



CHAPTER VI DRUG, ALCOHOL AND CONTROLLED SUBSTANCE POLICY

37. **General.**

a. The Ho-Chunk Nation has a vital interest in maintaining a safe, healthy, and efficient working environment for its employees, contract service providers, and elected and appointed Officials, and each of these parties has the right to expect such working conditions are maintained. Being under the influence of drugs, controlled substances, or alcohol on the job poses a serious health and safety risk to the user, as well as other employees, contract service providers, and Officials of the Nation. The possession, use, or sale of an illegal drug or controlled substance in the workplace also poses unacceptable risk to a safe, healthy, and efficient work environment.

b. The Ho-Chunk Nation recognizes that its own well-being and future success as a Nation and an employer are dependent on the physical, mental, and emotional health of its employees. Accordingly, it is the right, obligation and intent of the Nation to maintain a safe and healthy work environment to protect its employees, property, equipment, operations, goodwill, and customers.

38. **Purpose.**

a. This Chapter promulgates and implements policy to maintain a Drug Free Work Place by establishing procedures for pre-employment screening, employee education and assistance, employee testing, and employee disciplinary action for the use, possession, or sale of illegal drugs, controlled substances, and alcohol, as well as for breach of employee confidentiality.

b. This Chapter also provides the Nation's Zero Tolerance Policy for drugs, controlled substances, and alcohol for elected and appointed Officials of the Ho-Chunk Nation.

39. **Policy.**

a. General. As a condition of employment, all employees, supervisors, contract service providers, and elected and appointed Officials must abide by the terms of this policy and the procedures contained herein.

(1) Employees, contract service providers, and elected or appointed Officials are expected to report for work and remain at work in a condition, which enables them to perform their duties and tasks free from the effects of drugs or alcohol.

(2) The possession, use, sale, purchase, or distribution of illegal drugs or controlled substances, or being under the influence of alcohol on the Nation's premises or in the conduct of related work off-site is prohibited.

(3) It is the responsibility of all supervisors to enforce this Drug, Alcohol and Controlled Substance Policy. Failure to enforce this Policy may result in disciplinary action up to and

including termination. Nothing in this Policy precludes supervisors from establishing work or safety rules, which apply to their particular department and specified functions.

(4) Employees, contract service providers, and elected or appointed Officials suspected of being impaired by being under the influence of drugs or alcohol shall be escorted from the work site by the employee's supervisor or security personnel to a safe and secure area. The supervisor shall immediately document the incident and initiate Reasonable Suspicion Testing (see Section 45).

(5) Employee, contract service providers, and elected and appointed Officials rights shall not be violated. Any breach of confidentiality by an employee or supervisor will result in disciplinary action up to and including termination or removal.

b. Peyote. The use, possession, and/or transportation of peyote by Native American Church members in connection with the practice of the Native American Church (NAC) ceremony will not be considered to violate this Policy. The employee, contract service provider, or elected or appointed Official will not be subject to disciplinary action on the basis of such use, possession, or transportation in connection with the practice of the NAC.

c. Zero Tolerance Policy for Elected and Appointed Officials.

(1) Elected and appointed Officials of the Nation are to be held to the highest standards of compliance with the Nation's drug, alcohol, and controlled substance policies. See paragraph 4lm for a definition of "Official." Conduct of official duties by an elected or appointed Official while under the influence of drugs or when impaired by alcohol, as reasonably established by breath or blood alcohol and/or urinalysis testing shall not be tolerated and shall:

(a) Constitute malfeasance in office for purposes of Article IX, Sections 1 and 2 of the Constitution;

(b) Constitute good cause for removal under Article IX, Section 3 of the Constitution;

(c) Constitute good cause for removal under Section 805 of the *Gaming Ordinance*;

(d) Constitute good cause for removal of Election Board Members under paragraph 4d of the *Election Ordinance* (2 HCC § 6).

(e) Constitute malfeasance for the purposes of paragraph 5n of the *Code of Ethics Act* (2 HCC § 1); and

(f) Result in the immediate removal by the President of an Executive Director or other presidential appointed Officials from the position in which they serve if a violation of the Zero Tolerance Policy.

(2) Alcohol Related Misconduct associated with official duties by an Elected or Appointed Official shall be a violation of this Policy punishable by unpaid suspension for three (3) to ten (10) days or, if involving conduct of sufficient severity, by termination or removal as subject to the supervisor's discretion exercised in accordance with the Nation's Constitution and laws. During the Conduct of Official Duties, the stricter standards of paragraph (1), above, shall apply.

(3) Should there be a conflict in the application of the Zero Tolerance Policy and the Nation's other drug, alcohol, and controlled substance policies and procedures for elected and appointed Officials; the Zero Tolerance Policy shall prevail.

d. Legal Drugs.

(1) The use of, or being under the influence of, physician prescribed ("legal") drugs by an employee, contract service provider, or elected or appointed Official while in the workplace, or while on work related travel, is prohibited to the extent that such use or influence may, in the Nation's opinion, affect the safety of co-workers or members of the public, the employee's, contract service provider's, or elected or appointed official's job performance, or the safe and efficient operation of the Nation's facilities. Failure to report to management the use of prescription or legal drugs, which by their nature may impair the employee's, contract service provider's, or elected or appointed Official's abilities to perform his/her duties, may result in disciplinary action by management up to and including termination or removal.

(2) If management has determined that the employee, contract service provider, or elected or appointed Official does not pose a threat to her or his own safety, the safety of co-workers, and that the employee's, contract service provider's, or elected or appointed Official's job performance is not significantly affected by the legal drug, the employee, contract service provider, or elected or appointed Official may continue to work, even though they may be under the influence of a legal drug.

(3) If management has determined that the employee, contract service provider, or elected or appointed Official does pose a threat to her or his own safety, the safety of co-workers, and that the employee's, contract service provider's, or elected or appointed Official's job performance is significantly affected by the legal drug, the employee, contract service provider, or elected or appointed Official may be required to take a leave of absence, or comply with appropriate directive as determined by management.

(4) Any violation of this section will subject the employee, contract service provider, or elected or appointed Official to disciplinary action, up to and including termination or removal.

e. Illegal Drugs.

(1) The manufacture, possession, use, purchase, procurement, dispensation, or distribution of an illegal drug or illegal controlled substance or being under the influence of same, by any employee, contract service provider, or elected or appointed Official while in the workplace, on Nation premises, or in the conduct of related work off-site is prohibited. This will

subject the employee, contract service provider, or elected or appointed Officials to disciplinary action up to and including termination or removal, and referral to law enforcement for prosecution.

(2) The use of another person's legally prescribed drugs is a violation of this Policy and shall constitute a positive drug test result due to the illegal procurement and use of controlled substances.

f. Alcohol.

(1) The consumption of alcohol or being under the influence of alcohol during working hours is prohibited and will subject the employee, contract service provider, or elected or appointed Official to disciplinary action, up to and including termination or removal. The purchase of alcohol, even if for later off-duty consumption, while being either an operator or a passenger in any Tribal owned or rented vehicles is likewise prohibited.

(2) The Nation will conduct testing for alcohol utilizing both breath alcohol and blood alcohol testing, especially where circumstances, accidents or other incidents in the workplace justify. A positive alcohol test shall be treated the same as a positive drug test for the purposes of the disciplinary rules stated Section 49.

(3) The Nation shall designate a Certified Technician(s) who shall be responsible for administering breath alcohol testing utilizing an Alco Sensor IV RBT IV unit or another comparable or appropriate breath alcohol testing unit.

(4) A breath alcohol concentration equal to or greater than 0.02 is a positive result and the employee or contract service provider shall be subject to disciplinary action consistent with Section 50. The Supervisor, Compliance Division, or Security shall arrange for transportation of the employee or contract service provider to his/her residence.

(5) The Nation provides an Employee Assistance Program (EAP) and Alcohol and Other Drug Abuse (AODA) program, which provides help to employees who seek assistance to help with problems. See Section 50.

40. Definitions.

a. "Alcohol Concentration" means either of the following:

(1) The number of grams of alcohol per 100 milliliters of a person's blood.

(2) The number of grams of alcohol per 210 liters of a person's breath.

b. "Alcohol Related Misconduct" associated with official duties means a conviction for any alcohol related driving offense, physical altercation, or other serious wrongful conduct by an elected or appointed Official in which alcohol consumption is established by substantial and reliable evidence to be a contributing factor during travel, meal, and lodging time associated with

meetings or other responsibilities regarding the conduct of official business for which the appointed or elected Official is eligible to receive per diem under this Act. For the purposes of this definition, “substantial and reliable evidence” shall mean a breath or blood alcohol test administered by a certified tester showing an alcohol concentration of over 0.01 or credible eyewitness testimony of two (2) or more persons of the consumption by the subject of four (4) or more alcoholic beverages during a period of not more than three (3) hours.

c. “Conduct of Official Duties” means the normally scheduled work duties of elected and appointed Officials whether during the regular workday or at other official meetings, including Area meetings. Conduct of Official Duties does not include informal occasions such as receptions, dinners, and similar events at which no official business is transacted.

d. “Contract Service Provider” means a person who is providing services to the Nation pursuant to a Service Provider Agreement and who is treated for tax withholding purposes as though he or she is an employee of the Nation.

e. “Controlled Substance” means any controlled substance, dangerous drug(s) or intoxicating compound as defined under federal or state law and includes, but not limited to, narcotics, opiates, hallucinogens, stimulants, marijuana and so-called “designer drugs.”

f. “EMIT” means Enzyme Multiplied Immuno Technique, which is an initial test that identifies which class of drug(s) is present, but not which specific drug(s).

g. “False Negative/Water Dilution” is a way of a possible false negative result that results when large amounts of fluids are ingested or water is added to the specimen after urination.

h. “GC/MS” means Gas Chromatography Mass Spectrometry, which is the confirmatory test that is done after an initial positive test is detected. It will identify that a drug(s) is present and identify which specific drug(s) was ingested, injected, or inhaled and at what concentration it is still present in the person’s system.

i. “Illegal Drug” or “Illegal Controlled Substance” means any drug(s) or controlled substance(s), which is not legally obtainable, or has been legally obtained is being used in a manner inconsistent with the prescribed dosage or by an individual other than the person the medication was originally intended. The so-called “Designer Drugs” are included in this category.

j. “Impaired” means an alcohol concentration established by properly administered breath alcohol and/or blood test to be equal to or in excess of 0.02.

k. “Legal Drug” means any prescribed drug(s), over-the-counter drug(s), or prescribed controlled substance(s), which has been legally obtained and is being used in the dosage prescribed according to the manufacturer’s and/or physician’s instructions.

l. “Official,” for the purposes of the Nation’s Zero Tolerance Policy, means any person who:

(1) Holds elective office or is a candidate for elective office; or

(2) Is an appointed professional and includes Judges, Department Executive Directors, Gaming Commissioners, and an appointed member of the President's staff.

m. "Reasonable Suspicion" means that level of suspicion established on the basis of particular facts and/or observation by an agent, fellow employee, or supervisor concerning employee behavior, comments, or significant changes in work product that would cause a reasonable and prudent person under the same or similar circumstances to believe that an employee has violated the Nation's drug policy.

n. "Reasonably Established" means that level of drug, alcohol, or controlled substance detected in a person that is determined by a breath or blood alcohol and/or urinalysis test.

o. "Under the Influence" means:

(1) With respect to any drug or controlled substance, that substance is present in a person in any detectable amount based on the results of medically validated testing.

(2) With respect to alcohol, the alcohol concentration of a person established by a properly administered breath alcohol and/or blood alcohol test is in excess of 0.08.

41. Pre-Employment Screening and Testing. The Ho-Chunk Nation will use pre-employment screening and testing practices to prevent the hiring of individuals who use illegal drugs or illegal controlled substances, or individuals whose use of legal drugs or legal controlled substances indicates a potential for impaired or unsafe work performance. These provisions apply to contract service providers as well as employees.

a. All applicants will be advised that the final candidates for any position, full or part-time, will be tested for drugs and controlled substances as a condition of employment. The applicant will be tested after an offer of employment is accepted and prior to beginning employment. Should an applicant test positive on a pre-employment test, the offer of employment will be rescinded and he or she will not be hired. Any applicant testing positive on a pre-employment test must meet the rehire requirements in section 51 of this policy.

b. Any applicant or final candidate who, after being advised that testing is a condition of employment, refuses testing for drugs and/or controlled substances, without a valid medical reason, will not be hired.

c. Any applicant admitting to current misuse of drugs and/or controlled substances will not be employed. The applicant will be asked to sign a statement or disclosure stating that they understand the reason for non-employment with the Nation.

d. All final candidates will be asked to complete a Drug Policy Checklist in which candidates agree to take a drug test as a condition of employment with the Nation. Furthermore,

the candidates shall acknowledge that he or she understands the requirement as well as the potential consequences of all violations of the Nation's Drug, Alcohol and Controlled Substance Policy.

42. Random Drug Testing.

a. All employees of the Nation facilities shall be subject to random unannounced drug testing. Employees will be selected using a double blind computerized formula administered by an independent consulting firm. At a minimum, forty (40%) percent of all active employees shall be tested annually. Once notified, the employee will report directly for testing.

b. Compliance Division personnel shall, in most cases, arrive unannounced at the employee's work site to administer random drug and alcohol tests.

c. Any refusal or failure to comply with this testing, absent a valid medical reason, will result in termination of employment.

d. The Nation shall include contract service providers as part of the population randomly tested.

e. Elected or appointed Officials of the Nation shall be subject to initial and may be subject to random drug testing while serving in their official capacity under the Zero Tolerance Policy. An Initial Drug Test will be administered to a newly elected or appointed official within the first thirty (30) days (guideline) of employment. The initial drug test on occasion may be given after the first thirty (30) days where the Compliance Department work load and logistics capability do not make it practical to administer the test within the first thirty (30) days. Therefore, failure to administer the Initial Drug Test within 30 days of hire shall not be deemed a waiver of the requirement for an Initial Drug Test for the newly elected or appointed official provider. Any refusal by such an appointed or elected Official to take the drug test shall be deemed in violation of paragraph 39c of this Chapter.

f. If the result of the employee's or contract service provider's drug test is positive it is considered a violation of this policy and the employee or contract provider will be subject to the provisions in section 49. See paragraph 39c for elected and appointed Officials subject to the Zero Tolerance Policy.

43. Reasonable Suspicion Testing.

a. The Nation may require testing of employees, contract service providers, or elected or appointed Officials suspected of being in violation of the Nation's drug and alcohol policy or where circumstances (i.e., accidents, workplace incidents, etc.) indicate that drug or alcohol use may be involved based on the Reasonable Suspicion standard. Strict procedures have been established (available through the Department of Justice Compliance Division) for determining under what circumstances such a test shall be requested. The procedure includes a number of review steps. An employee's, contract service provider's, or elected or appointed Official's refusal to consent to testing shall result in termination or removal.

b. Any employee, contract service provider, or elected or appointed Official of the Nation that has direct knowledge or has reason to believe that another employee, contract service provider, or elected or appointed Official may be under the influence of alcohol and/or drugs shall report this to the Compliance Division and complete a Reasonable Suspicion Checklist. All information is confidential and will not be revealed without a Ho-Chunk Nation Trial Court Order.

c. The Director of Compliance or designee shall review the Reasonable Suspicion Checklist and either approve or deny a Reasonable Suspicion Test.

d. If the Reasonable Suspicion Test is approved, Compliance Division personnel shall arrive unannounced at the employee's or contract service provider's work site to administer the random test. Elected or appointed Officials of the Nation that are not employees of the Nation may be tested only when serving in their official capacity.

e. Should the Reasonable Suspicion involve alcohol, the employee, contract service provider, or elected or appointed Official will be administered a breath alcohol test in private by a Certified Technician. If this test is positive, a second confirmatory test shall be conducted as well as urinalysis testing.

f. Any refusal or failure to comply with Reasonable Suspicion Testing, absent a valid medical reason, will result in termination or removal.

g. If the result of the employee's or contract service provider's drug test is positive it is considered a violation of this policy and the employee or contract provider will be subject to the provisions in section 49. See paragraph 39c for elected and appointed Officials subject to the Zero Tolerance Policy.

h. In order to limit accident and liability exposure, managers will not allow employee's, contract service providers, or elected or appointed Officials who are unable to perform their assigned duties due to drug or alcohol related impairment to leave the work premises without an escort.

44. Drug and Alcohol Testing for Employees Required to Possess a Commercial Drivers License (CDL).

a. All employees and contract service providers that are required by job description to possess a commercial drivers license are subject to drug and alcohol testing.

b. If the test result of the employee's or contract service provider's drug test is positive, the employee or contract service provider will be terminated from employment with the Ho-Chunk Nation.

c. Any refusal or failure to comply with this test, absent a valid medical reason, will result in termination or removal.

45. Off-Duty Involvement with Drugs, Alcohol, and Controlled Substances. The Nation reserves the right to take disciplinary action, including termination or removal, for an employee's, contract service provider's, or elected or appointed Official's off-duty involvement with drugs, alcohol, or controlled substances. Off-duty involvement includes, but is not limited to, incidents where such involvement is, in the Nation's view, damaging to the Nation's reputation or business, and/or is inconsistent with the employee's, contract service provider's, or elected or appointed Official's duties or image, or when the off-duty behavior constitutes criminal behavior. This may include the review of criminal records for convictions with respect to drugs, alcohol, and controlled substances.

46. Part-time, Summer, and Contract Personnel. The provisions of this Policy are applicable to all part-time, summer, and contract personnel.

a. All part-time and summer personnel who could pose a potential for impaired or unsafe work performance shall be tested for drugs, alcohol, and/or controlled substances.

b. Contract vendors shall not provide contract employees who use illegal drugs or illegal controlled substances, or individuals who use legal drugs or legal controlled substances that could pose a potential for impaired or unsafe work performance.

47. Youth Employees. All youth employees will be subject to pre-employment testing, as well as random and reasonable suspicion testing after being hired. Youth employees who test positive on the pre-employment drug test will be retained as an employee on a conditional basis. As a condition of employment, youth employees testing positive will be placed on probation as outlined in section 49 of this policy. Additionally, youth employees will be required to attend AODA counseling. Youth employees who fail to adhere to the conditions of employment will be terminated. Any youth employee who tested positive on any previous pre-employment or initial test will not be eligible for employment should they test positive on any subsequent pre-employment test and must meet the requirements in section 51 of this policy to become eligible for rehire.

48. Searches.

a. The Nation reserves the right to conduct unannounced searches for illegal drugs or illegal controlled substances on the Nation's premises.

b. For purposes of the Zero Tolerance Policy, elected and appointed Officials who are not employees of the Nation may only be searched while serving in their official capacity.

c. The Department of Justice Compliance Division shall authorize all searches conducted on the Nation's premises. The Compliance Director or designee will coordinate with Department of Justice personnel and local law enforcement officials as appropriate.

d. Reasonable search of employees and their personal property, including vehicles, may be conducted at any time in order to maintain a safe, healthy, and efficient working environment. If and when any offices of the Nation are not on the Nation's property, any searches conducted will be in accordance with state and federal law.

e. Employees, contract service providers, or elected or appointed Officials who refuse to cooperate during an authorized search will be subject to disciplinary action up to and including termination or removal.

f. Should any quantity of illegal drugs, alcohol, and/or controlled substances be found as a result of a proper search, Compliance Division and/or Department of Justice personnel shall locate and escort the employee, contract service provider, or elected or appointed Official to an area with restricted access to other persons. The individual will then be subject to a drug and/or alcohol test and may be subject to arrest.

49. **Disciplinary Action.**

a. Elected and Appointed Officials. See paragraph 39c for provisions for elected and appointed Officials under the Zero Tolerance Policy.

b. Current Employees and Contract Service Providers. If the result of the employee's or contract service provider's drug or alcohol test is positive, the individual will be placed on probation with the following sanctions:

(1) The length of the initial drug and/or alcohol probation will be one (1) year and one (1) day from the date the employee or contract service provider is served with the positive result notification. Employees or contract service providers testing positive after previously serving an initial drug and/or alcohol probation will be subject to a second drug and/or alcohol probationary period of eighteen (18) months and one (1) day from the date they are served notice of the violation. Employees or contract service providers testing positive after serving two (2) or more drug and/or alcohol probationary periods will be subject to a two (2) year and one (1) day drug and/or alcohol probation from the date notice of the violation is served. However, the employee or contract service will serve the remaining drug and/or alcohol probationary period upon being rehired should they be terminated or have any other break in service for any non-drug policy reason before completing any drug and/or alcohol probationary period.

(2) The employee or contract service provider shall be referred to the Ho-Chunk Nation AODA Program for an Alcohol and Drug Assessment and will be required to follow through with any recommendations that result from that assessment. Failure to follow through with the recommendations will be considered a second offense and the employee or contract service provider will be terminated.

(3) The employee or contract service provider will sign a wage assignment in the amount of three-hundred and eighty-one dollars (\$381.00) for the initial drug and/or alcohol probationary period. The employee or contract service provider serving a second drug and/or alcohol probation will sign a wage assignment in the amount of \$571.50. The employee or contract

service provider serving three (3) or more drug and/or alcohol probationary periods will sign a wage assignment in the amount of seven hundred and sixty-two dollars (\$762.00). Refusal to pay the assessed fine shall result in termination of employment.

(4) The employee or contract service provider must sign a Condition of Employment Form allowing follow-up testing during a drug and/or alcohol probationary period. The employee or contract service provider will be subject to six (6) follow up tests during an initial drug and/or alcohol probation, nine (9) follow up tests during a second drug and/or alcohol probation, and twelve (12) follow up tests during a third or more drug and/or alcohol probation..

(5) The employee or contract service provider will be administered a series of follow up tests until a negative test result is achieved to ensure all drugs and/or alcohol are no longer in their system from his or her initial positive test. It is a violation of this policy and the employee or contract service provider will be terminated should he or she test positive during his or her drug and/or alcohol probation after a base line negative test was achieved. Once notified, if after six (6) weeks of follow up testing a negative result is not achieved, it will be considered a violation of this policy, as well as continued use, and the employee or contract service provider will be terminated. Once notified, it is also considered a violation of this policy should the result of a follow up test increase from the previous test and the employee or contract service provider will be terminated.

(6) Employees or contract service providers serving a drug and/or alcohol probation are also subject to Random drug testing and Reasonable Suspicion drug testing, as well as the above stated follow-up testing. Any delay in serving notification of violation is not intended to prevent the Nation from taking further actions should an individual test positive on a subsequent test before notification of a previous positive test result can be administered.

(7) After successfully completing a drug and/or alcohol probation period, the employee will be put back on a testing program as if he/she were a new hire.

c. Malicious Intent Reports. When a person habitually reports violations of this Policy by persons to whom they have malicious intent and such reports are false, the penalty for such false reports shall be a recurring fine of two-hundred dollars (\$200.00).

50. Employee Assistance Program (EAP) and Alcohol and Other Drug Abuse (AODA) Program. The Nation maintains a Ho-Chunk Employee Assistance Program (EAP) and AODA Program which provides referral resources and assistance help to employees who may be experiencing a drug, alcohol, or controlled substance problem. The purpose and practices of this Drug Policy and the EAP and AODA are not in conflict but are distinctively separate in their applications.

a. It is the responsibility of the each employee to seek assistance from Employee Assistance Program (EAP) or AODA program before a drug or alcohol problem leads to disciplinary action. Once a violation of the Nation's Drug Policy occurs, subsequent use of EAP or AODA on a voluntary basis will not necessarily lessen disciplinary action.

b. It is the responsibility of supervisors to counsel an employee suspected of drug or alcohol problems to voluntarily seek assistance of EAP or an AODA program.

c. The employee's decision to voluntarily seek prior assistance from EAP or AODA will not be used as a basis for disciplinary action and will not be used against the employee in any disciplinary proceedings. On the other hand, using EAP or AODA will not be a defense to the imposition of disciplinary action where facts proving a violation of this policy are obtained outside of EAP or AODA.

51. Rehiring Procedures for Drug Policy Violations. Employees or contract service providers who are found to be in violation of this drug and alcohol policy and are terminated may be eligible for employment after the following is completed.

a. The time period between termination and re-hiring, contingent on rehabilitation, shall be no less than six (6) months.

b. The employee must furnish a discharge summary indicating successful completion of treatment from a certified AODA counseling facility to the Compliance Division Drug Enforcement Unit.

c. The Compliance Division Drug Enforcement Unit shall certify to the Nation's Department of Personnel the former employee's eligibility for employment.

52. Testing Procedures.

a. The Initial Drug Test will test for at least the following substances:

- Cannabinoids
- Cocaine
- Benzodiazepines
- Opiates
- Barbiturates
- Amphetamines
- Phencyclidine
- Propoxyphene
- Methadone
- Methaqualone

b. False negative/water diluted tests will be re-tested only one time. After the second "false negative" test the employee or contract service provider will pay for any subsequent testing until a determinative result can be obtained. There will be no more than a forty-eight (48) hour span between any tests given. After three (3) false negative tests without determinative results, the employee or contract service provider will be placed on suspension without pay for up to two (2) weeks until a determinative test is completed. If no determinative test is completed within the two (2) weeks from date of the first test, the employee or contract service provider will be terminated.

c. If the employee or contract service provider is unable to produce an adequate specimen level in the time allotted, the Compliance Division personnel shall notify the employee or contract service provider that he or she is responsible to obtain and submit a medical report from a Licensed Medical Doctor citing a medical reason for the employee's or contract service provider's inability to produce a specimen. The employee or contract service provider must submit the report to the Drug Enforcement Unit within two (2) business days from the original date of collection.

d. If an invalid or adulterated result is received by the contracted laboratory, the result shall be considered a violation of this Policy and the employee or contract service shall be subject to disciplinary action consistent with Section 49 of this Policy.

e. All initial positive tests will be confirmed with a second testing procedure to eliminate false-positive results. The initial test will be performed by EMIT. The confirmation test will be GC/MS.

f. A chain of custody on all test samples will be utilized at all times.

g. Access to test results must be restricted to authorized personnel only. Test results will be secured in a locked container. Without written consent of the employee, information about the results of his/her tests shall not be released to anyone.

53. Reporting Procedures for Drug Policy Violations. When drug test results are received from the laboratory, the Compliance Director or his/her designee will report the drug policy violation to the employee or contract service provider.

a. Employees or contract service providers who have a positive Pre-employment Drug Test will be reported out using the following procedures.

(1) The Compliance Director or designee will coordinate with the individual to report the positive drug test results directly to the employee or contract service provider.

(2) The employee or contract service provider will be given a verbal and written drug test result.

b. Employees or contact service providers who have passed their pre-employment screening and testing, but have subsequently tested positive on a random or reasonable suspicion drug test, will be reported out using the following procedures.

(1) The Compliance Director or designee will coordinate with individual work schedules to report the positive drug test results directly to the employee or contract service provider.

(2) The employee or contract service provider will be given a verbal and written drug test result.

(3) The employee or contract service provider will sign a Condition of Employment Acknowledgement Form, which sets down the conditions the employee or contract service provider must comply with to retain employment.

(4) An explanation will be given to the employee or contract service provider that in order to monitor his or her compliance with the AODA program, he or she will need to sign a Consent for Release of Information Form.

(5) The Consent for Release of Information Form allows the Compliance Division to contact the AODA Office and schedule an appointment and to place that appointment on the referral form.

(6) If an employee or contract service provider completed an Alcohol and Other Drug Abuse (AODA) assessment and tests positive for a second time after the appropriate follow up testing outlined in section 49 and within his or her drug or alcohol probationary period, he or she will be terminated.

(7) If the employee or contract service provider tests positive after his or her drug or alcohol probationary period; it will be treated in accordance with section 49 and referral to the AODA program and the signing of the Condition of Employment Acknowledgement Form will be repeated.

(8) Copies of this documentation will be given to the employee or contract service provider, to the appropriate Executive Director and AODA. The Compliance Division will file the originals.

c. If an employee or contract service provider would like a copy of the drug test result, a request must be in written form, notarized, and submitted with self-addressed stamped envelope by mail to: Ho-Chunk Nation, Compliance Division, PO Box 667, Black River Falls, WI 54615.

d. Any breach of confidentiality with respect to reporting drug test results will result in disciplinary action up to including termination.

54. Enforcement of the Zero Tolerance Policy for Elected and Appointed Officials.

a. Presidential Enforcement. The President shall enforce the policies and procedures of the Zero Tolerance Policy for the following persons:

- (1) Department Executive Directors.
- (2) Appointed Presidential Staff Members.

b. Legislative Enforcement. The Legislature shall enforce the policies and procedures of the Zero Tolerance Policy for the following persons:

- (1) Members of the Legislature.

(2) President. If the President is alleged to have violated the Zero Tolerance Policy, the Legislature shall afford the President the option to have a hearing to contest the alleged violation and confront witnesses to establish reasonable cause prior to submitting the matter to General Council.

(3) Chief Justice. If the Chief Justice is alleged to have violated the Zero Tolerance Policy, the Legislature shall afford the Chief Justice the option to have a hearing to contest the alleged violation and confront witnesses to establish reasonable cause prior to submitting the matter to General Council.

(4) Gaming Commissioners.

c. Judicial Enforcement.

(1) The Chief Justice shall enforce the Zero Tolerance Policy for the following persons:

(a) Members of the Trial Court.

(b) Members of the Supreme Court.

d. Termination or removals of elected or appointed Officials shall be effected in accordance with any notice, hearing, and procedural rules that may apply under the Constitution and laws of the Nation. Reasonable hearing rights may be afforded to any other Official at the discretion of the person or body charged with enforcement of this Policy if any issues of fact are presented that are material to the finding of violation of this Policy.

e. Nothing in the Zero Tolerance Policy precludes a Tribal member or employee from reporting alleged violations directly to the Ethics Review Board.

Legislative History:

- 1/4/95 Legislature enacts Drug and Controlled Substance Policy.
- 10/16/01 Legislature amends Drug and Controlled Substance Policy by enacting the Drug, Alcohol and Controlled Substance Policy as Chapter VI to the draft Employment Relations Act (6 HCC § 5) by Legislative Resolution 10/16/01D.
- 10/11/02 Corrects the numbering of paragraph 15. Testing Procedures (renumbered from 17 to 15).
- 10/23/02 Amended and restated by Legislative Resolution 10/23/02B.
- 10/19/04 Restated with enactment of the Employment Relations Act (6 HCC § 5) by Legislative Resolution 12/9/04A.
- 04/7/09 Legislature passes Resolution 4-07-09 D placing proposed amendments to the Drug Policy of the Nation out for forty-five day public comment.
- 06/01/09 Off-Site held to go over proposed amendments to the Drug Policy of the Nation and to review comments received during 45 day public comment. Informal decision made to provide that drug testing of new employees, except youth employees and elected officials, shall occur prior to their being employed by the Nation, but after their being offered employment.
- 09/09/09 Resolution 09-09-09 L passes adopting proposed amendments to Drug policy.