

## **ARTICLE XI SUBSTANCE ABUSE LANGUAGE**

Section 11.01. The dangers and costs that alcohol and other chemical abuses can create in the electrical contracting industry in terms of safety and productivity are significant. The parties to this Agreement resolve to combat chemical abuse in any form and agree that, to be effective, programs to eliminate substance abuse and impairment should contain a strong rehabilitation component. The local parties recognize that the implementation of a drug and alcohol policy and program must be subject to all applicable federal, state, and local laws and regulations. Such policies and programs must also be administered in accordance with accepted scientific principles, and must incorporate procedural safeguards to ensure fairness in application and protection of legitimate interests of privacy and confidentiality. To provide a drug-free workforce for the Electrical Construction Industry, each IBEW local union and NECA chapter shall implement an area-wide Substance Abuse Testing Policy. The policy shall include minimum standards as required by the IBEW and NECA. Should any of the required minimum standards fail to comply with federal, state, and/or local laws and regulations, they shall be modified by the local union and chapter to meet the requirements of those laws and regulations.

# **THE NECA/IBEW LOCAL AREAWIDE SUBSTANCE ABUSE TESTING POLICY**

## **REQUIRED MINIMUM STANDARDS**

- 1) Each employer shall have the right to request drug-free applicants for employment from the drug-free applicant pool for each specific designated job or the employer may choose to hire only drug-free applicants for all employees.
- 2) Each applicant and/or employee to be eligible for employment through the drug-free applicant pool shall, where lawful, submit to a substance abuse test, demonstrate compliance, and remain in compliance with the substance abuse policy. Where lawful, each applicant and/or employee shall be tested every \_\_\_\_ calendar years (not less frequently than every 2 calendar years.) Local area substance abuse policies are permitted to be voluntary and those applicants and/or employees choosing to be tested, and who are compliant, would be available for employment in the drug-free applicants pool.
- 3) Each applicant and/or employee to be eligible for employment through the drug-free applicant pool shall submit to random drug testing unless random drug testing is prohibited by applicable law. Random drug testing will be required for \_\_\_\_ % (not less than 25%) of the group available for testing each calendar year. Every person in the drug-free applicant pool has an equal chance of being chosen for testing every time a random selection is drawn.
- 4) Drug, prohibited substance, and alcohol testing will be required for “Reasonable Cause” situations and those situations shall be clearly defined in the local policy and will include use, possession, transportation, concealing, buying, selling, dispensing, or receiving prohibited substances. Supervisory personnel should be trained in the proper methods of observation to determine reasonable cause behavior.
- 5) All non-compliant tests and/or actions will require review by a Medical Review Officer (MRO.) The MRO may require accelerated testing. All releases to return to work following a non-compliant test and/or action will require the MRO’s release. A release from the MRO does not guarantee an employment opportunity with the former employer.
- 6) All substance abuse testing policies shall contain a rehabilitation component which will provide an applicant and/or employee, who has a non-compliant test and/or action result, the opportunity to become compliant with the local area substance abuse policy and to become eligible for employment through the drug-free referral applicant pool.
- 7) Drug testing will be conducted by an independent testing laboratory holding a current certification from Substance Abuse and Mental Health Services Administration (SAMHSA), National Institute on Drug Abuse (NIDA) or other appropriate agency.

- 8) Urine analysis should be the primary method of testing for prohibited drugs. Initial testing will be accomplished using immunoassay testing for screening and will require gas chromatography/mass spectrometry (GC/MS) for a confirmatory test. All alcohol testing will be accomplished using an evidential breath testing device (breathalyzer.) *(Local areas may utilize other approved/recognized means of testing if negotiated and agreed to at the local level.)*
- 9) Collection of urine specimens shall be conducted in accordance with the current procedures set forth in the HHS Urine Specimen Collection Handbook or other appropriate recognized guidelines. Split samples will be taken to allow for an additional test, which employees may request.
- 10) All test results will be reviewed by a Medical Review Officer (MRO). The MRO shall be a physician that has training and expertise with substance abuse testing and must have a valid certification. The MRO shall, to the extent that they are applicable, follow the procedures set forth in the HHS Medical Review Officer Manual for Federal Workplace Drug Testing Programs or other appropriate recognized guidelines.
- 11) A Third Party Administrator (TPA) will be utilized for all drug-testing programs.
- 12) Applicants and/or employees must comply with the terms and conditions of the substance abuse policy in the area where the work is performed.
- 13) The local parties agree that government mandated or customer required and implemented substance abuse policies are beyond the scope of this policy and this policy is not intended to affect government mandated or customer required and implemented substance abuse policies. (For example, this shall include the current DOT requirements and CDL guidelines.)
- 14) Local Unions shall not be responsible for substance abuse testing, or costs associated with substance abuse testing. Substance abuse policies shall contain hold harmless and/or indemnification clauses for local unions negotiating substance abuse policies. Specifically, substance abuse policies shall provide that, by implementation of this Program, the Local Union does not assume legal responsibility for ascertaining or monitoring the drug-free or alcohol-free status of any employee, or for providing employees a safe workplace.

## **Questions and Answers Concerning the Substance Abuse Testing Program**

- 1) *Does our local area have to adopt this new language and implement a substance abuse testing program?*

Yes. This new Category I Substance Abuse Language is mandatory and must be inserted into every construction agreement in the country, and each area must implement a substance abuse testing policy. We would hope that the local parties would do so immediately, but in any case, the language must be placed into your agreement no later than at its next renewal. If your agreement is currently open for negotiations, you should insert this language now and immediately implement a substance abuse testing policy in line with the national standards. Inasmuch as these are minimum standards, the local parties are permitted, and expected, to work out the details and any additional requirements themselves.

- 2) *Once we have negotiated this language into our local agreement, will it be applicable to national agreements, (such as the NMA, GPA, VDV National Agreement, project labor agreements, etc.)?*

Inasmuch as the drug-free applicant pool operates as a corollary to the referral system, the substance abuse testing policy would be applicable under any agreement that relies on the local referral system.

- 3) *Many customers in our area have their own substance abuse policies. How do we meet our customers' requirements if we must use this new program?*

Item 13 is clear. When a customer, or a governmental authority, imposes its own substance abuse policy, which has more exacting standards than those locally adopted, the local parties are to comply with that policy.

- 4) *We already have a substance abuse testing program. Do we have to change it?*

While the language and program standards are mandatory, they are not intended to upset effective substance abuse testing programs that are already in place and serving the industry. However, established local programs should meet the *minimum* standards and safeguards. You will be required to place the new Category I Substance Abuse Language in your agreement to replace the current substance abuse enabling language, but you will not have to revamp your substance abuse testing program if it is already in compliance with the national guidelines.

The IBEW and NECA did not attempt to create a “one-size-fits-all” program that must be adopted verbatim, but developed “required minimum standards” to be incorporated in local testing programs. This allows considerable local flexibility. To get to these minimum standards, we looked at what was going on in the industry already and tried to model the more successful programs. We believe that many areas will find that they are already in compliance.

- 5) *Items 1 & 2 in the “Required Minimum Standards” refer to a “drug-free applicant pool.” Will this be a separate referral list or group?*

The standards do not require the local union to maintain a separate physical list; rather, this is an administrative function. The requirement here is that, when a contractor calls for a “drug-free applicant,” the local will be able to refer an applicant who is compliant with the program. The local parties may decide the form that this “pool” takes.

- 6) *Doesn’t the answer in Question 5 conflict with the language of Item 14 that says the “Local Unions shall not be responsible for substance abuse testing . . .,” shall be held harmless, and shall “not assume legal responsibility for ascertaining or monitoring the drug-free or alcohol-free status of any employee”?*

There is no conflict. There is a difference between “legal responsibility” and “contractual obligations.” Under the contract, the local union must maintain a drug-free applicant pool, and when an employer calls for an applicant from this pool, the local union must take reasonable steps to assure that the individual referred is compliant with the program. The local union is not required to test the individual before referring him or her, nor in any other way, make its own determination whether he or she is drug-free. How the drug-free applicant pool will be established and maintained is subject to local negotiations. The parties may require that the applicants show a current “drug-free” card at the time of referral, that the local make use of an updated list from the third party administrator (TPA) that handles the testing, that real-time access be available to the local union from the TPA’s database, or other methods. At the time of referral, the local union is obligated to ensure that only compliant applicants are referred in response to a call for a drug-free applicant. However, the local union has no on-going obligation to monitor that individual’s compliance with the program other than at the time of referral.

- 7) *What about an individual’s privacy rights? Is the union allowed to know if he is compliant or not?*

Privacy and other laws that could affect the substance abuse testing program vary from state to state, which is one of the reasons that certain details in the program were left to the local parties. Generally speaking, however, the local union is the collective bargaining representative and hiring agent for the worker and would have at least a limited “right to know.” The information disclosed to the local may, in some cases, be limited only to whether the worker is compliant or non-compliant with the program, not the actual results of a substance abuse screening.

- 8) *Item 2 says that substance abuse policies are permitted to be voluntary, but in Question 1, it was stated that they are mandatory. Which is it?*

In a way, it is both. It is *mandatory* for every local and NECA chapter to implement a substance abuse testing program. However, individual workers can choose not to be compliant with the program. In that event, they would be ineligible for referral through the drug-free applicant pool or for continuing employment at “drug-free” firms if they become non-compliant. Employers can choose never to request drug-free workers or make compliance with the program a condition of employment, if that is their desire.

(The employer would be required to comply with any provisions negotiated into the local agreement, whether he used the drug-free pool or not.)

- 9) *If this program only applies to applicants, does that mean current employees cannot be tested under the program?*

No. The negotiations for this program are specifically intended to give the employer the right to require current employees become and remain compliant (i.e., submit to testing) within the guidelines of the minimum standards and any locally agreed upon requirements. Therefore, the contractor may choose only to employ applicants and employees who become and remain compliant with the substance abuse program.

- 10) *Item 1 says an employer has the right to call for drug-free applicants for specific designated jobs or may choose to hire only drug-free applicants for all employees. If he chooses to hire only drug-free applicants, would he then have to test all of his current employees?*

No, the employer is not required to, but he may elect to do so. Current employees, or those referred without a drug-free requirement, would not necessarily have to participate in the program. The employer is free to call for drug-free applicants for a specific job, but not make that a requirement on calls for other jobs, or the employer may require drug-free status for all applicants. Further, when a drug-free applicant is referred and hired, the employer may require as a condition of continued employment that the individual remain compliant with the drug-free program. A contractor could mix “drug-free applicants” and non-participating current employees on the same job.

- 11) *Both the Category I language and Item 6 of the “Minimum Standards” talk about having a “rehabilitation component.” Are the local parties required to establish, and the contractors fund, a specific rehabilitation program?*

No. Aside from the humanitarian aspects, one of the motivations for a substance abuse testing program is to not lose our skilled workforce. If a non-compliant worker has no opportunity to rehabilitate himself and again become eligible for employment, those skills will be lost. The rehabilitation component called for here may be satisfied through a number of avenues, including referral to outside agencies for help, and it does not necessarily require the parties to establish their own program. Notwithstanding the requirement that workers who have completed the rehabilitation called for under the program shall become eligible for employment, a release does not guarantee re-employment with the former employer, and a contractor’s policies may provide that workers who use, possess, sell, distribute or transport prohibited substances will be terminated and not be eligible for re-employment with that firm. (There is currently a case before the courts that may limit an employer’s ability to enforce a no-rehire policy for employees terminated for drug use. Although a neutral no-rehire policy for workers fired for violation of company policies may be enforceable. [*Hernandez v. Hughes Missile Systems*])

- 12) *There have been several references to employers' policies and employers' choices under this program. Are employers free to establish any rules they want?*

No. The program as written requires the local parties to develop and implement a substance abuse testing program that meets certain minimum standards. The local parties may negotiate additional provisions that are in accord with the minimum standards. Within those parameters and the managements' rights clause, employers would be free to promulgate company policies that state how and to what extent that company will utilize the program. The local parties may leave individual contractors with a great deal of, or relatively little, flexibility as they determine which course is best for the industry in their area. Where contractors have already adopted company policies not explicitly precluded by the minimum standards or a locally negotiated program, those policies would be honored when implementing local programs.