Sample Handbook Statement (Without Testing) on a Drug-Free Workplace

It is the intent of the [ABC Township] to provide a drug-free, safe and secure work environment for our employees. To ensure a safe and efficient workplace, the [ABC Township] will strictly enforce the following rules:

1. No employee shall possess, distribute, use or be impaired by alcohol on Township property, while on Township business, or during working hours, including rest and meal periods.
2. No employee shall possess, distribute, use, be impaired by, or have in their bodily system, illegal prohibited drugs on Township property, while on Township business, or during working hours, including rest and meal periods.
3. No employee shall be impaired by legal prohibited drugs while on Township property, on Township business, or during working hours, including rest and meal periods.

Any employee who violates either of these rules may be disciplined up to and including discharge.

“Illegal prohibited drugs” are those substances that are illegal to sell or possess; “legal prohibited drugs” are any prescription or non-prescription drugs that may impair working ability. An employee who is taking a legal prohibited drug must notify his or her supervisor if its use is expected to adversely affect the employee’s performance of the essential functions of the employee’s job. Employees have a duty to know if the legal prescription or non-prescription drugs they are taking may impair working ability.

(Source: Michigan Townships Association 54th Annual Education Conference Workshop entitled “Employee Policies: What’s in Your Handbook.” by Clair V. Groen of Foster, Swift, Collins & Smith, P.C)

Sample Handbook Statement (With Testing) on a Drug-Free Workplace

Employees are our most valuable resource, and their safety and health is therefore of serious concern. [ABC Township] does not tolerate any drug or alcohol use which imperils the health or well-being of its employees or threatens its operations where individuals perform work on [ABC Township's] behalf.

Substance abuse, on or off duty, is inconsistent with lawful behavior expected of all citizens. Employees who abuse controlled substances tend to be less productive, less reliable and prone to greater absenteeism resulting in the potential for increased costs, delays and risk in operations.

Employees have the right to work in an alcohol- and drug-free environment and to work with persons free from the effects of alcohol and drugs.

The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace.

Employment is contingent upon successfully passing a pre-employment drug and alcohol screen. Additionally, if [ABC Township] has reason to suspect alcohol or illegal substance abuse, an employee may be required to submit to a drug or alcohol test. Refusal to submit, in such situations, will result in termination of employment.

Some positions at [ABC Township], such as *(list out positions)*, may be subject to random drug testing, based on federal and state requirements.

Violations of this policy may lead to corrective action, up to and including termination of employment. Employees with drug or alcohol problems that have not resulted in and are not the immediate subject of disciplinary action may request approval to take unpaid time off for treatment or leaves of absence for treatment and will not be subject to discipline. Costs associated with any rehabilitation are entirely the employee's sole responsibility.

A copy of [ABC Township's] drug and alcohol policy is given to each new employee. Copies can also be obtained by contacting *(list contact person)*.

(Source: Cindy Davis, MTA Member Information Specialist)

Sample Policy on Drug and Alcohol Testing

Pre-Employment Drug Testing Policy

All candidates who have received a written offer of employment will be required to undergo testing for commonly abused controlled substances.

Substances Covered By Drug/Alcohol Testing

Candidates will be tested for their use of commonly abused controlled substances, including, but not limited to: Amphetamines, Barbiturates, Benzodiazepines, Opiates, Cannabinoids, Cocaine, Methadone, Methaqualone, Phencyclidine (PCP), Propoxyphene, and chemical derivatives of these substances.

Candidates must advise the testing lab of all prescription drugs taken in the past month before the test and be prepared to show proof of such prescription to testing lab personnel.

Testing Methods and Procedure

All testing will be conducted by a licensed independent medical laboratory, which will follow established testing standards. Testing will be conducted on a urine sample provided by the candidate to the testing laboratory under procedures established by the laboratory to insure privacy of the employee, while protecting against tampering/alteration of the test results.

[*ABC Township*] will pay for the cost of the testing, including the confirmation of any positive test result by gas chromatography. The testing lab will retain samples in accordance with state law, so that a candidate may request a retest of the sample at his/her own expense if he or she disagrees with the test result.

Refusal to Undergo Testing

Candidates who refuse to submit to a drug test or who fail to show up for a drug test will no longer be considered for employment.

Positive Test

If a candidate tests positive on an initial screening test, the test will be confirmed using gas chromatography. On receipt of the second positive confirmation test, the employment offer will be formally withdrawn and the candidate will be provided with a copy of the test results and the reason why he/she is no longer being considered for employment.

Right to Explain Test Results

All candidates have the right to meet with [*ABC Township*] or [*other personnel as designated*] to explain their test results. These discussions shall be considered confidential except that information disclosed in such tests will be communicated to personnel within [*ABC Township*] or within the lab who need to know such information in order to make proper decisions regarding the test results or regarding the employment of the individual.

Right to Review Records

[*ABC Township*] will provide a copy of test results only to candidates who test positive.

Confidentiality Requirements

All records concerning test results will be kept in medical files that are maintained separately from [*ABC Township's*] personnel files.

Testing laboratories may conduct testing only for substances included on the disclosure list provided to the individual and may not conduct general testing related to the medical conditions of the individual which are unrelated to drug usage.

Retesting

Within five (5) working days after notification by [*ABC Township*] of such positive test result, a candidate may request a retest of their positive test results. This retest is at the expense of the individual, unless the original test result is called into question by the retest.

Re-Application and Rehire

[*ABC Township*] understands that individuals who are rehabilitated drug users or engaged in a supervised drug rehabilitation program and are no longer using drugs are protected under the Americans with Disabilities Act. Therefore, [*ABC Township*] will consider the applications of candidates who formerly tested positive for drugs if candidates can show evidence of rehabilitation.

(Source: Society for Human Resource Management)

Sample Conditional Job Offer with Drug Screening

Note: This same letter can also be used for physical testing and criminal background checking.

Dear _____;

[ABC Township] is pleased to extend to you a conditional offer of employment as _____ at a rate of _____ (which is \$_____ per year on an annualized basis) beginning _____, _____. This conditional job offer is contingent upon receipt of results of a satisfactory drug and alcohol screening test. This conditional job offer is valid until [*determine how long you will hold the job offer*].

This screening test must be completed no later than [*how many*] weeks from the date of this letter. Enclosed with this letter you will find information regarding the test, contact and location information for the laboratory, as well as the hours of operation. This alcohol and drug screening test is in accordance with the [ABC Township's] policy. If you have any questions regarding our policy or this test, please contact [*list contact person*] as soon as possible.

Should you accept this offer and begin employment with us, you retain the right to resign without notice or cause. [ABC Township] reserves the same right with respect to termination. Your employment is for no definite term, regardless of any other oral or written statement by any township representative, with the exception of an expressed written employment contract signed by the Board. If you understand and accept these terms, please sign and return one copy of this letter to [*list contact person*] in the enclosed envelope.

We look forward to the contributions you will make to [ABC Township] and to the professional and personal opportunities we will be able to provide to you!

Sincerely,

[ABC Township Board]

Accepted:

Signature: _____

Printed Name: _____

Date: _____

(Source: Society for Human Resource Management)

Sample Drug Test Consent Form

CONSENT FOR PRE-EMPLOYMENT, RANDOM OR REASONABLE SUSPICION DRUG TEST SCREEN, AND RELEASE COVENANT NOT TO SUE AND INDEMNITY AGREEMENT

I hereby CONSENT to allow [*medical center*] to take a specimen of my hair, urine or blood and submit it for a pre-employment, random or reasonable suspicion drug test screen. I FURTHER CONSENT to allow the laboratory testing service to make the results of such screen available to the prospective or current employer, [*ABC Township*].

In consideration for such services being rendered on my behalf, I hereby RELEASE the laboratory testing service, its officers, agents, and employees, from any and all claims which I might otherwise have due to such results being made so available. I hereby CONSENT NOT TO FILE ANY ACTION at law or in equity against [*ABC Township*], the laboratory testing service, their respective officers, agents or employees in connection with the results of such screen being made so available, and I hereby agree to INDEMNIFY and SAVE HARMLESS [*ABC Township*], the laboratory testing service, their respective officers, agents, and employees from all damages, expenses, reasonable attorney's fees, and costs of court which they or any of them may suffer or incur, jointly or severally, due to the results of such screen being made so available.

SIGNED this _____ day of _____, 20__.

CURRENT MEDICATIONS
PRESCRIPTIONS & NON-PRESCRIPTION

(SIGNATURE)

(NAME PRINTED)

(SOCIAL SECURITY or UNIQUE
IDENTIFICATION NUMBER)

(Source: Society for Human Resource Management)

Sample Policy on Fitness-for-Duty Physical

[ABC Township] requires current employees and applicants to whom a conditional offer of employment has been extended to undergo medical examinations whenever management determines that these are necessary for the safe operation of the township or job-related as consistent with operational necessity.

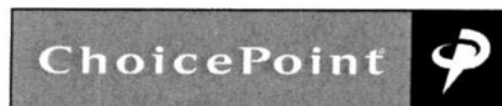
- (1) Successful applicants for employment may be required, as a condition of employment, to take a medical examination to establish their fitness to perform the jobs for which they have applied without endangering the health and safety of themselves or others. If the township board determines that an examination is appropriate to a particular position, all applicants for the job to whom a conditional offer of employment has been made should be examined.
- (2) Employees may be required to have a medical examination on other occasions when the examination is job-related and consistent with business necessity. For example, a medical examination may be required when an employee is exposed to toxic or unhealthful conditions, requests an accommodation for a particular disability or has a questionable ability to perform essential job functions due to a medical condition.
- (3) Employees are encouraged, but not required, unless it is determined to be a condition of employment, to have physical examinations periodically during their employment. Employees are encouraged, but not required, to participate in wellness programs.
- (4) Medical examinations required by [ABC Township] will be paid for by the township and will be performed by a physician or licensed medical facility designated or approved by the township board. Medical examinations paid for by the township board are the property of [ABC Township], and the examination records will be treated as confidential and kept in separate medical files. However, records of specific examinations, if required by law or regulation, will be made available to the employee, persons designated and authorized by the employee, public agencies, relevant insurance companies or the employee's doctor.
- (5) Employees who need to use prescription or nonprescription legal drugs while at work must report this requirement to [list contact person] if the use might impair their ability to perform the job safely. Depending on the circumstances, employees may be reassigned, prohibited from performing certain tasks or prohibited from working if they are determined to be unable to perform their jobs safely while taking prescription or nonprescription legal drugs.

(Source: Society for Human Resource Management)

Macomb Township

Drug-Free Workplace Policy

Effective
September 1, 2004



565 Braund Street, P.O. Box 67, Onalaska, WI 54650
(800) 873-3733 ♦ (608) 782-3733 ♦ Fax: (608) 782-7794

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PURPOSE AND COVERAGE

Macomb Township values its employees and customers and recognizes the need for a safe, productive and healthy work environment. Employees who abuse drugs and/or alcohol are less productive, less dependable, and are a critical threat to the safety, security and welfare of Macomb Township, its employees, customers, vendors, those who do business with Macomb Township, as well as the general public. The establishment of a Drug-Free Workplace Policy (Policy) is consistent with Macomb Township's desire to provide a safe, productive work environment for our employees.

Accordingly, it is the policy of Macomb Township to maintain a workplace free from the use and abuse of drugs and alcohol. Macomb Township will require that all employees and applicants participate in, consent and comply with the terms of this Policy as a condition of employment and continued employment. If questions arise regarding this Policy, please direct them to John F. Brogowicz, Human Resources Director and Macomb Township's Drug Program Coordinator (DPC). This Policy originally became effective July 1, 1997 as amended.

This Policy covers all employees of Macomb Township. Employees who are leased or subcontracted to clients may be required to be tested if required under a client's drug and/or alcohol testing policy, provided that the testing is in accordance with the policy and the policy complies with applicable law. This Policy, by its terms, also covers applicants insofar as applicants, after a conditional offer of employment has been made, are required to consent to, take and participate in a pre-employment test. Applicants, however, are not entitled to participate in any Employee Assistance or Rehabilitation Program offered by Macomb Township to its employees.

NON-DISCRIMINATION

In accordance with the requirements of the Americans with Disabilities Act, Macomb Township does not discriminate against employees or applicants who are qualified individuals with a disability who are not currently engaged in use of illegal drugs and who do not otherwise violate the provisions of this Policy, including but not limited to individuals who: 1) have successfully completed or who are currently participating in a supervised rehabilitation program and are no longer engaging in such use; or 2) have otherwise been rehabilitated successfully and are no longer engaging in such use.

INSPECTIONS

Macomb Township reserves the right to inspect Macomb Township vehicles, premises, and property (including offices, desks, lockers and other repositories) and personal effects (such as lunch boxes/bags, purses, gym bags, backpacks, handbags, briefcases, packages or coats) where there is reasonable cause to believe that an employee has violated this Policy. This Policy will extinguish and eliminate any continuing expectation of privacy where reasonable cause exists to believe that there has been a Policy violation. Where reasonably practical, inspections will be conducted in the presence of the employee implicated in the potential Policy violation.

DEFINITIONS

Drug means a controlled substance, as defined in Schedules I through V of Section 202 of the Controlled Substances Act, 21 U.S.C. § 812, including cocaine, opiates, marijuana, amphetamines and phencyclidine (PCP). The term "illegal drug" does not include the use of a drug obtained and taken under supervision by and in accordance with prescriptions or other instructions issued by a licensed health care professional and other drugs otherwise authorized to be used under the Controlled Substances Act.

Under the influence of alcohol means (1) the presence of alcohol in the individual's system which equals or exceeds a blood alcohol content (BAC) of .04; or (2) behavior, appearance, speech, or bodily odors that lead a supervisor or manager to reasonably suspect that the employee is impaired by alcohol during working time or on Macomb Township premises.

Under the influence of drugs means (1) the presence of any detectable amount of an illegal drug or its metabolites demonstrated by a verified positive drug test result, or (2) behavior, appearance, speech, or bodily odors that lead a supervisor or manager to reasonably suspect that the employee is impaired by illegal drugs or is using illegal drugs during working time or on Macomb Township property.

During working time means time during which the employee is being paid to work for or represent Macomb Township or the employee is in fact representing Macomb Township's interests. The term also includes all paid break and meal periods.

Safety-sensitive position means a job, including any supervisory or management position, in which impairment caused by drug or alcohol usage, would threaten the health or safety of any person. Safety-sensitive positions Macomb Township include the following: Department Head, Manager, Supervisor, Fire Fighter, Water & Sewer Inspector, Utility Worker, Building Inspector or Enforcement Officer, Lifeguard, Building or Park Attendant, any position entrusted with the care of children, disabled or impaired resident or senior citizen, or any employee driving a Township vehicle.

TESTING

Macomb Township reserves the right, within the limits of federal and state laws, to examine and test for the presence of drugs and/or alcohol. Under the conditions of this Policy, applicants or employees may be asked to submit to a medical examination and/or submit to urine, saliva, breath, and/or blood testing for drugs and/or alcohol. The types of testing performed by Macomb Township include, but are not limited to, the following:

Pre-Employment/Pre-Placement

Macomb Township makes all offers of employment subject to and conditioned on the applicant's: 1) consent to taking a drug and/or alcohol test; and 2) a negative test result. Applicants will be required to voluntarily submit to urinalysis, breath, blood or saliva drug and/or alcohol testing and sign a consent and testing appointment agreement. If the tests are positive or if the applicant refuses to undergo testing, the offer of employment will be withdrawn, provided that, where an offer is withdrawn on the basis of a positive alcohol test, the withdrawal is job-related and consistent with business necessity.

Post-Accident

A drug and/or alcohol test will be conducted on all employees involved in accidents occurring during work time or on Macomb Township property. Covered accidents include, but are not limited to, accidents that the employee caused or contributed to that involve: 1) personal injury to employees or others which necessitates medical attention; or results in lost work time; and/or 2) damage to Macomb Township property. Employees are expected to make themselves available for post-accident testing. If circumstances require an employee to leave the scene of an accident, the employee must make a good faith attempt to be tested and to notify Macomb Township of his or her location. Any employee who fails to report any work-related accident is in violation of this Policy and is subject to disciplinary action, up to and including termination. Under certain state laws, employees testing positive may be ineligible for workers' compensation benefits.

Reasonable Cause

Employees will be asked to submit to a drug and/or alcohol test if reasonable cause exists indicating that the employee is under the influence of illegal drugs or alcohol. Reasonable cause means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

Return-to-Duty

Employees who have tested positive and have been removed from his/her job duties must submit to and furnish a negative drug and/or alcohol test result prior to returning to his/her job duties.

Follow-Up

An employee who has been removed voluntarily or otherwise from his or her job duties on the basis of a verified positive drug test result and/or confirmed positive alcohol test result will be subject to unannounced drug and/or alcohol testing to determine whether he or she is under the influence of alcohol or drugs. The testing can continue up to twenty-four (24) months from the return-to-work date.

Annual

All employees may be subject to drug and/or alcohol testing as part of a routine annual physical examination, provided that the employee has been given at least two weeks' written notice that a drug and/or alcohol test may be requested or required as part of the physical examination.

POLICY PROHIBITIONS

Employees are strictly prohibited from engaging in the conduct listed below.

1. With respect to illegal drugs, employees violate this Policy by engaging in the following conduct, whether or not during work time or on Macomb Township premises or property:

- a) bringing and/or storing (including in a desk, locker, automobile, or other repository) illegal drugs or drug paraphernalia on Macomb Township's premises or property, including Macomb Township owned or leased vehicles, in vehicles used for Macomb Township purposes or a customer's premises;
 - b) having possession of, being under the influence of, testing positive for, or otherwise having in one's system, illegal drugs;
 - c) using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling or dispensing illegal drugs;
 - d) a conviction or plea of guilty relative to any criminal drug offense. All employees must notify Macomb Township in writing of any criminal drug conviction no later than five (5) calendar days after such conviction;
 - e) abuse of prescription drugs which includes exceeding the recommended prescribed dosage or using others' prescribed medications;
 - f) switching, tampering with or adulterating any specimen or sample collected under this Policy, or attempting to do so;
 - g) 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 Macomb Township or its designee, is in violation of Macomb Township's Policy and subject to disciplinary action, up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork, failing to report to the collection site at the appointed time and failing to be reasonably available for a post-accident test;
 - h) failure to consent to, participate in and abide by the terms and recommendations of any Employee Assistance Program (EAP) or rehabilitation program to which Macomb Township makes a referral, including but not limited to, failure to follow recommendations, if any, regarding behavior modification and abstinence. These failures are a violation of this Policy, as is any failure to be available for any prescribed continuing or follow-up sessions;
 - i) failure to advise a supervisor or manager of the use of a prescription or over-the-counter drug which may alter the employee's ability to perform the essential functions of his or her job is a violation of this Policy; or
 - j) failure of employees to notify his or her supervisor before going to work if he or she believes that he or she is under the influence of drugs.
 - k) Where lawful, Macomb Township strictly prohibits employees from using hemp products, which some within the medical community have indicated may cause a positive marijuana test result. Similarly, except where prohibited or restricted by law, and in accordance with and consistent with Department of Transportation guidelines for drug testing of certain truck drivers, Macomb Township will not generally consider use of hemp products a valid medical explanation for a positive marijuana test result. Any questions about this prohibition should be directed to the Director of Human Resources.
2. With respect to alcohol, employees violate this Policy by engaging in the following conduct during work time or on Macomb Township premises or property:
- a) bringing and/or storing (including a desk, locker, automobile, or other repository) alcohol on Macomb Township premises or property, including Macomb Township owned or leased vehicles, in vehicles used for Macomb Township purposes or a customer's premises;
 - b) having possession of, being under the influence of, testing positive for or having in one's system, alcohol;

- c) using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling or dispensing alcohol;
- d) a conviction or plea of guilty relative to any criminal alcohol offense. All employees must notify Macomb Township in writing of any criminal alcohol conviction no later than five (5) calendar days after such conviction;
- 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 of Macomb Township or its designee, is in violation of Macomb Township's Policy and subject to disciplinary action, up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork, failing to report to the collection site at the appointed time and failing to be reasonably available for a post-accident test;
- g) failure to consent to, participate in and abide by the terms and recommendations of any Employee Assistance Program (EAP) or rehabilitation program to which Macomb Township makes a referral, including but not limited to, failure to follow recommendations, if any, regarding behavior modification and abstinence. These failures are a violation of this Policy, as is any failure to be available for any prescribed continuing or follow-up sessions; or
- h) failure of employees to notify his or her supervisor before going to work if he or she believes that he or she is under the influence of alcohol.

CONSEQUENCES FOR POLICY VIOLATIONS

Employees who engage in any of the prohibited conduct listed above are in violation of this Policy and are subject to discipline, up to and including termination and at Macomb Township's sole discretion. While the discipline imposed will depend on the circumstances, and Macomb Township reserves the right to determine, in its discretion, discipline imposed, ordinarily certain offenses will result in immediate termination (e.g. possession, sale or use of illegal drugs on Macomb Township's premises or during working time).

Macomb Township also reserves the right to refer employees with a verified positive drug and/or confirmed alcohol test for assessment, counseling, rehabilitation services or treatment by a Rehabilitation Service Provider, Substance Abuse Professional, or other qualified person licensed or certified in accordance with applicable state law, if any, to provide chemical dependency counseling and to require any employee so referred to enter into and abide by one or more of the following: a Rehabilitation Agreement and/or a Return-to-Work Agreement. Costs associated with this benefit may be covered by the employee's medical insurance plan; however, any costs not covered by the employees medical insurance plan and which are not otherwise required to be paid by any applicable plan are entirely the employees sole responsibility.

Finally, employees for post-accident or reasonable cause testing will be removed from his or her position and receive a non-disciplinary suspension until Macomb Township receives the test results. Hourly employees will not be compensated for time missed from work if the test is positive, but will be compensated if the test is negative.

VOLUNTARY TREATMENT AND COUNSELING

We encourage all employees who need assistance in dealing with alcohol or drug abuse dependency problems to seek counseling through the various private and public agencies that are available. Employees who come forward to request treatment or leaves of absence for treatment will not be subject to discipline. Costs associated with any rehabilitation program may be covered by the employee's medical insurance plan; however, any costs not covered by the employee's medical insurance plan and which are not otherwise required to be paid by any applicable plan are entirely the employee's sole responsibility. Macomb Township will comply with any applicable medical leave law, disability discrimination law or applicable leave policy in the event leave is requested. Except as otherwise required by such laws or policies, Macomb Township cannot guarantee that the employee will return to the same or a comparable position upon return to duty.

Employees may not escape discipline by first requesting such treatment and/or leaves after being selected for testing or violating Macomb Township's policies and rules of conduct. Nor will such requests, leaves or participation in treatment or counseling excuse employees from compliance with normal standards of performance or conduct. Requests for voluntary treatment or counseling and related matters will be kept confidential in accordance with any applicable federal and/or state law requirements.

-OR-

EMPLOYEE ASSISTANCE PROGRAM

Macomb Township offers an Employee Assistance Program (EAP) for employees and their dependents. The EAP provides confidential assessment, referral, and short-term counseling for employees who need or request it. Any employee, through self-referral or through a referral source, can access the EAP. These EAP services are available to employees if Macomb Township's disciplinary rules have not been violated. Employees may not escape discipline, however, by first requesting EAP services after being selected for testing or violating Macomb Township's policies and rules of conduct. Nor will such requests or utilization of EAP services excuse employees from compliance with normal standards of performance or conduct. Information provided when accessing and utilizing EAP services will be kept confidential in accordance with any applicable federal and/or state law requirements.

Costs associated with this benefit may be covered by the employee's medical insurance plan; however, any costs not covered by the employee's medical insurance plan and which are not otherwise required to be paid by any applicable plan are entirely the employee's sole responsibility.

CONFIDENTIALITY AND PRIVACY

All drug and alcohol test results are reported to Macomb Township's DPC and will remain and be considered confidential. Results will only be disclosed within Macomb Township and on a need-to-know basis and as allowed by law and retained in a secure location with controlled access. Information about an employee's medical condition or history obtained in connection with a drug and alcohol test will be kept in a file separate and apart from the employee's personnel file. The release of an individual's drug and alcohol test results and other information gained in the testing process will only be otherwise disclosed in accordance with an individual's written authorization or as otherwise required by applicable law.

Macomb Township will attempt to ensure that all aspects of the testing process, including specimen or sample collection, are as private and confidential as reasonably practical. Employees or applicants will not be observed while providing a urine specimen unless there is reason to believe the employee or applicant has tampered with, adulterated, switched or attempted to tamper with, adulterate or switch a urine specimen.

EDUCATION AND TRAINING

Macomb Township has available information, education and training regarding problems associated with drug and alcohol abuse in the workplace and otherwise. One important source of information is the "Employee Handbook." We also provide training for supervisors and managers through, among other things, the "Supervisor Training Manual."

CONSENT

As a condition of continued employment, employees must sign a consent form (a copy of which is attached hereto and made a part hereof).

RESERVATION OF RIGHTS

This Policy supersedes and revokes any other Macomb Township practice or policy relating to the use of drugs and alcohol in the workplace and drug and/or alcohol testing. Macomb Township reserves the right to interpret and administer this Policy, and at any time and at its sole discretion, amend, supplement, modify, revoke, rescind or change this Policy, in whole or in part, with or without notice and with or without consideration. This Policy is not an express or implied contract of employment nor is it to be interpreted as such. Additionally, this Policy does not in any way affect or change the status of any at-will employee. At-will employees continue to be free to terminate their employment or resign from employment at any time and Macomb Township continues to be free to terminate employee, with or without cause, with or without notice, for any lawful reason or for no reason at all. Nothing in this Policy is a promise or guarantee or should be construed as a promise or guarantee that Macomb Township will follow in any particular circumstances any particular course of action, disciplinary, rehabilitative or otherwise.

Drug Free Workplace Policy

Acknowledgement of Receipt of Policy and Consent to Testing

I certify that I have received and understand my company's Drug-Free Workplace Policy.

I agree to comply with the company's policy on drugs and/or alcohol and understand failure to comply is grounds for disciplinary action, up to and including termination.

I consent to submit to drug and/or alcohol testing as outlined in the company's policy.

I consent to provide specimens at the assigned collection site(s) and further consent to have urine specimens tested for drugs at a U.S. Department of Health and Human Services/Substance Abuse and Mental Health Services Administration (DHHS/SAMHSA)-certified laboratory.

I consent to the release of the drug and/or alcohol test results in accordance with the company policy to the selected Medical Review Officer (MRO), to the company's third-party administrator (currently ChoicePoint), to and within the company on a need-to-know basis, and to additional parties in accordance with my written authorization or as otherwise required by applicable federal or state law.

I will be given an opportunity to discuss a positive drug test result with the MRO before the result is reported to the company as a verified positive.

In the event of a post-accident test, the drug and/or alcohol test result(s) may also be provided to the workers' compensation insurance carrier.

Employee Name (*Print*): _____ Date: _____

Employee Social Security Number: _____

Employee Signature: _____

Employer Name: **Macomb Township**
54111 Broughton Road
Macomb, MI 48315

I am the parent/guardian of _____, and I acknowledge that I understand the company's Drug-Free Workplace Policy. I hereby consent to his/her participation in the company's Drug-Free Workplace Program.

Parent/Guardian Signature: _____ Date: _____

Sample Handbook Statement on Background Checks

[*ABC Township*] requires a background check for [*list positions*] once a conditional offer of employment has been extended by the township board.

[*ABC Township*] believes that hiring qualified individuals to fill positions contributes to the overall strategic success of [*ABC Township*]. Background checks serve as an important part of the selection process at [*ABC Township*]. This type of information is collected as a means of promoting a safe work environment for current and future [*ABC Township*] employees. Background checks also help [*ABC Township*] obtain additional applicant related information that helps determine the applicant's overall employability, ensuring the protection of the people, property and information of the township.

Although a disqualification is possible, in accordance with federal and state laws, a previous conviction does not automatically disqualify an applicant from consideration for employment with [*ABC Township*]. Depending on a variety of factors (for example, the nature of the position, the nature of the conviction, age of the candidate when the illegal activity occurred), the candidate may still be eligible for employment with [*ABC Township*].

However, if an applicant attempts to withhold information or falsify information pertaining to previous convictions, the employee will be disqualified from further employment consideration in any position with [*ABC Township*] due to falsification of an application.

A conditional offer of employment may be extended to an applicant prior to the completion of the background check. Criminal convictions may result in the withdrawal of the employment offer or termination of employment.

(Source: Society for Human Resource Management)

Sample Policy on Background Checks

EXTERNAL BACKGROUND CHECK POLICY AND PROCEDURE

PURPOSE OF BACKGROUND CHECKS

[ABC Township] believes that hiring qualified individuals to fill positions contributes to the overall strategic success of [ABC Township]. Background checks serve as an important part of the selection process at [ABC Township]. This type of information is collected as a means of promoting a safe work environment for current and future [ABC Township] employees. Background checks also help [ABC Township] obtain additional applicant related information that helps determine the applicant's overall employability, ensuring the protection of the people, property and information of the township.

POLICY:

At [ABC Township] reference checks are conducted on job applicants applying for sensitive positions. These include positions involving security and financial responsibilities. [ABC Township] will use a third party agency to conduct the background checks. The type of information that can be collected by this agency includes, but is not limited to, that pertaining to an individual's past employment, education, character, finances or reputation. This process is conducted to verify the accuracy of the information provided by the applicant.

[ABC Township] will ensure that all background checks are held in compliance with all federal and state statutes, such as the Fair Credit Reporting Act. For example, the Americans with Disabilities Act prohibits organizations from collecting non-job-related information from previous employers or other sources. Therefore, the only information that can be collected is that pertaining to the quality and quantity of work performed by the applicant, the applicant's attendance record, education and other issues that can impact the workplace.

[ABC Township] can make inquiries regarding criminal convictions during the pre-employment stage, however, as part of Title VII of the Civil Rights Act of 1964, this information cannot be used as a basis for denying employment, unless it is determined to be due to job-related issues or business necessity.

[ABC Township] can collect credit information on applicants consistent with the guidelines set forth by the Federal Credit Reporting Act (FCRA). The Fair Credit Reporting Act requires organizations to obtain a candidate's written authorization before obtaining a credit report. When doing this, the employer must:

- Certify to the consumer-reporting agency that the employer is in compliance with the FCRA and will not misuse the information it receives.
- Disclose to the applicant or employee, on a separate form, its plans to obtain a consumer or investigative consumer report and that the information received will be used solely for employment purposes.
- Obtain written authorization from the applicant or employee.

- Inform the individual of his or her right to request additional information on the nature of the report and the means through which such information may be obtained.
- Inform the applicant that the report will include information about the individual's character, general reputation, personal characteristics, etc.
- Provide the individual with a summary of his or her rights under the FCRA.

If the results of the credit check are negative, the township must inform the applicant that it plans on taking adverse action, provide the applicant with a Statement of Consumer Rights from the FTC before adverse action, provide the applicant the opportunity to review a copy of their credit report and advise the applicant of their rights to dispute inaccurate information. Applicants should be granted reasonable time to contest the information (approximately 3-5 days).

RECORDKEEPING:

[*ABC Township*] guarantees that all information attained from the reference and background check process will only be used as part of the employment process and kept strictly confidential. [*ABC Township*] will maintain a log that will include the position you are applying for, your name, and the date of the background check. Only appropriate township representatives at [*ABC Township*] will have access to this information.

(Source: Society for Human Resource Management)

Sample Authorization to Obtain a Consumer Credit Report

Authorization to Obtain a Consumer Credit Report and Release of Information for Employment Purposes

Pursuant to the federal Fair Credit Reporting Act, I, _____, hereby authorize [ABC Township] and its designated agents and representatives to conduct a comprehensive review of my background through a consumer report or an investigative consumer report to be generated for employment, promotion, reassignment or retention as an employee. I understand the scope of the consumer report/investigative consumer report may include, but is not limited to, the following areas: verification of Social Security number; current and previous residences; employment history, including all personnel files; education; references; credit history and reports; criminal history, including records from any criminal justice agency in any or all federal, state or county jurisdictions; birth records; motor vehicle records, including traffic citations and registration; and any other public records.

I authorize the complete release of these records or data pertaining to me which an individual, company, firm, corporation or public agency may have. I understand that I must provide my date of birth to adequately complete said screening, and [ABC Township] agrees that my date of birth will not affect any hiring decisions. I hereby authorize and request any present or former employer, school, police department, financial institution or other persons having personal knowledge of me to furnish [ABC Township] or its designated agents with any and all information in their possession regarding me in connection with an application of employment. I am authorizing that a photocopy of this authorization be accepted with the same authority as the original.

I hereby release [ABC Township] and its agents, officials, representatives or assigned agencies, including officers, employees or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, which may at anytime result to me, my heirs, family or associates because of compliance with this authorization and request to release. You may contact me as indicated below. I understand that a copy of this authorization may be used at any time to initiate a background check.

I understand that, pursuant to the federal Fair Credit Reporting Act, if any adverse action is to be taken based upon the consumer report, a copy of the report and a summary of my rights will be provided to me.

Please Print Clearly

1. Name (Full) _____
2. Maiden Last Name _____
3. Print All Former Names Used (A) _____,
(B) _____
4. Social Security Number ____ - ____ - _____
5. Gender _____
6. Race _____
7. Date of Birth ____ - ____ - _____
8. Telephone Number _____
9. Current Street Address _____
10. City _____, State _____ Zip _____
11. Driver's License Number _____ State Issued _____
12. Name on Driver's License _____
13. May we contact your employers? _____
14. May we contact your supervisors? _____
15. Prior residence, past seven (7) years
 - i. _____
 - ii. From _____ To _____
 - iii. _____
 - iv. From _____ To _____
 - v. _____
 - vi. From _____ To _____

16. Have you ever been convicted of or pled guilty or “no contest” to a criminal charge?

17. Yes _____ No _____

18. Are you currently awaiting trial, sentencing or disposition of a criminal charge?

19. Yes _____ No _____

20. Have you even been a defendant in a civil action for intentional tort(s)? (Intentional torts include, but are not limited to, battery, assault, false imprisonment, defamation, fraud, conversion)? Yes _____ No _____

If you answered Yes to Numbers 17, 18 or 19, provide the Case Numbers, Date of Action, Disposition, Place of Occurrence and Current Status Below:

Please explain. If more space is needed, add supplemental sheets.

By signing below, you are certifying that the above information is true and correct.

Signature _____

Date _____

(Source: Society for Human Resource Management)