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## SECTION ONE GENERAL PROVISIONS

### **I. General Provisions:**

**A. Short Title** - This Ordinance is referred to as the Drug Free Work Place Ordinance of the Chippewa Cree Tribe.

**B. Authority** - This Ordinance is enacted pursuant to Article VI, Section 1 (p) of the Constitution and By-Laws of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation.

### **C. Findings and Policy:**

1. The Business Committee finds that a drug free workplace is critical to effective tribal governmental administration and ensures that a drug free workplace is maintained by the Tribe and Tribal entities within the Chippewa Cree Tribe of the Rocky Boy's Reservation.

2. It is the policy of the Business Committee to provide and maintain drug free workplace and work force free from the detrimental social effects caused by the use of illegal controlled substances within the Reservation.

**D. Scope** - This Ordinance shall apply to all the employees including Chippewa Cree Tribal elected officials, full time, part time, temporary seasonal, and contractual employees, and appointed community board members of the Tribe or Tribal entities.

**E. Definitions** - For the purposes of this Ordinance the following definitions shall apply:

1. "Working Hours" means the normal assigned time period for the position the employee occupies. For all employees the term includes those periods outside the normal eight (8) hour work period when the employee is engaged in activities, which constitute part of the responsibilities, assigned to his/ her position with the Tribe. The term also means those periods during travel period when the employee is actually engaged in activities, which constitute a part of the responsibilities assigned to his/ her position with the Tribe.

2. "Drug Test" or "Drug Screening" means the analysis of urine, saliva, and/ or blood sample supplied under controlled conditions by the tribal employee to the testing agency.

3. "Employee" means all full time, part time, temporary, contractual and seasonal employees, all Chippewa Cree Tribal Elected Officials and all appointed community board members.
4. "Under the Influence" means that degree of impairment due to illegal drug use.
5. "Contractual employee" means anyone who enters into an agreement with the Chippewa Cree tribe or any of the Chippewa Cree Tribal Entities to provide services and/ or expertise who also receive the same benefit package.
6. "Controlled Substances" mean those substances listed in the Controlled Substances Act 12USC 801 et. seq., and its accompanying regulations and/or "controlled substances" as defined by the laws of the Chippewa Cree Tribe.
7. "Tribe" means the Chippewa Cree Tribe including all departments, organizations, and entities under the Chippewa Cree Tribe.
8. "Critical or safety sensitive employees" mean employees whose position directly affects the safety, health or welfare of the Tribe and/or tribal members. The following employees are considered Critical and/ or safety sensitive employees.
  - a. Police Officers;
  - b. Fish and Game Warden supervisor;
  - c. Fish and Game Wardens;
  - d. Operators of Heavy Equipment;
  - e. Transportation Drivers and Chauffeurs;
  - f. Ambulance Drivers and Attendants/ EMT's;
  - g. Seasonal Fire Fighters/ Workers;
  - h. Fire Suppression team including Fire Management Officer, fire clerk, time keepers, time checkers, fuel management specialist, hot shot superintendent, hot shot assistant superintendent, and any temporary fire personnel positions;
  - i. Employees who work directly with anyone under the age of eighteen (18);
  - j. Provider of Direct Patient Care;

- k. Executive Level Employees including Program Directors;
- l. Elected Officials;
- m. Professional level Employees;
- n. Finance Employees;
- o. Others who are designated as critical or safety sensitive employees by the respective Governing Board or Sub Committee's;
- p. Tribal Prosecutor;
- q. Court Clerks;
- r. Wellness coordinator/Drug Tester;
- s. Juvenile Court Counselors/Youth Counselors/Coordinators;
- t. Social Service Department staff; and
- u. Tribal Foresters.

**SECTION TWO  
ADMINISTRATION OF DRUG FREE WORKPLACE**

**I. Administration of Drug Free Workplace:**

There shall be a wellness officer to administer, coordinate and monitor the Drug Free Workplace Program. The Wellness Officer shall be appointed by the Business Committee.

**SECTION THREE  
FUNCTIONS OF THE WELLNESS COORDINATOR**

**I. Functions of the Wellness Coordinator - Followings are the functions of the wellness Coordinator:**

- A. To instruct the employees on filling out the chain of custody form;
- B. To explain employees about the specimen collection procedures;
- C. To coordinate with the directors, Personnel Officers and CDC;
- D. To keep accurate records including updated employees list, list of the tested employees and results of the test;

- E. To inform personnel officers and directors of results that are tested positive;
- F. To contact the courier to pick up specimen;
- G. To collect specimen from those staffs who are in the random list;
- H. To test the employee who is newly employed;
- I. To maintain the files of the employees who have tested;
- J. To monitor the employees in regard to retesting time frames and annual testing. The Officer shall coordinate with the CDC, personnel officers and directors in order to monitor the follow-up retesting and treatment plan;
- K. To recommend necessary policy and procedures to the Business Committee in order to enforce this Ordinance; and
- L. The Wellness Coordinator shall not disclose unauthorized information of employees.

## **SECTION FOUR PERSONNEL OFFICERS**

### **I. Personnel Officers:**

Upon notice of the positive drug test result from the Wellness coordinator, the personnel officer of the tribe or other tribal entities shall notify the employee of the result and penalties. Upon notice from the personnel officer, an employee who tested positive shall be given an opportunity to explain about his/her positive result to the personnel officer in writing. The personnel officers shall be responsible to assure compliance with all the penalties as prescribed in this Ordinance.

## **SECTION FIVE PROHIBITED ACTIVITIES**

### **I. Prohibited Activities:**

- A. The use illegal controlled substances by tribal employees during working hours or testing positive to illegal controlled substances while otherwise on duty shall be subject to disciplinary action in Section V below, including termination.
- B. Any employee who is convicted of a criminal activity involving the use of an illegally controlled substance during work hours or while otherwise on duty shall be subject to disciplinary action in Section V below, including termination. The employee is required to notify the employer as soon as possible after receiving notice of any conviction that is in violation of this ordinance. Failure to notify the employer or supervisor shall result in further disciplinary action.

- C. Any employee whose position requires them to transport persons or drive any vehicle and who is currently on a prescribed medicine that requires them not to drive while on the medication cannot drive until the prescribing physician releases them from the medication and the ability to drive a vehicle.

## SECTION SIX DRUG TESTING

### I. Drug Testing:

- A. Every Tribal employee is required to participate in a random drug-testing program, which will consist of the submission of a urine, saliva and/or blood sample under controlled conditions. The urine, saliva and/or blood sample will be analyzed for the presence of illegal controlled substances by a Certified Lab. Any lab analyses or report will be properly signed by a licensed Medical Review Officer (MRO). The method for selection of participants in a random test shall be by random selection under a computer program designed for such purpose and approved by the Tribal Business Committee.
- B. An employee who is not tested during a one (1) year period, due to his/her name not being drawn within the one-year period, shall be required to submit to a mandatory drug test prior to the anniversary date of his/her employment. The wellness coordinator shall notify such employee for mandatory drug testing.
- C. It is required that all persons who are offered and accept a position with the Tribe to submit to a drug screening test the first day of employment or the first (1<sup>st</sup>) Monday of the week of employment.
- D. Any employee involved in an accident during working hours, resulting in property damage or injury to him self or other persons, shall be required to submit to a drug test to determine the presence of illegal drugs. Test results secured pursuant to law enforcement activities may be utilized.
- E. Any tribal employee in a supervisory position, who has reason to believe that an employee under his/ her supervision is present in the workplace under the influence of an illegal controlled substance, shall notify the Drug Tester and/or Police, who upon the establishment of probable cause, shall take appropriate action. This action must be documented in writing. Failure of supervisory employee to report such activity promptly shall be grounds for disciplinary action against the supervisory employee.

## SECTION SEVEN PENALTIES

**I. Penalties:**

A. In the event an employee is found to have tested positive under this ordinance, the following procedure will take place:

1. All employees who are categorized as "Critical", who test positive, shall be terminated immediately. The method of selection of participants who are considered "critical" in a random test shall be placement of all "Critical" employees named into a bin and drawing the requisite number of names, which constitute 10% (per month) of employees on payroll at the time of the scheduled test and/or random selection under a computer program designed for such purpose and approved by the Tribal Business Committee.
2. The Drug Testing Official shall notify the Director/CEO and personnel officers of an employee who tested positive and written notice shall be given to the Directors/CEO,
3. CDC and Personnel Officers. The personnel officers shall then notify the employee that the employee is terminated in case of critical employees. If the employee is not a critical employee, the personnel officer shall notify the employee of the suspension for ten (10) days without pay if it is the first notification of a positive test.
4. The employee will be immediately suspended without pay for ten (10) days. This ten-day period will allow the employee to obtain an evaluation from an approved Chemical Dependency Center (CDC). The employee must obtain results of a negative drug testing through the Tribe's testing process within thirty working days upon returning to work and may return to work within ten days with submittal of a letter stating that the employee has done evaluation process and recommendation from an approved Chemical Dependency Center.
5. The non-critical employee who is tested positive shall be on probation for 90 days and shall be tested every thirty (30) days during the 90 days probation period and then will be added on to the random list.
6. If during the initial ten days suspension period the employee does not obtain an evaluation from an approved Chemical Dependency Center, the employee shall be terminated from his/her employment.
7. Based on the Chemical Dependency evaluation, a prescribed plan of action for recovery with explicit time lines shall be recommended by the evaluator. It shall be the responsibility of an employee to comply with the prescribed treatment plan. Failure to comply with the treatment plan shall result in termination of employment. The CDC shall notify the personnel officer and wellness coordinator about the follow up compliance schedule. The personnel

officer and wellness coordinator shall provide the information received from the CDC to the Chairman.

8. The employee must also sign a release of information with the CDC to insure that documentation can be released assuring the Drug Tester that the employee is following the prescribed plan.
9. Upon the employee's return to work, the employee must continue to follow any Chemical Dependency prescribed plan. Refusal or avoidance of retesting or follow-up of prescribed plan or a positive test result during the probationary period shall end the employee's employment with the Chippewa Cree Tribe or its entities. The employee will continue to accrue any leave benefits but will not be eligible to use them during the 90 days period.
10. Non-critical employee will be allowed only one chance to follow the above procedure for positive drug testing. Any subsequent positive drug test results shall result to immediate termination of employment.
11. Any employee whose employment is terminated due to positive drug testing will not be eligible for any employment with the Tribe or any Tribal entity for a period of six (6) months.
12. After the six (6) month period, the employee must have completed an assessment and proof of successful completion of an approved drug and alcohol program or participation in an on-going drug and alcohol treatment plan/program.
13. Any employee who refuses to submit to a drug test shall be subject to immediate termination.
14. When an employee tests positive, he or she will be given the opportunity to explain the positive results. The employee shall follow the Grievance Procedures in Section 13 of the Tribal Personnel Policies and Procedures Manual and any and all amendments. The employee may submit any relevant documentation such as, but not limited to, a prescription, explanation, or other pertinent information which will be considered in determining whether a positive test has been satisfactorily explained. Pursuant to Section II (C), the Personnel Officer shall review the written explanation by the employee and any other relevant information and/or documentation submitted by the employee. The Personnel Officer shall make a determination based upon the review of whether a grievance panel is necessary to hear the appeal. In the event, the employee's written explanation does not warrant a grievance panel hearing, the Personnel Officer shall summarily dismiss the appeal and uphold the positive test result. In the event that a grievance panel is convened, the grievance committee's decision shall be final.



15. Employees who have collaborated with a physician and the director for clarification of prescribed medication impacting the outcome of the drug test will not be suspended. It shall be the employee's responsibility to notify the Drug Tester, at the time of drug testing, of any current prescriptions for medicine. Prescription medicine older than one year will be considered as invalid and will not be accepted. The employee's name must be on the prescribed medicine or refill medication the employee is taking which may impact the outcome of the drug test. Employees who test positive for a controlled substance, which has not been prescribed by a physician to the individual, will be treated as a positive.
16. Employees who receive an inconclusive test result or submit a diluted sample will immediately be required to re-test. If immediate re-testing does not happen, the employee shall be given no more than 2 days to submit another sample for re-testing. Failure to re-test within the 2 day period shall subject the employee to termination.
17. If at the time of testing, the person administering the test notifies the employee of a possible inconclusive or adulterated test, the employee is given the opportunity to re-test immediately. Failure to re-test immediately shall be treated as a positive test result and grounds for termination.
18. In the event that Chippewa Cree Elected Officials, Executive level employees and professional employees are tested positive, the Chippewa Cree Business Committee shall remove the elected official and said employees.
19. An employee who tests positive must have an orientation session with the wellness coordinator before he/she proceeds to the CDC for evaluation and treatment. During the orientation, the employee shall sign a release of information form.

## **SECTION EIGHT JUDICIAL REVIEW**

### **V. Judicial Review:**

The Tribal Court of the Chippewa Cree Tribe shall have limited jurisdiction for judicial review of those final administrative decisions terminating an employee who has tested positive to assure due process requirements have been met and that the ordinance is constitutional.

## **SECTION NINE MISCELLANEOUS PROVISIONS**

### **VI. Miscellaneous Provisions:**

- A. Severability - If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this code shall not be affected thereby.
- B. Repeal of Inconsistent Tribal Codes - All codes and resolutions inconsistent with this Ordinance are hereby repealed. To the extent that this document imposes greater restrictions than those contained in any other tribal code, the provision of this document shall govern.
- C. Amendments - The Tribe may add to, modify, or repeal in part of this ordinance or in full when necessary to take care of unforeseen or unusual problems as prescribed by the Law and Order Code.

## SECTION TEN SPECIMEN COLLECTION PROCEDURES

### I. Specimen Collection Procedures:

These specimen collection procedures shall be a part of the Drug Ordinance:

### II. The following are the specimen collection procedures:

- A. Tribal Program Directors shall be responsible for transporting employees to the Drug Testing Site.
- B. Drug Testing shall be conducted once a month at the discretion of the collection contractor ~~discretion~~.
- C. The following shall be the procedures for collecting urine specimens for Drug testing:
  1. The collector shall provide a chain of custody form to the donor/client and instruct them on completing the form.
  2. After the completion of the form, the collector shall provide the collection kit to donor with instruction on the tampering strip on the cup and the allotted time of four minutes to have a specimen to the collector.
  3. The collection kit shall not be opened until donor enters into bathroom and is then shall be instructed on how much urine is required.
  4. The staff shall ask donor to remove all outer garments (coats, sweater, or jacket), any handbags, purses or briefcases and must be left with collector. The donor may keep cash and credit cards.
  5. The staff shall open the kit in the donor's presence. A minimum of 30 mls of urine is required. If the donor is unable to produce this amount, he/she shall

be allowed up to three hours to provide an adequate sample. The donor may be given up to 40 oz. of liquid within the three-hour period.

6. After the donor has completed the task, the collector must receive the specimen in four minutes or less so the temperature can be recorded on the chain of custody form. The temperature must be 90.0-100.0 degree F.
  7. In the event of specimen not meeting the required temperature, donor's tympanic temperature shall be checked to compare with the temperature of the urine specimen. The donor shall not be given a second opportunity to provide a urine specimen. This will be treated as positive and suspension and/or termination shall occur.
  8. The collector then pours 30 mls of urine from the collection cup to the shipping vial and sealed with temper proof seal on which the donor shall initial and date.
  9. Once collection is complete, the specimen and original chain of custody form are placed into a plastic shipping bag.
  10. All collected specimens shall be placed in a lab pack and shipped immediately to a certified drug-testing laboratory.
  11. Method of shipping shall be express mail delivery system.
- D.** The donor, who is required to submit urine specimens for the purpose of drug testing, shall be accompanied by male or female designee at or inside the restroom area.
- E.** Wellness coordinator shall show and explain the process of sealing kit to employees who provide the drug test.