

DRUG AND ALCOHOL TESTING POLICY

INFORMATION, PROCEDURES AND INSTRUCTIONS

For

CITY OF MILWAUKEE – DEPARTMENT OF PUBLIC WORKS

EMPLOYEES, INCLUDING CDL AND NON-CDL DRIVERS

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TABLE OF CONTENTS

TABLE OF CONTENTS

CITY OF MILWAUKEE.....	2
DRUG AND ALCOHOL TESTING POLICY	2
I. PURPOSE	2
II. APPLICABILITY	2
III. DEFINITIONS	2
IV. PROHIBITIONS	7
V. NOTICE.....	9
VI. TESTING REQUIREMENTS – GENERAL	9
VII. TESTING PROCEDURES	13
VIII. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) CLEARINGHOUSE	14
IX. CONSEQUENCES FOR EMPLOYEES UNDER THIS POLICY AND 49 CFR Part 382	16
X. CONFIDENTIALITY	16
APPENDIX A CONTACT INFORMATION	18
APPENDIX B TESTING PROCEDURES FOR ALCOHOL.....	19
APPENDIX C TESTING PROCEDURES FOR CONTROLLED SUBSTANCES.....	22
APPENDIX D EMPLOYEES COVERED BY THIS POLICY	25
APPENDIX E DRUG TESTING FORMS.....	26
APPENDIX F DISQUALIFICATIONS	27

CITY OF MILWAUKEE

DRUG AND ALCOHOL TESTING POLICY

I. PURPOSE

- A. The purpose of this policy is to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of both commercial and non-commercial motor vehicles. This policy is intended to be consistent with, and in compliance with the U.S. Department of Transportation Federal Highway Administration's drug and alcohol testing rules, regulations and procedures contained in Title 49 CFR. Nothing herein shall preclude the City from establishing rules, regulations, policies and/or procedures governing the misuse of alcohol and/or the use of controlled substances, consistent with the City's rights and obligations under Sec. 111.70, Wisconsin Statutes so long as such rules, regulations, policies and/or procedures do not conflict with the specific requirements of Title 49 CFR.

II. APPLICABILITY

- A. This policy applies to every employee who is subject to the commercial driver's license (CDL) requirement, any person who operates a commercial motor vehicle and includes full time drivers, casual, intermittent or occasional drivers and any person applying for a job driving a commercial motor vehicle. Provisions of this policy also apply to all DPW employees, whether driving is a requirement of the position or not.
- B. Specific information about what categories of employees are subject to alcohol and controlled substances testing is contained in Appendix D. This Appendix also contains information regarding the safety-sensitive functions performed by these employees and the periods of the work day during which employees must be in compliance with this policy.
- C. It is your responsibility to comply with this policy. If you need help in dealing with your use of drugs or alcohol, you should contact the City's Employee Assistance Program (Appendix A) before you test positive and discipline becomes necessary.

III. DEFINITIONS

- A. **ALCOHOL:** Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.
- B. **ALCOHOL CONCENTRATION (or content):** Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

- C. ALCOHOL TEST: An alcohol test is a test conducted by a Breath Alcohol Technician, or any other person approved by the Department of Transportation rules, using an Evidential Breath Testing Device to measure. The amount of alcohol concentration in a volume of breath, or any other test used to detect the presence of alcohol that is approved by the Federal Highway Administration.
- D. ALCOHOL USE: Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- E. BREATH ALCOHOL TECHNICIAN (BAT): Breath Alcohol Technician is a trained individual who instructs and assists individuals in the alcohol testing process and who operates the evidential breath testing device.
- F. DESIGNATED EMPLOYER REPRESENTATIVE (DER): DER means the primary contact person(s) designated by the City to receive all information and/or reports from the Medical Review Officer, the Breath Alcohol Technician, the Substance Abuse Professional and the laboratories. The DER is also the designated contact person for driver inquiries regarding this policy and the Department of Transportation (DOT) regulations.
- G. COLLECTOR: Personnel trained and authorized under the requirements of CFR 49 part 40.
- H. COMMERCIAL MOTOR VEHICLE: A commercial motor vehicle means a motor vehicle or a combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle –
 - 1. and a towed unit have a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
 - 2. and a towed unit have a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
 - 3. has a gross vehicle weight of 26,001 or more pounds; or
 - 4. is designed to transport 16 or more passengers, including the driver; or
 - 5. is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR 172, subpart F).
- I. CONFIRMATION TEST
 - a. For alcohol testing, a confirmation test means a second test following a screening test with a result of 0.02 or greater. Confirmation of the screening test must be by an Evidential Breath Testing (EBT) device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), and must be capable of printing out each test result and air blank, and must sequentially number each test.

- b. For controlled substances testing, a confirmation test means a second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.
- J. CONTROLLED SUBSTANCE: Controlled substances include cocaine, marijuana, opiates, amphetamines, and phencyclidine and any other substance determined by the Department of Transportation to be a controlled substance.
- K. CONTROLLED SUBSTANCE TEST: A method for determining the presence of controlled substances in a urine sample using a scientifically reliable method performed in accordance with procedures specified in 49 CFR 40.
- L. DESIGNATED EMPLOYER REPRESENTATIVE (DER): DER means the primary contact person(s) designated by the City to receive all information and/or reports from the Medical Review Officer, the Breath Alcohol Technician, the Substance Abuse Professional and the laboratories. The DER is also the designated contact person for driver inquiries regarding this policy and the Department of Transportation (DOT) regulations.
- M. DIRECTLY OBSERVED COLLECTION: A collection in which an observer will witness the urine pass from the donor's body into the collection container.
- N. DOT VERIFICATION: A DOT Verification is an employment verification wherein detailed information is gathered about the candidate's employment history, driving record, and drug and alcohol test history during the previous 3 years.
- O. DRIVER: Any employee of the City of Milwaukee required to attain, hold, and/or maintain a Commercial Driver's License (CDL) and who is subject to operating a Commercial Motor Vehicle at the direction of, or with the consent of the City.
- P. EMPLOYEE: Any DPW employee, including but not limited to employees required to possess a CDL, employees required to possess a driver's license (ex. Inspectors, Parking Enforcement Officers, etc), and employees not required to hold a driver's license.
- Q. EVIDENTIAL BREATH TESTING DEVICE (EBT): An evidential breath testing device is a device approved by the National Highway Traffic Safety Administration (NHTSA) and placed on the NHTSA's Conforming Products List and is used for the evidential testing of breath.
- R. FMCSA CLEARINGHOUSE: The Clearinghouse is a secure online database that gives employers, FMCSA (Federal Motor Carrier Safety Administration), State Driver Licensing Agencies, and State law enforcement personnel real-time information about CDL driver drug and alcohol program violations.
- S. FOLLOW-UP TEST: A follow-up test is an alcohol and/or controlled substances test administered to a driver who has violated the prohibitions of this policy and who has

been permitted to return to duty after passing a return-to-duty alcohol and/or controlled substances test.

- T. **MEDICAL REVIEW OFFICER (MRO):** A Medical Review Officer is a licensed physician (medical doctor or doctor of osteopathy), responsible for receiving laboratory results generated by the City's drug testing program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
- U. **MONITORED COLLECTION:** A collection in which an approved monitor is present in the collection area, but does not directly observe the collection.
- V. **ON-DUTY TIME:** All time spent providing a breath sample or primary urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident or follow-up testing as directed by the City.
- W. **POST-ACCIDENT TEST:** A post-accident test is an alcohol and/or controlled substances test administered to a driver following an accident involving a commercial motor vehicle or any other City vehicle under the following circumstances:
 - a. The driver was performing safety-sensitive functions with respect to the vehicle and the accident involved a loss of human life; or
 - b. The driver receives a citation under State or local law for a moving traffic violation arising from the accident; and
 - i A person is injured and immediately receives medical treatment away from the scene of the accident; or
 - ii one or more vehicles received disabling damage and were towed from the scene of the accident; or
 - c. Any other time when management "reasonably believes" that alcohol or drug impairment may have been a contributing factor in the accident or injury.
- X. **PRE-EMPLOYMENT TEST:** A pre-employment test is an alcohol and/or controlled substances test administered to an individual prior to the first time the individual performs a safety-sensitive function. Pre-employment testing is conducted as a condition of appointment to a position designated by the City of Milwaukee Department of Employee Relations as a safety/security position, a CDL driving position, or after having been laid off from a safety/security position, at the discretion of the Department of Employee Relations.
- Y. **Query:** An electronic check in the Clearinghouse, conducted by an employer or their designated C/TPA (Consortium/Third Party Administrator), to determine if current or prospective employees are prohibited from performing safety sensitive functions, operating a commercial motor vehicle (CMV), due to unresolved drug and alcohol program violations.

- Z. **RANDOM TEST:** A random test is an alcohol and/or controlled substances test administered to a driver who has been randomly selected by a scientifically valid method from among the pool of City drivers subject to such tests.
- AA. **REASONABLE SUSPICION TEST:** A reasonable suspicion test is an alcohol and/or controlled substances test administered to an employee as a result of a trained supervisor's or trained City official's belief that the driver has violated the alcohol or controlled substances prohibitions of this policy. A reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, and speech or body odors of the driver. These observations may include indications of the chronic and withdrawal effects of controlled substances.
- BB. **REFUSAL TO SUBMIT** (to an alcohol or controlled substances test) means any of the following:
- a. The employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing.
 - b. The employee fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing.
 - c. The employee engages in conduct that clearly obstructs the testing process.
 - d. The employee fails to be readily available for post-accident testing.
 - e. The employee fails to report to, and undergo alcohol and controlled substances testing, at a collection site as required.
- CC. **RETURN-TO-DUTY TEST:** A return-to-duty test is an alcohol and/or controlled substances test administered to an employee who has violated the prohibitions in this policy, prior to the employee being permitted to return to duty.
- DD. **SAFETY-SENSITIVE FUNCTION:** A safety-sensitive function, as defined by 49 CFR, is the operation of a commercial motor vehicle including the following related activities:
1. Time spent at a facility waiting to be dispatched;
 2. Inspecting or servicing the vehicle;
 - a. Driving or at the controls of the vehicle;
 - b. Resting in the vehicle;
 - c. Loading or unloading the vehicle including the performance of any related paperwork;
 - d. Performing those duties required of a driver involved in a vehicle accident; or

- e. Performing those duties required of a driver involved in a vehicle accident; or
 - 3. Safety-sensitive functions may also include functions of positions designated by the City of Milwaukee Department of Employee Relations as safety/security positions.
- EE. SCREENING TEST (also known as an initial test):
- a. In alcohol testing, a screening test means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system.
 - b. In controlled substances testing, a screening test means an immunoassay screen (or other DFMS-approved test) to eliminate "negative" urine specimens from further consideration.
- FF. SHY BLADDER: If the employee is unable to provide the required 45 ml of urine, they will be engaged in a Shy Bladder collection procedure (APPENDIX C).
- GG. SUBSTANCE ABUSE PROFESSIONAL (SAP): A substance abuse professional is a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
- HH. SUPERVISOR: A management or supervisory employee employed by the City of Milwaukee.
- II. TRAINED SUPERVISOR OR TRAINED CITY OFFICIAL: A trained supervisor or a trained City official is any City supervisor or any City management employee who has received a minimum of 60 minutes of training in identifying the signs and symptoms of alcohol abuse and 60 minutes of training in identifying the signs and symptoms of controlled substance abuse.
- JJ. 24-HOUR STAND-DOWN: An employee whose alcohol test indicates an alcohol concentration of at least 0.02 but less than 0.04 is prohibited from performing all job functions, including safety sensitive functions for 24 hours and issued a 1-day suspension, to be served concurrently.

IV. PROHIBITIONS

A. ALCOHOL

- 1. An employee is prohibited from reporting for duty or remaining on duty while the employee is under the influence of or impaired by alcohol.
- 2. An employee is prohibited from performing all job functions, including safety-sensitive functions, for 24 hours following an alcohol test result indicating an alcohol

concentration of at least 0.02 but less than 0.04.

3. An employee is prohibited from reporting for duty or remaining on duty, including the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
4. An employee is prohibited from being on duty or operating a commercial or non-commercial motor vehicle while the driver possesses alcohol unless the alcohol is manifested and transported as part of a shipment.
5. An employee is prohibited from using alcohol while performing job duties, including safety-sensitive functions.
6. An employee is prohibited from performing job duties, including safety-sensitive functions within four (4) hours after using any alcohol.
7. An employee who is required to take a post-accident alcohol test is prohibited from using alcohol for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
8. An employee is prohibited from refusing to submit to a post-accident, reasonable suspicion, or follow-up alcohol test. An employee is prohibited from refusing to submit to a pre-employment or return-to-duty alcohol test if required to do so by the City. A driver is prohibited from refusing to submit to a random alcohol test.

B. CONTROLLED SUBSTANCES

1. An employee is prohibited from reporting for duty or remaining on duty when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to perform their job duties, including safe operation of any required commercial motor vehicle.
2. An employee is prohibited from reporting for duty, remaining on duty, or performing a safety-sensitive function if the driver tests positive for controlled substances.
3. An employee is prohibited from refusing to submit to a post-accident, reasonable suspicion, or follow-up tests for controlled substances. An employee is prohibited from refusing to submit to a pre-employment or return-to-duty controlled substances test if required to do so by the City. A driver is prohibited from refusing to submit to a random test for controlled substances.

C. OTHER PROHIBITIONS

1. An employee is prohibited from refusing to sign a Certification of Receipt for a copy of the City's Drug and Alcohol Testing Policy with associated materials upon receipt of the Policy and materials.
2. A driver is prohibited from refusing to sign a General Consent for Queries of the Federal Motor Safety Administration (FMCSA) Drug and Alcohol Clearinghouse.
3. Other prohibited conduct is specified in Appendices B and C attached hereto.
4. City policies and DPW Work Rules that are not specifically cited in this policy, and that are not inconsistent with this policy remain in full force and effect.

V. NOTICE

- A. Before performing an alcohol or controlled substances test under the requirements of the City of Milwaukee – Department of Public Works' Drug and Alcohol policy, an employee being tested shall be notified that the alcohol and/or controlled substances test is required by the DPW Drug and Alcohol policy.
- B. Before performing an alcohol or controlled substances test under the requirements of the DOT rules and regulations, drivers being tested shall be notified that the alcohol and/or controlled substances test is required by 49 CFR Part 382.

VI. TESTING REQUIREMENTS – GENERAL

A. GENERAL

1. Unless otherwise outlined in the following subsections, alcohol tests required to be administered to employees may be administered at any time during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this policy.
2. Unless otherwise outlined in the following subsections, controlled substances tests required to be administered to employees may be administered at any time during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this policy.
3. Employees subject to an SAP process are responsible for the associated costs, which may be covered by that employee's insurance or paid out of pocket.
4. The City of Milwaukee Department of Public Works will not be responsible for any costs associated with the SAP process, or Return-to-Duty or Follow-Up testing for any individual who is not a City of Milwaukee employee, including those who were employees at the time of their violation.

B. PRE-EMPLOYMENT TESTING

1. Employees entering a position identified by the Department of Employee Relations as a safety/security position or a CDL driving position shall be subject to pre-employment testing for either alcohol and/or controlled substances, at the discretion and direction of the Department of Employee Relations.

C. RANDOM TESTING

1. No fewer than 10% of the average number of DPW CDL driving positions shall undergo random alcohol testing in each calendar year, or a sufficient number of drivers equal to an annual rate not less than the minimum annual percentage determined by the Federal Motor Carrier Safety Administration (FMCSA).
2. No fewer than 25% of the average number of DPW CDL driving positions shall undergo random controlled substances testing in each calendar year, or a sufficient number of drivers equal to an annual rate not less than the minimum annual percentage determined by the FMCSA.
3. The selection of drivers for random testing, the timing and frequency of random tests, and the number of drivers to be tested on any given day shall be determined by the Department of Public Works. The selection of drivers for random testing shall be made by a scientifically valid method determined by the Department of Public Works. Each driver shall have an equal chance of being selected for testing each time selections are made.
4. Random alcohol and controlled substances tests shall be unannounced and shall be spread reasonably throughout the year.
5. Drivers who are notified of selection for random alcohol and/or controlled substances testing shall be required to proceed to the test site immediately as instructed.
6. The Random Drug Testing Form (see Appendix E) shall be returned to DPW Safety immediately following the completion of the random test.

D. REASONABLE SUSPICION TESTING

1. An employee shall promptly submit to an alcohol or controlled substances test whenever a trained supervisor or trained City official has a reasonable suspicion to believe that the employee has violated the alcohol or controlled substances prohibitions of this policy.
2. At the time that a determination is made that a reasonable suspicion exists, the employee shall be removed from performing their job duties and notified that they will be tested under the provisions of this policy.
3. A determination that a reasonable suspicion exists that an employee has violated the alcohol prohibitions must be based on observations made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with

this policy. A written record, the Reasonable Suspicion Testing Form (See Appendix E), shall be made of these observations and shall be signed by the trained supervisor or trained City official who made the observations and returned to DPW Safety along with any supporting documentation, immediately following the test.

4. No employee shall be subject to reasonable suspicion alcohol testing later than 8 hours following the determination that reasonable suspicion exists to require the driver to undergo such test.
5. A trained supervisor or trained City official who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.
6. A written record, the Reasonable Suspicion Testing Form (See Appendix E), shall be made of the observations leading to a controlled substances reasonable suspicion test and shall be signed by the trained supervisor or trained City official who made the observations and returned to DPW Safety, along with any supporting documentation, immediately following the test.

E. POST-ACCIDENT TESTING

1. Employees shall follow all post-accident procedures detailed in the DPW Fleet Vehicle Use Manual, Fleet Vehicle Accidents section.
2. A surviving driver shall be subject to post-accident alcohol and controlled substances testing as soon as practicable following the accident.
3. A driver subject to post-accident testing shall be subject to a breath alcohol test no later than eight hours following the accident and to a controlled substances test no later than 32 hours following the accident.
4. A driver who is subject to post-accident testing shall remain readily available for such testing or shall be deemed to have refused to submit to testing. Nothing herein shall be construed to require the delay of necessary medical attention or to prohibit the driver from leaving the scene of the accident for the period of time necessary to obtain assistance in responding to the accident, necessary medical treatment for injured people, materials necessary to secure the accident site, or necessary emergency medical care.

F. RETURN-TO-DUTY TESTING

1. If an employee has an alcohol test result indicating an alcohol concentration of 0.02 or greater, but less than 0.04, the employee shall be prohibited from performing all job duties, including safety-sensitive functions for a minimum of 24 hours (24-hour stand-down). No return to duty test is required after the 24-hour stand-down is completed.
2. An employee who is not a CDL driver and who has undergone an alcohol test with a result of 0.04 or greater or who has tested confirmed positive for controlled substances

shall not be permitted to perform any job duties, including safety-sensitive functions, unless:

- a. The employee has been evaluated by the City of Milwaukee Employee Assistance Program (EAP) Coordinator, who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substances use; and
 - b. Following a determination by the EAP Coordinator that the driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the driver has complied and remains in compliance with any and all prescribed or recommended rehabilitation and/or treatment programs.
 - c. The employee has undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 before returning to duty if the driver has violated the alcohol prohibitions; and
 - d. The employee has undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use if the driver has violated the controlled substances prohibitions.
 - e. The employee shall be subject to such return-to-duty testing for alcohol misuse and/or use of controlled substances as determined by the EAP Coordinator.
3. A driver who has undergone an alcohol test with a result of 0.04 or greater or who has tested confirmed positive for controlled substances shall not be permitted to perform any job duties, including safety-sensitive functions, unless:
- a. The driver has been evaluated by a Substance Abuse Professional (SAP) who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substances use; and
 - b. Following a determination by a Substance Abuse Professional that the driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the driver has complied and remains in compliance with any and all prescribed or recommended rehabilitation and/or treatment programs.
 - c. The driver has undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 before returning to duty if the driver has violated the alcohol prohibitions; and
 - d. The driver has undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use if the driver has violated the controlled substances prohibitions.
 - e. The driver shall be subject to such return-to-duty testing for alcohol misuse and/or use of controlled substances, as is determined by the SAP.

4. An employee who has undergone an alcohol test with a result of 0.04 or greater or who has tested confirmed positive for controlled substances as a result of a Return-to-Duty test shall be required to complete a new SAP and Return-to-Duty process, and may be responsible for any associated costs.

G. FOLLOW-UP TESTING

1. An employee who has undergone an alcohol test with a result of 0.04 or greater or who has tested confirmed positive for controlled substances, and who has completed the Return to Duty SAP or EAP process, as outlined in Part 6, Section F of this policy shall be subject to the following:
 - a. The employee shall be subject to unannounced follow-up testing.
2. The number and frequency of such tests shall be determined by the SAP or EAP Coordinator, and shall consist of at least six tests in the first 12 months following the employee's return to duty. Follow-up testing shall not exceed 60 months after the employee's return to duty.
3. The SAP or EAP Coordinator may terminate such tests at any time after the first six tests have been administered if he or she determines the tests are no longer necessary.
4. The employee shall be subject to such follow-up testing for alcohol misuse and/or use of controlled substances, as is determined by the SAP or EAP Coordinator.

VII. TESTING PROCEDURES

A. ALCOHOL TESTING PROCEDURES

1. Alcohol tests shall be administered by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing device (EBT) except that, if the Department of Transportation Federal Highway Administration approves administration of tests by persons other than BATs or approves the use of other methods or technologies for detecting the presence of alcohol, then the administration of tests by such other persons and/or the use of such other methods or technologies shall be permitted under this policy.
2. Alcohol testing shall be conducted in accordance with procedures set out in Appendix B.

B. CONTROLLED SUBSTANCES TESTING PROCEDURES

1. Controlled substances testing shall be conducted by a DHHS certified laboratory and in accordance with procedures set out in Appendix C.

C. SAFETY NOTIFICATION PROCEDURES

1. Notification shall be made immediately to DPW.Injury@milwaukee.gov, the DER, and Safety Staff (Appendix A)
2. Forms shall be scan and emailed to DPW.Injury@milwaukee.gov, the DER, and Safety Staff (Appendix A) and originals returned to the Safety office, ZMB 5th floor.

VIII. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) CLEARINGHOUSE

- A. The FMCSA Clearinghouse is a secure online database that gives employers, FMCSA, State Driver Licensing Agencies, and State law enforcement personnel real-time information about CDL driver drug and alcohol program violations.
- B. The Clearinghouse contains information about the following employees who are covered by FMCSA's drug and alcohol program and are required to be registered as drivers in the Clearinghouse:
 1. Drivers with commercial driver's licenses
 2. Drivers with commercial driver's license permits
- C. The Clearinghouse contains information on all CDL driver drug and alcohol program violations. These violations include:
 1. Report for duty/remain on duty for safety-sensitive function with alcohol concentration of 0.04 or greater or while using any drug specified in the regulations (Part 40), other than those prescribed by a licensed medical practitioner.
 2. Alcohol use while performing, or within four hours of performing, a safety-sensitive function.
 3. Alcohol use within eight hours of an accident or until the post-accident test is completed, whichever occurs first.
 4. Test positive for use of specified drugs.
 5. Refusing to submit to a required alcohol or drug test.
- D. The Clearinghouse is used for the following purposes:
 1. State Driver Licensing Agencies
 - a. Query the Clearinghouse prior to completing licensing transactions.

2. Employers

- a. DOT Verification (Pre-employment): Check that no prospective employee or new CDL driver is prohibited from performing safety-sensitive functions, such as operating a commercial motor vehicle, due to a drug and alcohol program violation for which a driver has not successfully completed a return-to-duty (RTD) process.
- b. Annual Query: Check that no current employee is prohibited from performing safety-sensitive functions, such as operating a commercial motor vehicle, due to a drug and alcohol program violation for which a driver has not successfully completed a return-to-duty (RTD) process.
- c. Report alcohol violations
- d. Report refusals to submit to drug and alcohol tests.

3. Medical Review Officers (MRO)

- a. Report verified positive drug test results

4. Substance Abuse Professionals

- a. Report Return to Duty initial assessment and eligibility status for Return to Duty testing.

5. Consortia/Third-Party Administrators

- a. On behalf of an employer, report drug and alcohol program violations and perform driver queries as required.

6. CDL Drivers

- a. View own record.
- b. Provide consent to current or prospective employers to access details about any drug and alcohol program violations.
- c. Review Violations and enter Return to Duty Process on open violations.
- d. Select a Substance Abuse Professional, if needed.

IX. CONSEQUENCES FOR EMPLOYEES UNDER THIS POLICY AND 49 CFR PART 382

- A. An employee shall not be permitted to perform the functions of their job, including safety sensitive functions, if the driver has engaged in conduct prohibited by this policy.
- B. A driver who violates any of the requirements of 49 CFR Part 382 shall be subject to the penalty provisions of 49 U.S.C. 521(b).
- C. Any employee who refuses to submit to a required alcohol or controlled substances test shall be prohibited from performing the functions of their job, including safety sensitive functions.
- D. The FMCSA will disqualify drivers for one year, under the procedures in 49 CFR part 383, if a driver refuses to submit to a post-accident test after a fatal accident. (See Appendix F)
- E. Drivers who are restricted from performing safety sensitive functions under FMCSA guidelines due to a violation at a secondary employer shall not be permitted to perform any functions of their job, including safety sensitive functions, until they have successfully completed their SAP process and return-to-duty testing and are in compliance with any required follow-up plan.
 - 1. Any SAP or testing expenses incurred due to a violation at a secondary employer shall be the responsibility of the employee and/or secondary employer, and will not be covered by the City of Milwaukee Department of Public Works.
- F. All employees are subject to the discipline provisions for drug and alcohol violations as laid out in the DPW Standard Work Rules.

X. CONFIDENTIALITY

- A. All records required to be maintained under the FMCSA Rules and Regulations shall be maintained in a secure location with controlled access.
- B. Except as required by law or expressly authorized or required by 49 CFR, subtitle B, chapter III section 382.405, the City shall not release information that is contained in records required to be maintained under the FMCSA Rules and Regulations.
- C. Upon written request, a driver is entitled to copies of any records pertaining to the driver's use of controlled substances or alcohol, including any records pertaining to his or her alcohol or controlled substances tests.
- D. All results of alcohol and/or controlled substances testing conducted pursuant to this policy shall be made available, upon request, to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City or any of its drivers.

- E. Information related to post-accident test results administered following an accident, which is under investigation, by the National Transportation Safety Board shall be released to the Board upon request.
- F. Records shall be made available to a driver's subsequent employer upon receipt of a written request from a driver subject to the express terms of the driver's request.
- G. The City may disclose information pertaining to a driver that is required to be maintained under the FMCSA Rules and Regulations to the decision maker in a lawsuit, grievance, or other procedures initiated by or on behalf of the driver, and including, but not limited to, a worker's compensation, unemployment compensation, or other procedure relating to a benefit sought by the driver, and arising from the results of an alcohol and/or controlled substances test administered in accordance with the FMCSA Rules and Regulations, or from the City's determination that the driver engaged in conduct prohibited by the FMCSA Rules and Regulations.
- H. The City will release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person.

APPENDIX A

CONTACTS FOR INFORMATION AND ASSISTANCE

Safety Injury Email

DPW.INJURY@milwaukee.gov

Designated Employer Representative (DER)

Donald Laster.....(414) 286-3656

Substance Abuse Professional (SAP)

Joe Glassman (414) 759-0770

Employee Assistance Program (EAP)

Cris Zamora (414) 286-3145

APPENDIX B

TESTING PROCEDURES FOR ALCOHOL

1. Drivers directed to undergo alcohol testing shall proceed immediately to the designated test site as instructed.
2. Drivers shall follow all procedures and instructions given by the Breath Alcohol Technician (BAT) including completing, signing, initialing, and/or dating any required forms or log books. Failure to do so shall be considered a refusal to test except that it shall not be considered a refusal to test when a driver tests less than 0.02 alcohol concentration and the driver fails to: (1) sign the certification in Step 4 of the Breath Alcohol Testing Form, or (2) fails to initial the log book entry for a test.
3. The testing site shall provide visual and aural privacy to the driver, sufficient to prevent unauthorized persons from seeing or hearing test results. AR necessary equipment, personnel and materials for breath testing shall be provided at the location where the testing is conducted.
4. No unauthorized persons shall be permitted access to the testing location when the EBT remains unsecured or, in order to prevent such persons from seeing or hearing test results, at any time when testing is being conducted.
5. In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet the requirements of paragraph 3, above. In such cases, the driver shall be provided visual and aural privacy to the greatest extent practicable.
6. The BAT shall supervise only one driver's use of the EBT at a time and shall not leave the alcohol testing location while the testing procedure for a given driver is in progress.
7. Upon entering the test site, the driver shall be required to provide the BAT with positive identification. Positive identification may take the form of a photo I.D. card or identification by a supervisor or City official. On request of the driver, the BAT shall provide positive identification to the driver.
8. If a screening test of a driver indicates a breath alcohol concentration of less than 0.02, no further alcohol testing of that driver shall be conducted during this testing event.
9. If the result of a screening test of a driver indicates a breath alcohol concentration of less than 0.02 the BAT shall transmit the result to the City in a confidential manner, and the City shall receive and store the information so as to ensure that confidentiality is maintained.

10. If the result of a screening test of a driver indicates a breath alcohol concentration of 0.02 or greater, the driver shall be required to undergo a confirmation test.
11. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the Breath Alcohol Testing Form and log book entry. The BAT shall provide the driver with Copy 2 of the form.
12. If a BAT other than the one who conducted the screening test is conducting the confirmation test the driver shall be required to provide positive identification in accordance with paragraph 7, above, to the new BAT and the driver may request positive identification of the new BAT.
13. The driver shall not eat, drink, and put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This waiting period begins with the completion of the screening test, and shall not be less than 15 minutes.
14. The confirmation test shall be conducted within 20 minutes of the completion of the screening test.
15. If a BAT other than the one whom conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The driver shall then complete Step 2 on the form, signing the certification. Refusal of the driver to sign the certification shall be deemed a refusal to test.
16. Refusal by the driver to complete and sign the Breath Alcohol Testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test shall be noted by the BAT in the "Remarks" section of the form. The testing process shall be terminated and the BAT shall immediately notify the Designated Employer Representative (DER).
17. Refusal by the driver to complete and sign the Breath Alcohol Testing Form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test shall be deemed a refusal to test.
18. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new Breath Alcohol Testing form with a new sequential test number.
19. If the driver is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the BAT shall again instruct the driver to attempt to provide an adequate amount of breath.
 - a) If the driver refuses to make the attempt, the BAT shall immediately inform the DER.

- b) If the driver attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol form and immediately inform the DER.
- c) If the driver attempts and fails to provide an adequate amount of breath, the DER shall direct the driver to obtain, as soon as practicable after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the City concerning the driver's medical ability to provide an adequate amount of breath.
- d) If the licensed physician determines in his or her reasonable medical judgement, that a medical condition has or with a high degree of probability could have precluded the driver from providing an adequate amount of breath. The driver's failure to provide an adequate amount of breath shall not be deemed a refusal to test. The physician shall provide to the City a written statement of the basis for his or her conclusion.
- e) If the licensed physician, in his or her reasonable medical judgment, is unable to determine that a medical condition has, or with a high degree of probability, could have, precluded the driver from providing an adequate amount of breath, the driver's failure to provide an adequate amount of breath shall be deemed a refusal to take a test. The physician shall provide the for City a written statement with the basis for his or her conclusion.

APPENDIX C

TESTING PROCEDURES FOR CONTROLLED SUBSTANCES

1. Drivers directed to undergo a controlled substances test shall proceed immediately to the designated collection site as instructed
2. Drivers shall follow all procedures and instructions given by the collection site person. Failure to do so shall be considered a refusal to test.
3. The collection site person shall collect a urine sample from the driver in accordance with DHHS-approved procedures.
4. Drivers shall provide at least 45 ml of urine for testing. Drivers who fail to provide at least 45 ml of urine shall be subject to the provisions of paragraph 19, below.
5. The collection site person shall divide the specimen into two containers. One container shall contain at least 30 ml of urine and shall be the primary specimen. The other container shall contain at least 15 ml of urine and shall be the split specimen.
6. Both containers shall be shipped in a single shipping container, together with copies 1 and 2, and the split specimen copy of the chain of custody form, to the laboratory.
7. The laboratory shall log in the split specimen with the split specimen seal remaining intact. The laboratory shall store the split specimen securely in accordance with approved procedures.
8. The primary specimen shall undergo a screening test for the presence of controlled substances. If the screening test detects the presence of controlled substances, the primary specimen shall undergo a confirmation test.
9. If the result of the test of the primary specimen is negative, the laboratory may discard the split specimen.
10. The MRO shall review all primary specimen results. If the result of the test of the primary specimen is confirmed positive for the presence of controlled substances, the MRO shall notify the driver that the driver has 72 hours in which to request a test of the split specimen if the confirmed positive test is verified as positive. If the result of the test of the primary specimen is negative, the MRO shall have the authority to direct an employee to undergo a retest for the presence of controlled substances if, upon review of those results, the MRO has reason to believe the primary specimen has been adulterated.

11. If the primary specimen tests confirmed positive for the presence of controlled substances, the driver may request, in writing, that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) or drug metabolite(s) for which a positive test result was obtained in the test of the primary specimen. The MRO shall honor such request if it is made within 72 hours of the driver having been notified of a verified positive test result. The driver shall be responsible for any and all costs associated with having the split specimen tested.
12. If the driver has not contacted the MRO within 72 hours the driver may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the driver from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the driver's failure to contact the MRO within 72 hours, the NMO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed. The driver may not request a reanalysis of the primary specimen.
13. If the result of the test of the primary specimen is positive, the laboratory shall retain the split specimen in frozen storage for 60 days from the date on which the laboratory acquires it. Following the end of the 60-day period, if not informed by the NMO that the driver has requested a test of the split specimen, the laboratory may discard the split specimen.
14. If the MRO directs the first laboratory in writing to forward the split specimen to a second DHHS-certified laboratory, the second laboratory shall analyze the split specimen by GC/N4S to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such GC/MS confirmation shall be conducted without regard to the cutoff levels established by DHHS. The split sample shall be retained in long-term storage for one year by the laboratory conducting the analysis of the split specimen (or longer if litigation concerning the test is pending).
15. The results from the split specimen test shall be transmitted by the second laboratory to the MRO.
16. If the analysis of the split specimen fails to re-confirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or un-testable, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the DER and the driver.
17. A driver whose primary specimen tests confirm positive for the presence of controlled substances and who requests, in accordance with paragraph 11, above, that the split specimen be tested, shall not be permitted to perform safety-sensitive functions pending the outcome of such test but, shall be suspended without pay and subject to further disciplinary action. However, if the test of the split specimen does not reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the driver shall be paid his/her straight time salary for all regularly-scheduled shifts he or she would have worked had the suspension not occurred.

18. If the result of the test of the split specimen fails to reconfirm the presence of the controlled substances found in the primary specimen, the MRO shall cancel the test and report the reasons for it to the DOT, the City and the driver
19. If the employee is unable to provide the required 45 ml of urine, they will be engaged in a Shy Bladder collection procedure.
 - a) If the driver is unable to provide the required 45 ml of urine, the driver shall be instructed to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded.
 - b) If the driver is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the laboratory shall notify the City of the driver's inability to provide an adequate sample.
 - c) The MRO will refer the driver for a medical evaluation to develop pertinent information concerning whether the driver's inability to provide an adequate specimen is genuine or constitutes a refusal to test (In a pre-employment testing situation, the City will determine whether or not to hire the employee, and the MRO is not required to make such a referral). Upon completion of the examination, the MRO shall report his or her conclusions to the City in writing.
 - d) If the MRO determines that the driver's inability to provide an adequate sample is not genuine, the driver shall be deemed to have refused to test.
20. If the MRO determines that the sample has been altered the MRO shall report that test as a refusal or order an immediate observed collection.

APPENDIX D

EMPLOYEES COVERED BY THIS POLICY

Any employee required by the City to have and maintain a Commercial Driver's License is required to comply with the provisions of the City of Milwaukee Drug and Alcohol Testing Policy.

PERIOD OF THE DAY DRIVERS, CREW LEADERS, AND SUPERVISORS ARE REQUIRED TO COMPLY WITH 49 CFR PART 382:

A driver is required to be in compliance with 49 CFR Part 382 from the time the driver begins to work or is required to be in readiness to work until the time they are relieved from work and all responsibility for performing work, including time spent:

1. at a facility waiting to be dispatched;
2. inspecting or servicing the vehicle;
3. driving or at the controls of the vehicle;
4. resting in the vehicle;
5. loading or unloading the vehicle including the performance of any related paperwork;
6. performing those duties required of a driver involved in a vehicle accident; or
7. repairing or attending to a disabled vehicle.

Every DPW employee is required to comply with the City of Milwaukee Drug and Alcohol Testing Policy (CDL or non-CDL holder), regardless of whether they are operating a vehicle or not. Employees are required to be in compliance with the Drug and Alcohol Testing Policy from the time they begin to work or are required to be in readiness to work until the time they are relieved from work and all responsibility for performing work.

APPENDIX E

DRUG TESTING FORMS

DPW Safety's forms shall be used for all Post-Accident and Reasonable Suspicion testing. Please contact dpw.injury@milwaukee.gov for copies of these forms.

APPENDIX F

CDL Disqualifications



Department of Public Works
Administration

Jeffrey S. Polenske, P.E.
Commissioner of Public Works

Dan Thomas, M.P.A., J.D.
Director of Administrative Services

TO: Employee Requiring a Commercial Driver’s License (CDL)

FROM: Dan Thomas, DPW Administrative Services Manager

REISSUED DATE: May 19, 2021

RE: FEDERAL & WI LAW CDL DRIVER DISQUALIFICATIONS

Attached are charts from the Wisconsin Department of Transportation and the US Department of Transportation (§ 383.51.)

Since maintaining a CDL is a condition of your employment, we strongly recommend that you take a few moments and read these important charts. Driving violations that occur outside of work (your personal life) may affect your maintaining a CDL and your job.

IMPACT OF VIOLATIONS: Losing your CDL driving privileges *will* affect the status of your job.

- A lifetime CDL revocation shall be cause for discharge. A one-year CDL disqualification will result in discipline up to and including discharge and/or a leave of absence, pay reduction and/or demotion.
- An Operation While Intoxicated (OWI) conviction while driving a car or motorcycle even when you *are not working* will disqualify you operating a Commercial Motor Vehicle for one year for your first conviction.
- Driving a CMV when a CDL is revoked, suspended, or disqualified can also lead to one-year disqualification. A second conviction can lead to a lifetime disqualification.
- Speeding 15 or more over the limit and other serious violations in *your personal vehicle not on City time* may also affect your CDL driving privileges.

AS A GENERAL RULE: AVOID ANY DISQUALIFICATIONS, SUSPENSIONS, OR REVOCATIONS to avoid any impact on your job status.

CONTACTS FOR INFORMATION AND ASSISTANCE

City-Designated Representative (CDR)
 Allyson Weiss (414) 286-2441
 Substance Abuse Professional (SAP)
 Joe Glassman..... (414)759-0770 Employee Assistance Program (EAP)
 Cris Zamora..... (414) 286-3145

UNION REPRESENTATIVES

Milwaukee District Council 48, AFSCME (414) 344-6868
 Bcal 949 IBEW Electrical Group
 Kurt Jante (414) 327-5202
 Building and Construction Trade Council
 Julie Plagge..... (414) 475-5580

(b) *Disqualification for major offenses.* Table 1 to §383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO §383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials as defined in §383.5, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *
(1) Being under the influence of alcohol as prescribed by State law * * *	1 year	1 year	3 years	Life	Life.
(2) Being under the influence of a controlled substance * * *	1 year	1 year	3 years	Life	Life.
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV * * *	1 year	Not applicable	3 years	Life	Not applicable.
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in §383.72 of this part * * *	1 year	1 year	3 years	Life	Life.
(5) Leaving the scene of an accident * * *	1 year	1 year	3 years	Life	Life.
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table * * *	1 year	1 year	3 years	Life	Life.
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CLP or CDL is revoked, suspended, or canceled, or the	1 year	Not applicable	3 years	Life	Not applicable.

driver is disqualified from operating a CMV					
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide	1 year	Not applicable	3 years	Life	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement
(10) Using a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11)	Life—not eligible for 10-year reinstatement	Not applicable	Life—not eligible for 10-year reinstatement	Life—not eligible for 10-year reinstatement	Not applicable.

(c) *Disqualification for serious traffic violations.* Table 2 to §383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO §383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for * * *
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the regulated or posted speed limit	60 days	60 days	120 days	120 days.
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property	60 days	60 days	120 days	120 days.
(3) Making improper or erratic traffic lane changes	60 days	60 days	120 days	120 days.
(4) Following the vehicle ahead too closely	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident	60 days	60 days	120 days	120 days.
(6) Driving a CMV without obtaining a CLP or CDL	60 days	Not applicable	120 days	Not applicable.
(7) Driving a CMV without a CLP or CDL in the driver's possession ¹	60 days	Not applicable	120 days	Not applicable.
(8) Driving a CMV without the proper class of CLP or CDL and/or	60 days	Not applicable	120 days	Not applicable.

endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported				
(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving a CMV. ²	60 days	Not applicable	120 days	Not applicable.
(10) Violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a CMV. ²	60 days	Not applicable	120 days	Not applicable.

¹Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CLP or CDL on the date the citation was issued, shall not be guilty of this offense.

²*Driving, for the purpose of this disqualification*, means operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to §383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO §383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because * * *.	For a first conviction a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance * * *	No less than 60 days	No less than 120 days	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 to §383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO §383.51

If the driver operates a CMV and is convicted of * * *	For a first conviction while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials	No less than 180 days or more than 1 year	No less than 2 years or more than 5 years	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials as defined in §383.5, or while operating a vehicle designed to transport 16 or more passengers, including the driver	No less than 180 days or more than 2 years	No less than 3 years or more than 5 years	No less than 3 years or more than 5 years.

[67 FR 49756, July 31, 2002, as amended at 68 FR 4396, Jan. 29, 2003; 72 FR 36787, July 5, 2007; 75 FR 59134, Sept. 27, 2010; 76 FR 26879, May 9, 2011; 76 FR 75486, Dec. 2, 2011; 77 FR 59825, Oct. 1, 2012; 78 FR 58479, Sept. 24, 2013; 78 FR 60231, Oct. 1, 2013; 84 FR 35338, July 23, 2019]

Wisconsin General CDL Disqualifications

Revised February 2017

DISQUALIFYING OFFENSES	DISQUALIFY CDL 1st CMV Conviction	DISQUALIFY CDL 1st Non-CMV Conviction	DISQUALIFY CDL 2nd CMV Conviction	DISQUALIFY CDL 2nd Non-CMV Conviction
Violations on or after 7/1/87 but prior to 9/30/2005				
Operating While Intoxicated (OWI)	1 year or, if HAZ MAT conviction: 3 years	N/A	Life	N/A
OWI causing injury				
OWI causing great bodily harm				
OWI causing death				
Commercial Alcohol (CA) .04-.07				
CA causing injury				
CA causing great bodily harm				
CA causing death				
Operating under influence of controlled substance				
Refusal				
Failure to stop/report accident	Life			
Felony				
Controlled substance felony				
Violations on or after 9/30/2005				
Operating While Intoxicated (OWI)	1 year or, if HAZ MAT conviction: 3 years	1 year	Life	Life
Operating with a Prohibited Alcohol Concentration (PAC)		1 year		Life
Blood Alcohol Concentration (BAC)		1 year		Life
OWI causing injury		1 year		Life
OWI causing great bodily harm		1 year		Life
OWI causing death		1 year		Life
Commercial Alcohol (CA) .04-.07		N/A		N/A
CA causing injury		N/A		N/A
CA causing great bodily harm		N/A		N/A
CA causing death		N/A		N/A
Operating under influence of controlled substance		1 year		Life
Refusal (IC; ICU)		1 year		Life
Failure to stop/report accident (FSA; FSU; DSP)		1 year		Life
Felony		1 year		Life
Driving a CMV when CDL is rev/sus/can/dqf		N/A		N/A
Causing a fatality/negligent operation of CMV		N/A		N/A
Controlled substance felony	Life	Life	Life	
Imminent Hazard	As ordered by FMCSA			

Wisconsin General CDL Disqualifications *(continued)*

SERIOUS DISQUALIFYING OFFENSES:	DISQUALIFY CDL 1st CMV Conviction	DISQUALIFY CDL 1st Non-CMV Conviction	DISQUALIFY CDL 2nd CMV Conviction	DISQUALIFY CDL 2nd Non-CMV Conviction
Violations on or after 7/1/87 but prior to 9/30/2005				
Speeding 15 or more over the limit	N/A	N/A	2 offenses within 3 years: 60 days 3 offenses within 3 years: 120 days	N/A
Reckless driving				
Passing illegally				
Improper or erratic lane change				
Following too closely				
Moving violation arising from a fatal accident				
Violations on or after 9/30/2005				
Speeding 15 or more over the limit	N/A	N/A	2 offenses within 3 years: 60 days 3 offenses within 3 years: 120 days	2 offenses within 3 years: 60 days 3 offenses within 3 years: 120 days if the conviction results in revocation, suspension, or cancel of CDL holder's license or non-CMV driving privileges
Reckless driving				
Passing illegally				
Improper or erratic lane change				
Following too closely				
Moving violation arising from a fatal accident				
Driving a CMV without obtaining a CDL	N/A	N/A	2 offenses within 3 years: 60 days 3 offenses within 3 years: 120 days	N/A
Driving a CMV without a CDL in possession				
Driving a CMV without proper class/endorsement				
Violations on or after 7/1/2016				
Texting while driving CMV	N/A	N/A	2 offenses within 3 years: 60 days 3 offenses within 3 years: 120 days	N/A
Telephone use while Driving CMV				

RAILROAD-HIGHWAY GRADE CROSSING: DRIVER FAILS TO:	DISQUALIFY CDL 1st CMV Conviction	DISQUALIFY CDL 1st Non-CMV Conviction	DISQUALIFY CDL 2nd CMV Conviction	DISQUALIFY CDL 2nd Non-CMV Conviction
Violations on or after 10/4/2002				
Slow down to ensure tracks clear	1st offense: 60 days	N/A	2 offenses within 3 years: 120 days 3 offenses within 3 years: 1 year	N/A
Stop if the tracks are not clear				
Stop before driving onto crossing				
Drive through crossing without stopping				
Obey a traffic control device or officer				
Ensure sufficient undercarriage clearance				

Wisconsin General CDL Disqualifications (continued)

FALSIFIED APPLICATION FOR A CDL:	DISQUALIFY CDL 1st CMV Conviction	DISQUALIFY CDL 1st Non-CMV Conviction	DISQUALIFY CDL 2nd CMV Conviction	DISQUALIFY CDL 2nd Non-CMV Conviction
Violations on or after 12/21/1995				
Falsified application for a CDL	60 days	N/A	60 days 3rd offense: 60 days	N/A
Violations on or after 7/1/2016				
Falsified application for a CDL/Issuance	1 year	N/A	1 year 3rd offense: 1 year	N/A

OPERATING CMV WHILE OUT-OF-SERVICE:	DISQUALIFY CDL 1st CMV Conviction	DISQUALIFY CDL 1st Non-CMV Conviction	DISQUALIFY CDL 2nd CMV Conviction	DISQUALIFY CDL 2nd Non-CMV Conviction
Violations on or after 8/1/2000				
Operating CMV while out-of-service HAZ penalties apply if violation occurred while transporting HAZ MAT or while operating a vehicle designed to carry 16 or more passengers	1st offense: 90 days HAZ MAT or passenger: 180 days	N/A	2nd offense within 10 years: 2 years HAZ MAT or passenger: 3 years 3rd offense within 10 years: 3 years HAZ MAT or passenger: 3 years	N/A