

Beartooth Electric Cooperative, Inc.

EMPLOYEE RELATIONS POLICY NO. 514

1. SUBJECT: ALCOHOL AND DRUG FREE WORKPLACE- NON-DOT

2. PURPOSE:

2.1. Beartooth Electric Cooperative (BEC) is committed to employee safety and health, and prohibits the use or being under the influence of alcohol, illegal drugs and controlled substances in the workplace. BEC is committed to providing a workplace that is free from the use, sale, possession or distribution of illegal drugs or the improper or abusive use of prescription drugs, and over the counter medications or alcohol. Therefore, it is BEC's Policy that employees shall be tested for the presence of alcohol and drugs prior to employment and under certain circumstances during employment. The purpose of this Policy is to identify the method for maintaining a work environment free from the effects of prohibited alcohol and drug use by setting forth BEC's testing program.

2.2. BEC has employees that are covered by the Department of Transportation (DOT) regulations. Therefore, BEC maintains two (2) Alcohol and Drug policies. The DOT Policy will ensure BEC complies with Federal law as set forth under the DOT, 49 CFR Part 40 regarding alcohol and drug testing of those employees subject to DOT testing requirements. The Non-DOT Policy provides standards for all other employees who are not covered under the DOT Policy.

3. OBJECTIVE:

3.1. To maintain a safe, healthful, and productive working environment for our employees, subcontractors and their employees, and visitors throughout the organization, and the premises of our members and customers.

3.2. To eliminate the use of alcohol or drugs by employees, subcontractors or their employees, or others and deter substance abuse and drug related paraphernalia in the work place.

3.3. To comply with contractual obligations of members and customers, state or federal agencies or to city, county, state and federal substance abuse laws.

4. POLICY: This Policy applies to all employees as follows:

4.1. New hires, all of whom are required to take and pass a pre-employment Alcohol/Drug test. Details of testing are contained in the Types of Tests section.

4.2. All employees that are salaried and hourly who perform work or services defined in Mont. Code Ann. Section 39-2-206 (4).

- 4.3. For purposes of random testing, all management and supervisory employees.
- 4.4. Employees, as provided for herein, are subject to alcohol and drug testing through the collection of breath, urine or oral fluid samples.
- 4.5. Prohibited Substances
 - 4.5.1. Marijuana
 - 4.5.2. Cocaine
 - 4.5.3. Amphetamines
 - 4.5.4. Opiates
 - 4.5.5. Phencyclidine
 - 4.5.6. Any other illegal and/or dangerous drug as defined in 49 CFR Part 40
 - 4.5.7. "Alcohol" which includes any beer, wine, distilled spirits or other beverages containing ethyl alcohol (also called ethanol) or the hydrated oxide of ethyl. Use or possession of alcohol includes drinking or swallowing of any beverage or mixture or preparation which contains alcohol.
- 4.6. Standards of Conduct
 - 4.6.1. It is a condition of employment that employees abide by the BEC's policies regarding alcohol and drugs. Employees who violate the alcohol and drug Policy will be terminated unless it is determined that special circumstances exist that justify less severe disciplinary action.
 - 4.6.2. Conduct regulated by this Policy includes the following:
 - 4.6.2.1. Use. Possession. Manufacture or Trafficking
 - 4.6.2.1.1. An employee's use, possession, manufacture, sale, distribution, purchase or dispensation of alcohol or drugs while on BEC premises, in BEC vehicles, or while conducting BEC business will result in termination unless it is determined that special circumstances exist that justify less severe disciplinary action. Law enforcement authorities may be notified if criminal activity is suspected.
 - 4.6.2.2. Intoxication or Under the Influence

4.6.2.2.1. Intoxication shall mean having a blood alcohol concentration (BAC) of 0.04 or greater indicated by scientifically accepted testing procedures, or if there has been the use of alcohol within four (4) hours of reporting for duty. Any employee who is reasonably suspected of being intoxicated or under the influence of alcohol or drugs while on BEC premises, in BEC vehicles, while conducting BEC business, during on-call status or when reporting to work shall be suspended from job duties pending an investigation and confirmation of condition. Employees should not report to work when their bodies contain a concentration of blood alcohol of 0.02 or greater or if they have used alcohol within four hours of reporting for duty.

4.6.2.2.2. Employees found with a BAC of 0.02 or greater, but less than 0.04, shall be removed from duty and suspended without pay for their next two (2) scheduled shifts, unless it is determined that special circumstances exist that justify less severe disciplinary action.

4.6.2.2.3. Employees found to be intoxicated, BAC 0.04 or greater, shall be removed from duty and their employment terminated unless it is determined that special circumstances exist that justify less severe disciplinary action.

4.6.2.2.4. Employees under the influence of drugs shall be removed from duty and their employment terminated unless it is determined that special circumstances exist that justify less severe disciplinary action.

4.6.2.3. Use or Abuse of Legal or Prescription Drugs

4.6.2.3.1. Prescription and over-the-counter medications are not prohibited when taken in standard dosages or according to a physician's prescription.

4.6.2.3.2. The misuse or abuse of legal or prescription drugs which adversely affects an employee's work performance or the safety of the employee or others will subject an employee to termination unless it is determined that special circumstances exist that justify less severe disciplinary action.

4.6.2.3.3. Employees who are taking a prescription or over-the-counter medication that may impair their ability to safely perform their job or affect the safety of well-being of others must use appropriate personnel procedures, such as calling in sick, using personal leave, requesting a change of duty or notifying his or her supervisor of such possible impairment before starting work. It is an employee's responsibility not to start work or be at work if impaired by a prescription or an over-the-

counter medication.

4.6.2.4. Positive Test or Refusal to Test

4.6.2.4.1. A positive test result for alcohol or drugs is a violation of this Policy. Any refusal to submit to a test when required by this Policy is also treated as a positive result.

4.6.2.4.2. An employee will be considered to have refused to submit to a test if: 1) the employee fails to appear for a test or fails to remain at the testing site until the process is complete; 2) the employee refuses to cooperate in the testing process; or 3) the employee is unable or unwilling to provide the required minimum breath or urine sample and there is no plausible medical explanation for the failure.

4.6.2.4.3. An employee who tests positive for alcohol or drugs; who refuses to submit to a test; or who is found to have altered or substituted a specimen will be terminated unless it is determined that special circumstances exist that justify less severe disciplinary action.

4.6.2.4.4. Applicants who refuse to submit to a Pre-Employment alcohol and drug test will not be considered eligible for employment with BEC.

4.6.2.4.5. Before taking any action based on a positive test result, BEC shall have the result reviewed and certified by a license physician trained in the field of substance abuse ("medical review officer"). An employee or applicant will be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting the test result, including information concerning the current or recent use of prescription or non-prescription drugs.

4.6.2.5. Drug Conviction

4.6.2.5.1. An employee's conviction for the unlawful use, possession, manufacture, sale, distribution, purchase or dispensation of illegal drugs will be considered a serious breach of the intent of this Policy. Such incidents shall be treated similarly to substance abuse on BEC premises.

4.6.2.5.2. Employees must notify BEC of any criminal drug conviction no later than five days after such conviction.

4.6.2.6. Searches

4.6.2.6.1. BEC reserves the right to conduct searches and to adopt other

measures reasonably necessary to deter and detect violations of this Policy. Entering BEC's property constitutes consent to searches. If an individual is suspected of violating this Policy, he or she may be asked to submit to a search.

4.6.2.7. Testing Procedures

4.6.2.7.1. The presence of alcohol is determined by a breath test, and the presence of drugs is determined by analyzing urine. BEC contracts with an independent third party ("the testing provider") to conduct alcohol and drug testing. All alcohol and drug tests will be administered in accordance with the testing procedures adopted by the testing provider and BEC and as required by Section 39-2-205 through 211 MCA. A copy of these procedures will be made available to all persons subject to testing. To the extent possible, alcohol and drug testing will be conducted in a manner that respects employee privacy and confidentiality.

4.6.2.7.2. When an applicant or employee is tested for drugs, a part of the urine sample, known as the "split sample," will be retained unopened and will be used in the event that an applicant or employee requests that it be tested following a confirmed positive test.

4.6.2.8. Types of Tests

4.6.2.8.1. Pre-Employment Testing

4.6.2.8.1.1. After an employment offer is made, but before a candidate begins employment, a drug test must be conducted and results received. Applicants who test positive for drugs are disqualified from employment.

4.6.2.8.1.2. Former employees who have been recalled or rehired or employees who have been promoted or transferred are also subject to a drug test before assuming their new job responsibilities.

4.6.2.8.2. Reasonable Suspicion Testing

4.6.2.8.2.1. BEC will require an employee to be tested for alcohol or drugs if BEC has reason to suspect that an employee is impaired as a result of alcohol or drug use or consumption. A reasonable suspicion means that BEC believes, based on specific observations, including, but not limited to, the employee's work performance, appearance, behavior, speech or body odors, that the employee has violated this Policy.

4.6.2.8.2.2. In the case of suspected drug use, the observations may include symptoms of the chronic or withdrawal effects of drug use.

4.6.2.8.2.3. A determination that reasonable suspicion exists that an employee is impaired as a result of alcohol or drug use or consumption will be made by at least one manager or supervisor who has been trained to detect the signs and symptoms of alcohol and drug abuse.

4.6.2.8.3. Random Testing

4.6.2.8.3.1. Employees will be provided a written copy of BEC's Alcohol and Drug Free Workplace Policy that includes the random screening process and will be required to sign a statement acknowledging receipt of the written description.

4.6.2.8.3.2. Random Screening will be conducted on at least a quarterly basis. For the purpose of this procedure, quarters are defined as January through March, April through June, July through September and October through December.

4.6.2.8.3.3. Each quarter, a minimum of 10% of all personnel employed, including union, non-union, supervisory and management will be tested through the random selection process.

4.6.2.8.3.4. BEC will contract with an independent third party to administer the random selection process that will determine who will be tested during each selection period. The selection for random testing will be made by a scientifically valid method, and each employee will have an equal chance of being selected each time. BEC management will schedule the screenings as soon as possible following receipt of the list of employees to be tested from the third party. Random testing will occur on any work shift or on any workday of the selected employee during the testing period.

4.6.2.8.3.5. Employees must sign a Random Screening Consent Form and submit to a screening for alcohol and drugs. Employees will be tested on BEC time and return to work following the testing unless the test is positive

4.6.2.8.3.6. An employee who refuses to submit to a random screening, or who tests positive for drugs or alcohol, or whose urine sample contains adulterants shall be subject to the consequences for positive screening.

4.6.2.8.3.7. Consistent with MCA 39-2-208, BEC, at its discretion, may do 100% unannounced testing.

4.6.2.8.3.8. The employee may not self-identify at this time in order to avoid testing.

4.6.2.8.3.9. Employees notified of selection for testing must proceed immediately to the designated testing site unless a time is otherwise specified by the testing provider.

4.6.2.8.3.10. Management will coordinate the random testing and will notify the selected employee, who has been selected for testing, and will confirm the date and time when the employee is to be notified for testing. All screening results will be directed to Human Resources.

4.6.2.8.4. Post-Accident Testing

4.6.2.8.4.1. An employee will be required to be tested for alcohol or drugs if there is reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of \$1,500. However, BEC may, in its discretion, require testing if there is \$1,500 or less of property damage. An employee who is subject to post-accident testing must remain readily available for testing and may not take any action to interfere with testing or the results of testing. An employee involved in a work-related accident that has caused death or personal injury or property damage in excess of \$1,500 who, without reasonable justification, leaves the scene without proper authorization from BEC prior to submission to alcohol and drug testing will be considered to have refused testing and will be subject to disciplinary action up to and including termination.

4.6.2.8.5. Return to Work and Follow-Up Testing

4.6.2.8.5.1. Employees who have tested positive on an alcohol or drug test and whose employment has not been terminated must test negative and be evaluated and released to work by a substance abuse professional before returning to work. Employees who return to work after testing positive for alcohol or drugs will be subject to unannounced follow-up testing in accordance with the recommendations of a substance abuse professional and BEC Policy for up to one year after BEC first requires a follow-up test.

4.6.2.8.5.2. Follow-up tests will not involve advance notice to the employee.

4.6.2.8.6. Re-Testing

4.6.2.8.6.1. Employees who test positive for drugs may request a second test within 72 hours of notification of a positive test result. The test must be conducted on the split urine sample that was provided at the same time as the original sample. All costs for the additional testing are paid by the employee unless the second test invalidates the original test. If an employee requests a second drug test and there is any amount of the illegal drugs in the urine, it is considered positive even if the level is below the minimum positive test amounts.

4.6.2.8.6.2. Under no circumstances will an employee be allowed to take another alcohol/drug test.

4.6.2.8.7. Results of Violation

4.6.2.8.7.1. No employee may remain on duty or on-call status while under the influence or impaired by alcohol or an illegal drug when reasonable suspicion exists that the employee is under the influence or impaired.

4.6.2.8.7.2. Any employee who receives a confirmed positive alcohol or drug test result, or who refuses to submit to a test will be terminated unless it is determined that special circumstances exist that justifies less severe disciplinary action.

4.6.2.8.7.3. An employee tested under this Policy will be provided with a copy of the test report and will be given an opportunity to rebut or explain the results of the test. No adverse action, including follow-up testing, will be taken by BEC if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by alcohol consumption or the unlawful use of drugs. If the employee presents a reasonable explanation or medical opinion, the original test results will be removed from the employee's record and destroyed.

4.6.2.8.8. Treatment for Alcohol or Drug Problems

4.6.2.8.8.1. BEC strongly encourages employees who believe they have a problem with alcohol or drugs to voluntarily seek treatment and/or rehabilitation. Employees should contact Human Resources for information as to what assistance may be available for this purpose under BEC's group medical insurance plan. All inquiries of this nature will be treated as confidential and only those persons with the need to know will be made aware of any such inquiry.

4.6.2.8.8.2. The request for assistance for an alcohol or drug problem will not be considered grounds for disciplinary action. A request for assistance will not prevent the taking of appropriate disciplinary action for misconduct or performance problems which may be related to alcohol or drug abuse. In no case will participation in alcohol or drug treatment shield employees who violate this Policy from disciplinary action.

4.6.2.8.8.3. BEC is not obligated to employ any person whose job performance is impaired because of alcohol or drug use. Employees given the opportunity to seek treatment who reject or fail to complete their treatment or program of rehabilitation will not be given a second opportunity to seek treatment and will be immediately terminated.

4.6.2.8.9. Information and Education

4.6.2.8.9.1. All employees will be provided regular education concerning the health and workplace safety risks associated with the use and abuse of alcohol and drugs. The materials provided for purposes of education are also available at BEC's offices in Red Lodge, Montana.

4.6.2.8.10. Confidentiality

4.6.2.8.10.1. All information, interviews, reports, statements, memoranda, and test results created or received in connection with BEC's alcohol and drug testing program are confidential communications and may not be disclosed to anyone except:

4.6.2.8.10.1.1. the tested employee;

4.6.2.8.10.1.2. persons designated by the express written consent of the tested employee;

4.6.2.8.10.1.3. BEC's designated representative;

4.6.2.8.10.1.4. in connection with any legal or administrative claim arising out of the testing program; or

4.6.2.8.10.1.5. in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500 when there is reason to believe the tested employee may have caused or contributed to the accident.

4.6.2.8.10.2. Information obtained through testing that is unrelated to the use of alcohol or drugs shall be held in strict confidentiality and will not be released or disclosed to BEC by the medical review officer.

4.6.2.8.10.3. Criminal Sanctions

4.6.2.8.10.3.1. Illegal use of controlled substances and operation of motor vehicles on public ways while under the influence of alcohol are unlawful and subject to penalty under state and federal law, up to and including fines and imprisonment.

4.6.2.8.10.3.2. Possession, manufacture and sale of dangerous drugs in Montana are criminal acts punishable by imprisonment and/or substantial fines.

4.6.2.8.10.3.3. Possession of dangerous drugs has a range of penalties, the minimum of which is six months in the county jail and/or a fine of up to \$500. The maximum penalty for possession of dangerous drugs with intent to sell is imprisonment at Montana State Prison for a term of not more than 20 years or a fine not to exceed \$50,000 (Section 45-9-102, MCA).

4.6.2.8.10.3.4. Manufacturing of dangerous drugs carries a penalty of imprisonment in Montana State Penitentiary for a term of not less than 5 years or more than life and/or a fine of up to \$50,000 (Section 45-9-100, MCA).

4.6.2.8.10.3.5. Sale of dangerous drugs carries with it a possible sentence of not less than 2 years imprisonment and not more than life imprisonment and/or a fine of up to \$50,000 (Section 45-9-101, MCA).

4.6.2.8.10.3.6. The Federal Crimes Act has sanctions similar to the State sanctions for manufacture, distribution and possession of illegal drugs.

5. RESPONSIBILITY:

5.1. The General Manager shall ensure that the provisions of this policy are followed.

Adopted: 08/31/2012

Revised: 06/30/2015

Reference:

Review Date: June 2017

Attest: /s/ Richard Nolan
Secretary/Treasurer

Attest: /s/ Roxie Melton
Board President