

Resolution No.: 20-245
Introduced: July 18, 2023
Adopted: July 18, 2023

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

SUBJECT: Approval of Executive Regulation 9-23, Amendment to the Montgomery County Personnel Regulations – Employee Drug and Alcohol Use and Drug and Alcohol Testing

Background

1. Under Method (2), the Council may approve or disapprove a proposed regulation within 60 days after receiving it.
2. On July 7, 2023, the County Council received Executive Regulation 9-23, Amendment to the Montgomery County Personnel Regulations – Employee Drug and Alcohol Use and Drug and Alcohol Testing.
3. Executive Regulation 9-23 would amend Section 32 of the Montgomery County Personnel Regulations to comply with the updated Federal Transit Administration requirements for drug and alcohol testing.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The Council approves Executive Regulation 9-23, Amendment to the Montgomery County Personnel Regulations – Employee Drug and Alcohol Use and Drug and Alcohol Testing

This is a correct copy of Council action.



Sara R. Tenenbaum
Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Employee Drug and Alcohol Use and Drug and
Alcohol Testing – Amendments

Number: 9-23

Originating Department:
Office of Human Resources

Effective Date:

Montgomery County Regulation on:

Employee Drug and Alcohol Use and Drug and
Alcohol Testing – Amendments

Issued by: County Executive

Regulation No. 9-23

COMCOR 33.07.01.32

Supersedes: Executive Regulation 14-17

Authority: Montgomery County Code, Section 33-7(b)

Council Method (2) Under Code Section 2A-15

Register Volume 40, Issue 6

Comment Deadline: June 15, 2023

Effective Date: _____

Sunset Date: None

SUMMARY: This regulation amends Section 32 of the Montgomery County Personnel Regulations to comply with updated FTA requirements for drug and alcohol testing.

ADDRESS: Director, Office of Human Resources
Executive Office Building
101 Monroe Street, 7th Floor
Rockville, MD 20850

STAFF Additional information and copies of the regulation are available from:

CONTACT: Samuel Frushour, Strategic Communications Manager, 240-777-5012.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject: Employee Drug and Alcohol Use and Drug and Alcohol Testing – Amendments

Number: 9-23

Originating Department:
Office of Human Resources

Effective Date:

COMCOR 33.07.01.32 Employee Drug and Alcohol Use and Drug and Alcohol Testing

* * *

32-1. Purpose. This section of the Personnel Regulations is intended to:

* * *

32-2. Definitions.

* * *

(rr) Substance Abuse Professional: A person who:

- (1) meets all the DOT requirements and evaluates an employee covered by DOT regulations who has violated a U.S. DOT drug and alcohol regulation; and
- (2) makes recommendations concerning the employee's education, treatment, follow-up testing, and aftercare.

(ss) Substance Addiction Counselor: A person who provides professional mental, emotional and behavioral health services needed for an individual to recover from drug and alcohol dependence and other behavioral issues.

(tt) Substituted specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

(uu) Under the influence or impaired: A state or condition less than intoxication where consumption of alcohol or drugs has affected an individual's normal coordination, judgment, or discretion.

(vv) Verified test: A drug test result or validity test result from a laboratory that has undergone review and final determination by the MRO.

32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.

* * *



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- (b) Limited exceptions to drug and alcohol prohibitions.

* * *

- (2) The Director of Alcohol Beverage Services may authorize the tasting of alcoholic beverages by County employees during work hours:

- (A) for the purpose of product selection and quality control; and
(B) at supervised product knowledge seminars.

* * *

- (g) Required check on the drug and alcohol testing records of applicants for FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.

* * *

- (8) The County must also ask the applicant or employee if they have tested positive, or refused to test, on any pre-employment drug or pre-assignment alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by U.S. DOT drug and alcohol testing rules during the past 2 years. If the applicant or employee admits that they had a positive test or a refusal to test, the County must not use the applicant or employee to perform safety-sensitive functions until and unless the applicant or employee documents successful completion of the return-to-duty process as required under U.S. DOT regulations.

- (h) Drug and alcohol testing of job applicants and employees.

* * *

- (10) Guidance on drug and alcohol testing. For further guidance on drug and alcohol testing, supervisors should contact the OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email DAPM@montgomerycountymd.gov.

* * *

- (20) Rights of job applicants and employees subject to drug or alcohol testing.



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* * *

- (C) If the MRO has verified a drug test result as positive or as a refusal to test because of adulteration or substitution, the MRO must notify the applicant or employee of the applicant's or employee's right to have a test conducted on the split specimen, as appropriate, by a different laboratory at the employee's expense.
- (i) The MRO must tell a DOT covered applicant or employee how to request the split specimen test, provide a list of certified labs for the applicant or employee to choose from, and give the applicant or employee at least 72 hours to request the test. Applicants or employees not covered by U.S. DOT regulations are given five days to request the test.
 - (ii) An employee covered by U.S. DOT regulations may be required to pay for the test. Other employees are required to pay for the test before the test takes place.
 - (iii) If the test conducted by a different laboratory is negative, the County must treat the test result as negative.

* * *

- (i) Required referral, evaluation, and treatment.

* * *

- (3) Referral, evaluation, and treatment for employees not covered by U.S. DOT regulations.

- (A) If an employee has a verified positive drug test result, engaged in prohibited alcohol use, or refused to take a drug or alcohol test, and if the employee hasn't been dismissed or terminated as a result of such conduct, the employee's supervisor must:
- (i) refer the employee to the EAP;
 - (ii) give the employee information about the resources available to the employee to evaluate and resolve problems associated with illegal



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drug use or alcohol misuse, including contact information for counseling and treatment programs;

- (iii) ensure that the employee is evaluated by a medical provider trained in substance abuse to determine if the employee is in need of assistance in resolving problems associated with illegal drug use or alcohol misuse;
- (iv) give the employee contact information and the credentials of a medical provider affiliated with the County;
- (v) ensure that, before the employee returns to work, the employee has complied with the appropriate referral and evaluation provisions and takes, as appropriate:
 - (a) a return-to-duty drug test with a verified negative result;
 - (b) a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; or
 - (c) both, if the medical provider determines that the employee should be tested for both drugs and alcohol.

* * *

- (j) Effects of drug abuse and alcohol misuse.

* * *

- (2) An employee who recognizes symptoms of drug abuse or alcohol misuse in themselves should contact the EAP instead of ignoring or covering up the problem.

* * *

- (k) Employees who refer themselves for treatment.

* * *

- (2) If an employee tells a supervisor that they need help to resolve a problem associated with prohibited drug use or alcohol misuse:



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- (A) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:
 - (i) after the employee is approached by a supervisor who intends to inform the employee that the employee has been selected for testing, but before the supervisor has the opportunity to notify the employee that the employee has been selected for a required drug or alcohol test;
 - (ii) after the employee learns that they have been selected for a required drug or alcohol test but before the employee is officially notified of the required drug or alcohol test;

* * *

- (n) For further information. For further information about drug and alcohol testing, an employee may contact the staff of:
 - (1) OHR OMS Drug and Alcohol Program Coordinator at 240-777- 5118 or email DAPM@montgomerycountymd.gov.

* * *

32-5. Prevention of Prohibited Drug Use and Alcohol Misuse by FTA Safety-Sensitive Employees Under Federal Transit Administration Regulations.

- (e) Drug and alcohol prohibitions.
 - (1) Prohibitions for FTA Safety-Sensitive employees. In addition to the prohibitions of Section 32-3, an FTA Safety-Sensitive employee must not:
 - (A) use a prohibited drug;
 - (B) report for duty, remain on duty, or perform a safety- sensitive function after testing positive for a prohibited drug;
 - (C) report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or higher;

* * *



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(f) Drug and alcohol testing.

* * *

(4) Notice required for drug and alcohol testing.

(A) Before performing a drug or alcohol test under FTA regulations, the supervisor must notify the employee that the FTA requires the drug or alcohol test.

* * *

(g) Types of drug and alcohol testing. Under FTA regulations, an FTA Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. A non-employee applicant for such a position must submit to pre-employment drug testing as described in (1)(A) below.

(1) Pre-employment drug and alcohol testing.

(A) An applicant for an FTA Safety-Sensitive position must produce a verified negative drug test result before employment.

(B) An employee transferred or temporarily assigned to an FTA Safety-Sensitive position must produce a verified negative drug test result before performing safety-sensitive functions.

(C) An employee newly hired or assigned to an FTA Safety-Sensitive position must take a pre-employment breath alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time. All pre-employment alcohol tests will be conducted using the procedures set forth in 49 CFR Part 40.

* * *

(i) Consequences for an employee of prohibited drug use, alcohol misuse, or refusal to take a drug or alcohol test.

* * *

(2) Consequences under County authority.



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* * *

- (C) If an FTA Safety-Sensitive employee tells a supervisor that they need help to resolve a problem associated with prohibited drug use or alcohol misuse:
- (i) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:
 - (a) after the employee is approached by a supervisor who intends to inform the employee that the employee has been selected for testing, but before the supervisor has the opportunity to notify the employee that the employee has been selected for a required drug or alcohol test;
 - (b) after the employee learns that they have been selected for a required drug or alcohol test but before the employee is officially notified of the required drug or alcohol test;
 - (c) after the employee is notified of a required drug or alcohol test but before the employee is tested for drugs or alcohol;
 - (d) after the employee is tested for drugs or alcohol;
 - (e) after an accident;
 - (f) after a confirmed positive drug test result or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater;
 - (g) after a refusal to be tested for drugs or alcohol; or
 - (h) after conduct prohibited by Section 32-3, of these Regulations; and
 - (ii) the supervisor must refer the employee to a Substance Addiction Counselor for evaluation, treatment, return-to-duty testing, and follow-up testing. These tests will be conducted under County authority and not under direct observation.

* * *



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Office of Human Resources

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Approved:

A handwritten signature in blue ink, appearing to read "Marc Elrich", written over a horizontal line.

Marc Elrich, County Executive

7/7/2023

Date

Approved as to form and legality:

A handwritten signature in blue ink, appearing to read "J. D. M.", written over a horizontal line.

Office of the County Attorney

6/26/2023

Date



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Council Method (2) Under Code Section 2A-15

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SUMMARY: This regulation amends Section 32 of the Montgomery County Personnel Regulations to comply with updated FTA requirements for drug and alcohol testing.

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COMCOR 33.07.01.32 Employee Drug and Alcohol Use and Drug and Alcohol Testing

* * *

32-1. Purpose. This section of the Personnel Regulations is intended to:

* * *

32-2. Definitions.

* * *

(rr) Substance Abuse Professional: A person who:

- (1) meets all the DOT requirements and evaluates an employee covered by DOT regulations who has violated a U.S. DOT drug and alcohol regulation; and
- (2) makes recommendations concerning the employee's education, treatment, follow-up testing, and aftercare.

(ss) Substance Addiction Counselor: A person who provides professional mental, emotional and behavioral health services needed for an individual to recover from drug and alcohol dependence and other behavioral issues.

[(ss)] (tt) Substituted specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

[(tt)] (uu) Under the influence or impaired: A state or condition less than intoxication where consumption of alcohol or drugs has affected an individual's normal coordination, judgment, or discretion.

[(uu)] (vv) Verified test: A drug test result or validity test result from a laboratory that has undergone review and final determination by the MRO.

32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.

* * *



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- (b) Limited exceptions to drug and alcohol prohibitions.

* * *

- (2) The Director of [the Department of Liquor Control] Alcohol Beverage Services may authorize the tasting of alcoholic beverages by County employees during work hours:

- (A) for the purpose of product selection and quality control; and
- (B) at supervised product knowledge seminars.

* * *

- (g) Required check on the drug and alcohol testing records of applicants for FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.

* * *

- (8) The County must also ask the applicant or employee if [he or she has] they have tested positive, or refused to test, on any pre-employment drug or pre-assignment alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by U.S. DOT drug and alcohol testing rules during the past 2 years. If the applicant or employee admits that [he or she] they had a positive test or a refusal to test, the County must not use the applicant or employee to perform safety-sensitive functions until and unless the applicant or employee documents successful completion of the return-to-duty process as required under U.S. DOT regulations.

- (h) Drug and alcohol testing of job applicants and employees.

* * *

- (10) Guidance on drug and alcohol testing. For further guidance on drug and alcohol testing, supervisors should contact the OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email [OMSTeam@montgomerycountymd.gov] DAPM@montgomerycountymd.gov.

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(20) Rights of job applicants and employees subject to drug or alcohol testing.

* * *

(C) [(i)] If the MRO has verified a drug test result as positive or as a refusal to test because of adulteration or substitution, the MRO must notify the applicant or employee of the applicant's or employee's right to have a test conducted on the split specimen, as appropriate, by a different laboratory at the employee's expense.

[(ii)] (i) The MRO must tell a DOT covered applicant or employee how to request the split specimen test, provide a list of certified labs for the applicant or employee to choose from, and give [him or her] the applicant or employee at least 72 hours to request the test. Applicants or employees not covered by U.S. DOT regulations are given [10] five days to request the test.

[(iii)] (ii) An employee covered by U.S. DOT regulations may be required to pay for the test. Other employees are required to pay for the test before the test takes place.

[(iv)] (iii) If the test conducted by a different laboratory is negative, the County must treat the test result as negative.

* * *

(i) Required referral, evaluation, and treatment.

* * *

(3) Referral, evaluation, and treatment for employees not covered by U.S. DOT regulations.

(A) If an employee has a verified positive drug test result, engaged in prohibited alcohol use, or refused to take a drug or alcohol test, and if the employee hasn't been dismissed or terminated as a result of such conduct, the employee's supervisor must:

(i) refer the employee to the EAP[:];



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- (ii) give the employee information about the resources available to the employee to evaluate and resolve problems associated with illegal drug use or alcohol misuse, including contact information for counseling and treatment programs;
- [(iv)] (iii) ensure that the employee is evaluated by a medical provider trained in substance abuse to determine if the employee is in need of assistance in resolving problems associated with illegal drug use or alcohol misuse;
- [(v)] (iv) give the employee contact information and the credentials of a medical provider affiliated with the County;
- [(vi)] (v) ensure that, before the employee returns to work, the employee has complied with the appropriate referral and evaluation provisions and takes, as appropriate:
 - (a) a return-to-duty drug test with a verified negative result;
 - (b) a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; or
 - (c) both, if the medical provider determines that the employee should be tested for both drugs and alcohol.

* * *

- (j) Effects of drug abuse and alcohol misuse.

* * *

- (2) An employee who recognizes symptoms of drug abuse or alcohol misuse in [himself or herself] themselves should contact the EAP instead of ignoring or covering up the problem.

* * *

- (k) Employees [Who Refer Themselves for Treatment] who refer themselves for treatment.

* * *



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- (2) If an employee tells a supervisor that [he or she needs] they need help to resolve a problem associated with prohibited drug use or alcohol misuse:
- (A) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:
- (i) after the employee is approached by a supervisor who intends to inform the employee that the employee has been selected for testing, but before the supervisor has the opportunity to notify the employee that the employee has been selected for a required drug or alcohol test;
- (ii) after the employee learns that [he/she has] they have been selected for a required drug or alcohol test but before the employee is officially notified of the required drug or alcohol test;

* * *

- (n) For further information. For further information about drug and alcohol testing, an employee may contact the staff of:

- (1) OHR OMS Drug and Alcohol Program Coordinator at 240-777- 5118 or email [OMSTeam@montgomerycountymd.gov] DAPM@montgomerycountymd.gov.

* * *

32-5. Prevention of Prohibited Drug Use and Alcohol Misuse by FTA Safety-Sensitive Employees Under Federal Transit Administration Regulations.

- (e) Drug and alcohol prohibitions.

- (1) Prohibitions for FTA Safety-Sensitive employees. In addition to the prohibitions of Section 32-3, an FTA Safety-Sensitive employee must not:
- (A) use a prohibited drug;
- (B) report for duty, remain on duty, or perform a safety- sensitive function after testing positive for a prohibited drug;



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- (C) report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of [0.02] 0.04 or higher;

* * *

- (f) Drug and alcohol testing.

* * *

- (4) Notice required for drug and alcohol testing.

- (A) Before performing a drug or alcohol test under FTA regulations, the supervisor must notify the employee that the FTA requires the drug or alcohol test. [:

- (i) that the FTA requires the drug or alcohol test; and
(ii) if drug testing, of the identity of the DHHS certified laboratory that will conduct the drug test.]

* * *

- (g) Types of drug and alcohol testing. Under FTA regulations, an FTA Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. A non-employee applicant for such a position must submit to pre-employment drug testing as described in (1)(A) below.

- (1) Pre-employment [and pre-assignment] drug and alcohol testing.

- (A) An applicant for an FTA Safety-Sensitive position must produce a verified negative drug test result before employment.
- (B) An employee transferred or temporarily assigned to an FTA Safety-Sensitive position must produce a verified negative drug test result before performing safety-sensitive functions.
- (C) An employee newly hired or assigned to an FTA Safety-Sensitive position must take a pre-employment [assignment] breath alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time. All pre-employment alcohol tests will be conducted using the procedures set forth in 49 CFR Part 40.



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- (i) Consequences for an employee of prohibited drug use, alcohol misuse, or refusal to take a drug or alcohol test.

* * *

- (2) Consequences under County authority.

* * *

- (C) If an FTA Safety-Sensitive employee tells a supervisor that [he or she needs] they need help to resolve a problem associated with prohibited drug use or alcohol misuse:

- (i) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:
- (a) after the employee is approached by a supervisor who intends to inform the employee that the employee has been selected for testing, but before the supervisor has the opportunity to notify the employee that the employee has been selected for a required drug or alcohol test;
 - (b) after the employee learns that [he/she has] they have been selected for a required drug or alcohol test but before the employee is officially notified of the required drug or alcohol test;
 - (c) after the employee is notified of a required drug or alcohol test but before the employee is tested for drugs or alcohol;
 - (d) after the employee is tested for drugs or alcohol;
 - (e) after an accident;
 - (f) after a confirmed positive drug test result or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater;
 - (g) after a refusal to be tested for drugs or alcohol; or



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(h) after conduct prohibited by Section 32-3, of these Regulations; and

(ii) the supervisor must refer the employee to a Substance [Abuse Professional] Addiction Counselor for evaluation, treatment, return-to-duty testing, and follow-up testing. These tests will be conducted under County authority and not under direct observation.

* * *

Approved:



Marc Elrich, County Executive

7/7/2023

Date

Approved as to form and legality:



Office of the County Attorney

6/26/2023

Date