



Title: Approval of New and Updated Employee Policies

Resolution number: 22-078: Approval of Updated Employee Drug and Alcohol Abuse Policy
22-079: Approval of New Hire Probationary Period

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Reviewed by: Name/Title: Louis Smith, District Counsel

Recommended action: Approval at the December 15 2022 Board meeting

Budget considerations: None

Summary:

Staff is bringing forward two employee policies for Board consideration.

First is an update to the existing employee Drug and Alcohol Abuse Policy, last updated and approved by the Board of Managers in 2011. The updated policy provides a new “drug” definition based on the new laws enacted in 2022 by the Minnesota legislature that allow for certain cannabinoids, including tetrahydrocannabinols in certain circumstances, to be legally purchased. The League of Minnesota Cities provided model language to address this law change and staff is recommending the District update its current employee drug and alcohol abuse policy to reflect this state law change.

The second is a new policy amending the employee handbook to include a provision for probationary status. This new policy stipulates that all new hires, for the first 12 months of employment, are in a probationary status. A probationary status is also applicable should a current employee receive a promotion, reassignment or transfer. This probationary status reflects the training and learning received during the first 12 months of employment, promotion or reassignment.

Supporting documents (list attachments):

Draft Employee Drug and Alcohol Abuse Policy
Draft Employee Training/Probationary Period



RESOLUTION

Resolution number: 22-078

Title: Approval to Update Employee Drug and Alcohol Abuse Policy

WHEREAS, the MCWD has a duly adopted drug and alcohol abuse policy;

WHEREAS, the Minnesota Legislature enacted a new law at the end of the 2022 legislative session that allows certain edible and beverage products infused with tetrahydrocannabinol (THC) to be sold;

WHEREAS, the fact that cannabinoids may be lawfully purchased and consumed in some circumstances does not alter the concern with job performance for an employee to possess, use, buy, sell, dispense, distribute, manufacture, transfer, transport or be under the influence of cannabinoids while on MCWD time, present on MCWD premises, or operating MCWD machinery or equipment;

WHEREAS, the League of Minnesota Cities has provided model language to address updated drug and alcohol policy for public employers in light of this legislative change, and the Administrator, having reviewed such policy language with legal counsel, recommends adoption of this policy update;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby adopts the attached Drug and Alcohol Abuse Policy for insertion into the Employee Handbook in a location determined by the Administrator.

Resolution Number 22- 078 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date.

Secretary Date: _____

Minnehaha Creek Watershed District

Drug and Alcohol Abuse Policy

Revised 12.15.2022

Confidential and For Internal Use Only

Purpose

Drug and alcohol misuse can endanger the Minnehaha Creek Watershed District's (MCWD's) employees and/or the public, can adversely affect MCWD's mission, and can jeopardize MCWD's reputation and operations. This policy is intended to improve service and safety, encourage employees to seek help for drug or alcohol problems, and explain MCWD's drug and alcohol testing program.

Scope

This policy applies to all employees of the MCWD.

Nothing in this policy constitutes a waiver of MCWD's policy of At-Will employment, under which it may terminate employees at any time with or without cause and with or without notice. This policy does not limit MCWD's right to implement other reasonable measures to maintain safety in the workplace. Failure to comply with this policy shall constitute just cause for disciplinary measures up to and including discharge, subject to the terms and conditions provided herein.

Standards of Conduct

Drugs: While on MCWD time, present on MCWD premises, or operating MCWD machinery or equipment, employees may not possess, use, buy, sell, dispense, distribute, manufacture, transfer, transport, or be under the influence of illegal drugs, or use prescription drugs in an unauthorized manner. Engaging in any illegal or unauthorized use of drugs at any time while on duty is prohibited.

"Drugs" include any "controlled substance" as defined in Minn. Stat. § 152.01, subd. 4, and also includes all cannabinoids, including those that are lawfully available for public consumption that do not otherwise qualify as being a "controlled substance" as defined in Minn. Stat. § 152.01, subd. 4. The fact that cannabinoids may be lawfully purchased and consumed in some circumstances does not permit any employee to possess, use, buy, sell, dispense, distribute, manufacture, transfer, transport or be under the influence of cannabinoids while on MCWD time, present on MCWD premises, or operating MCWD machinery or equipment. The federal government still classifies cannabis as an illegal drug, even though some states, including Minnesota, have decriminalized its possession and use in certain circumstances.

This prohibition does not apply to prescription or over-the-counter medications taken by employees that have been lawfully prescribed to, or obtained by, the employee, and taken in a manner consistent with medical instructions.

Alcohol: Employees may not report to work or remain on duty after consuming alcohol in any amount that adversely affects their job performance.

Refusal to Cooperate: Employees are prohibited from adulterating or substituting or attempting to adulterate or substitute any specimen submitted for testing under this policy, from otherwise obstructing or attempting to obstruct the collection, testing or medical review processes, and from refusing to promptly cooperate in testing required by this policy. Employees have the right to refuse testing required by this policy, but they may be disciplined for doing so. Such discipline may include any disciplinary measures permitted by law, including discharge.

Voluntary Requests for Assistance: MCWD encourages all employees who may need assistance with alcohol or drug problems to contact Human Resources, their insurance assistance program, or community-based programs before they become subject to discipline for violating this or other MCWD policies. MCWD will support, assist and accommodate such employees to the extent required by law. Human Resources will refer such employees to counseling and treatment providers and help employees utilize any available employee benefits. Employees will not be disciplined because they request such assistance. Employees may not escape discipline, however, by requesting such assistance after they violate MCWD's policies or are notified of their selection for drug and/or alcohol testing, nor will such requests excuse employees from compliance with MCWD's policies, including its standards for employee performance and conduct.

Confidentiality: MCWD shall keep test results, drug or alcohol abuse and treatment records, medical records and medical history information, and other information and/or documents acquired through testing confidential as required by law. Such information shall be maintained in secure confidential files separate from normal personnel files.

Drug and alcohol testing information may be disclosed to MCWD's managers, supervisors, attorneys, and clients on a need-to-know basis, and will be disclosed where relevant to arbitrations, claims, charges, lawsuits, and other legal proceedings against MCWD, or as required or otherwise permitted by law. Employees may obtain copies of their own results and own medical records upon written request and payment of a copying charge.

Drug Testing Program

All testing provided for herein will be conducted by a testing laboratory which meets all certification requirements identified by applicable law. The testing laboratory shall conduct a confirmatory test on all samples that produced a positive test result on an initial screening test before any adverse employment action is taken based on any positive test result, including disciplinary action against any employee.

Types of Testing

Post-Accident: Employees are subject to drug and alcohol testing if they have sustained a personal injury arising out of and in the course of employment, have caused another employee to sustain such an injury, have caused a work-related accident, or have operated or helped to operate machinery, equipment, or vehicles while such machinery, equipment, or vehicles were involved in a work-related accident.

Reasonable Cause: Employees are subject to drug and alcohol testing if MCWD has a reasonable suspicion, based on the employee's job performance, appearance, behavior, body odors, speech, or any other factors, that they are using or possessing drugs or alcohol in violation of this policy.

Treatment Program: If an employee has participated in a chemical dependency treatment program pursuant to this policy or under an employee benefit plan, MCWD retains the right, at its sole discretion, to require the involved employee to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

Consequences

MCWD retains the right to impose all disciplinary measures permitted by law where a MCWD employee has submitted a positive drug testing sample. These measures may include discharge.

If an employee submits a positive sample which is confirmed by a confirmatory positive test result, the employee will be offered the opportunity to participate, at the employee's own expense or under the employee's benefit plan (if available), in either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by MCWD after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency.

A first confirmatory positive test result will not be a basis for discharge unless the employee who tests positive has failed to participate in a drug or alcohol counseling or rehabilitation program or to complete it successfully, but a first confirmatory positive test result may be the basis for other disciplinary action. Subsequent positive test results may result in disciplinary action up to and including discharge.

If an employee's initial test result is positive and the confirmatory test has not yet been performed, or a confirmatory retest has been requested, MCWD reserves the right to suspend the employee pending the results of the confirmatory test, if MCWD reasonably believes that the suspension is necessary to protect the employee, the employee's coworkers, or the public. If the confirmatory test comes back negative (or if a confirmatory retest is negative), the employee shall be reinstated with back pay.

The terms and conditions provided for above shall not restrict MCWD's ability to discipline employees for misconduct, including but not limited to assault, destruction of property, or disrespect toward a supervisor, manager or client, which occurs at a time the employee is under the influence of drugs or alcohol. Such discipline may include discharge. The terms and conditions above only restrict MCWD's ability to institute discipline for the submission of a positive drug testing sample.

Crimes Involving Drugs

Employees who are convicted of, plead guilty to, or are sentenced for a crime involving the use or possession of illegal drugs must report the conviction, plea or sentence to their manager or Human Resources within five (5) days after such conviction, plea or sentence. MCWD may take disciplinary and/or other appropriate action, up to and including discharge, when an employee is involved in any crime that damages MCWD's operations or reputation.

Revisions

This policy will be revised to comply with the requirements of applicable law and may be revised from time to time at MCWD's discretion. Affected employees will be given notice of such changes.

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that I have received a copy of the MCWD Drug and Alcohol Abuse Policy (the "Policy").

I understand and agree that it is my responsibility to carefully review the Policy. I understand that as a MCWD employee I will be bound by the terms and conditions contained in the Policy and I agree to be so bound.

I understand and agree that the Policy does not create a contract for employment.

I understand and agree that MCWD may amend or republish the Policy at its sole discretion at any time, and that, if that occurs, I will receive copies of any amendments or republications of the Policy from MCWD.

Employee Signature

Date



RESOLUTION

Resolution number: 22-079

Title: Amending Employee Handbook to Provide for Probationary Status

WHEREAS, under the MCWD’s governance policies, the Board of Managers has generally delegating staff hiring and supervision authority to the Administrator;

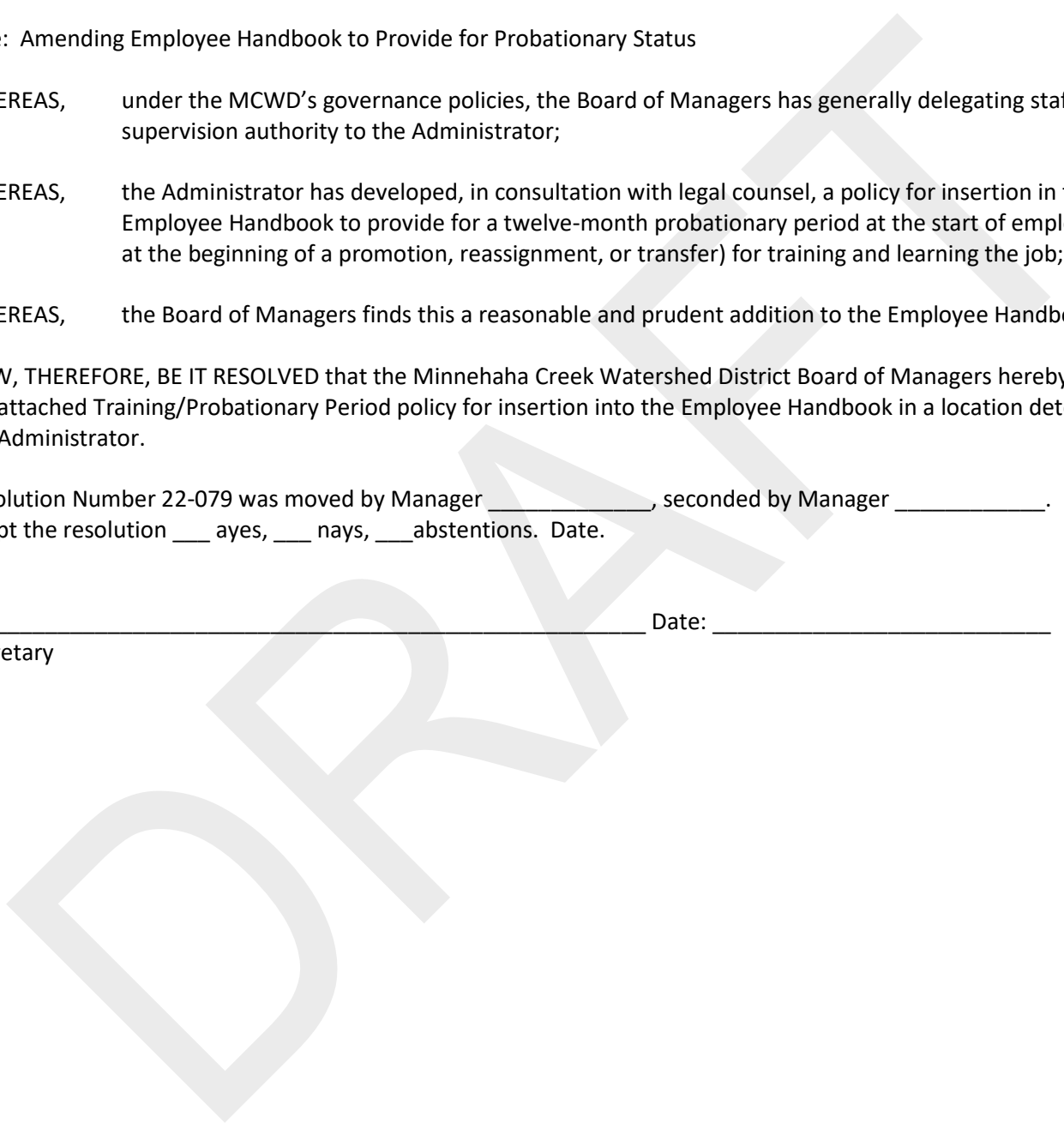
WHEREAS, the Administrator has developed, in consultation with legal counsel, a policy for insertion in the Employee Handbook to provide for a twelve-month probationary period at the start of employment (or at the beginning of a promotion, reassignment, or transfer) for training and learning the job;

WHEREAS, the Board of Managers finds this a reasonable and prudent addition to the Employee Handbook;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby approves the attached Training/Probationary Period policy for insertion into the Employee Handbook in a location determined by the Administrator.

Resolution Number 22-079 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date.

Secretary Date: _____



Minnehaha Creek Watershed District

Training/Probationary Period

Revised 12.15.2022

Confidential and For Internal Use Only

Upon commencing employment with the MCWD, all employees shall have a twelve-month period at the start of employment (or at the beginning of a promotion, reassignment, or transfer) designated as a period within which to learn the job. The training period is an integral extension of the MCWD's selection process and is used by supervisors for closely observing an employee's work.

An employee serving his/her initial probationary period may be disciplined at the sole discretion of the MCWD, up to and including dismissal. An employee so disciplined, including dismissal, will not have any grievance rights.

Nothing in this policy shall be construed to imply that after completion of the probationary period an employee has any vested interest or property right to continued MCWD employment.

Time served in temporary, seasonal, volunteer or interim positions are not considered part of the probationary period. If an emergency arises during an employee's probationary period which requires a leave of absence, such time off, if granted, will not be considered as time worked, and the probationary period will be extended by the length of time taken.

During this probationary period, employees will meet with their supervisor frequently to discuss progress and prior to the completion of the probationary period, the employee will have a formal review.