

BOROUGH OF ENGLEWOOD CLIFFS

PERSONNEL POLICIES

AND

PROCEDURES MANUAL

Adopted December ~~13~~¹⁸, 202~~5~~³

The Borough of Englewood Cliffs is an Equal Opportunity Employer

AT WILL STATEMENT & DISCLAIMER

The contents of this Personnel Policies and Procedures manual (“the Manual”) summarize the current benefits and guidelines within the Borough of Englewood Cliffs (“the Employer” or the “Borough”) and are intended as guidelines only.

The Employer reserves the right to change, delete, suspend, or discontinue any part or parts of this Manual at any time, without prior notice, and any such action shall apply to existing as well as future employees. You should be aware that these benefits and guidelines may be changed at any time, and that depending upon the circumstances of a given situation, the Employer’s actions may vary from the provisions of this Manual. **As such, the contents of the Manual DO NOT CONSTITUTE THE TERMS OF A CONTRACT OF EMPLOYMENT.**

It should be noted that nothing contained in this Manual should be construed as a guarantee of continued employment; but rather, EMPLOYMENT WITH THE EMPLOYER IS ON AN AT-WILL BASIS. This means that either the employee or the Employer, with or without cause, may terminate the employment relationship at any time with or without notice, for any reason not expressly prohibited by law. Any exception must be expressly authorized and signed by the Employer.

This Manual supersedes and replaces all prior personnel policy and benefit statements, whether oral or in writing. While some of the provisions contained herein refer specifically only to federal law, employees should be aware that the Employer will comply with all federal, state and local laws. Should any provision in this Manual be found to be unenforceable and/or invalid, such finding does not invalidate the entire Manual, but only the subject provision. Many of the policies in this handbook shall also apply in equal force to volunteers of the Employer.

When changes are made to this Manual, the Employer will, employees will be notified.

This Manual has been written so as not to conflict with the collective bargaining agreements between the Employer and its unionized employees. If there is a conflict between this Manual and any collective bargaining agreement, the provisions of the collective bargaining agreement will prevail for represented employees. This Manual has been written so as not to conflict with the provisions and mandates of the laws and regulations governing employment in the State of New Jersey. If there is a conflict between this Manual and any such mandate pursuant to law, such law will prevail for covered employees.

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GENERAL PERSONNEL POLICY:

Department Heads shall be appointed and promoted by the Mayor and Council. No person shall be employed or promoted unless there exists a position created by an ordinance adopted by the Mayor and Council as well as the necessary budget appropriation and salary ordinance.

The Borough Administrator is authorized and responsible for personnel policies and procedures. The Borough Administrator shall also have access to the Borough Attorney and Borough Labor Attorney appointed by the governing body for guidance in personnel matters.

As a general principle, the Borough has a “no tolerance” policy towards workplace wrongdoing. Borough officials, employees and independent contractors are to report anything perceived to be improper. The Borough believes strongly in an Open Door Policy and encourages employees to talk with their Department Head and the Borough Administrator concerning any problem.

The Personnel Policies and Procedures Manual adopted by the governing body is intended to provide guidelines covering public service by Borough employees and is not a contract. This manual contains many, but not necessarily all of the rules, regulations, and conditions of employment for Borough personnel. The provisions of this manual may be amended and supplemented from time to time without notice and at the sole discretion of the Borough.

SECTION ONE: POLICIES RELATING TO EMPLOYEE RIGHTS AND OBLIGATIONS

Equal Employment Opportunity Policy:

The Borough is committed to the principle of equal employment opportunity and anti-discrimination pursuant to Title VII of the 1964 Civil Rights Act as amended by the Equal Opportunity Act of 1972 and the New Jersey Law Against Discrimination ~~as amended by the New Jersey Pregnant Worker's Fairness Act~~ (LAD) and all other applicable state or federal laws. Under no circumstances will the Borough discriminate on the basis of sex, race, creed, color, religion, national origin, ancestry, age, marital or political status, affectional or sexual orientation, domestic partnership status, civil union status, atypical heredity, cellular or blood trait, genetic information, disability (including AIDS or HIV infection), pregnancy (including pregnancy related medical condition), childbirth, breastfeeding, liability for service in the United States armed forces, gender identity or expression, and/or any other characteristic protected by state or federal law. Decisions regarding the hiring, promotion, transfer, demotion or termination are based solely on the qualifications and performance of the employee or prospective employee. If any employee or prospective employee feels they have been treated unfairly, they have the right to address their concern with their supervisor, Department Head, Borough Administrator, Affirmative Action Officer or any other supervisor with whom they feel comfortable, using the complaint procedure set forth in the Policy Against Harassment set forth herein.

The Borough has designated its Borough Administrator, ~~Roberta Stern~~, as the Affirmative Action Officer.

Any employees with questions or concerns about any type of discrimination or harassment in the workplace are encouraged to bring these issues to the attention of management through the complaint procedure set forth in the Policy Against Harassment set forth in this Manual.

Americans with Disabilities Act And Pregnant Workers Fairness Policy:

~~In compliance with the Americans with Disabilities Act, the ADA Amendments Act and the New Jersey Law Against Discrimination as amended by the New Jersey Pregnant Worker's Fairness Act (LAD), the Borough does not discriminate based on disability, pregnancy, pregnancy related medical condition, breastfeeding or childbirth. The Borough complies with the New Jersey Law Against Discrimination, the Americans with Disabilities Act and the federal Pregnant Workers Fairness Act ("PWFA"). The Borough will not discriminate against any qualified employee or job applicant with respect to any terms, privileges, or conditions of employment because of a person's physical or mental disability, pregnancy, pregnancy-related medical condition, breastfeeding or childbirth.~~

The Borough also will make reasonable accommodations wherever necessary for all employees or applicants with disabilities or with known limitations related to pregnancy, childbirth or related medical conditions, provided that the individual is otherwise qualified to safely perform the essential duties and assignments connected with the job and provided that accommodations do not

require significant difficulty or expense. The Borough's nondiscrimination policy applies to all aspects of the employer-employee relationship, including recruitment, hiring, upgrading, training, promotion, transfer, discipline, layoff, recall, and termination.

Definitions. The Americans with Disabilities Act defines an individual with a disability as any person who:

1. has a physical or mental impairment that substantially limits one or more major life activities, such as caring for oneself, walking, seeing, hearing, or speaking;
2. has a record of such an impairment; or
3. is regarded as having such an impairment.

An individual must satisfy at least one of the three prongs of the above definition to be considered an individual with a disability under the ADA. Temporary conditions, such as a broken leg, are not disabilities, nor are minor impairments, such as vision problems that are correctable with glasses.

The New Jersey Law Against Discrimination defines disability as a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

A qualified individual is an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position held or sought. An individual who poses a threat to the health and safety of oneself or to others is not qualified. Reasonable accommodation means any change or adjustment to a job or work environment that does not impose an undue hardship on the Employer, or that permits a qualified applicant or employee with a disability to participate in the job application process, perform the essential functions of the job, or enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

[The Pregnancy Workers Fairness Act \(“PWFA”\) defines “pregnancy and childbirth” as meaning the pregnancy or childbirth of the specific employee in question and includes, but is not limited to, current pregnancy; past pregnancy; potential or intended pregnancy \(which can include infertility, fertility treatment, and the use of contraception\); labor; and childbirth.](#)

Requesting Accommodation. Qualified employees or prospective employees with disabilities, [or who need accommodations due to pregnancy, childbirth, or related medical conditions,](#) may request accommodations to perform the essential functions of their job or gain access to the hiring process. Employees or prospective employees should direct their written request to the Employer. In the written request, the employee or prospective employee should identify themselves as a person with a disability, eligible for protection, [or include an explanation of the pregnancy-related limitation](#) and identify the nature of the accommodation or consideration desired.

The Borough may require the employee to provide adequate medical or other appropriate documentation of the disability [or pregnancy or childbirth-related condition](#) and the need for the desired accommodation. The Employer will reasonably accommodate the known physical or mental limitation of an otherwise qualified applicant or employee with a disability [or employee affected by pregnancy or childbirth](#) unless the accommodation would impose an undue hardship on the Employer's business operation.

To further the Employer's nondiscrimination policy, the Employer will:

- Identify the essential functions of a job;
- Determine whether a person with a disability, with or without accommodation, is qualified to perform the duties; and
- Determine whether a reasonable accommodation can be made for a qualified individual.

Reasonable accommodations that the Employer may provide in connection with modifications to the work environment or adjustments in how and when a job is performed may include the following:

- Making existing facilities accessible and usable;
- Job restructuring;
- Part-time or modified work schedules;
- Acquiring or modifying equipment or devices;
- Appropriate adjustment or modifications of testing materials, training materials, and/or policies;
- Reassignment to a vacant position.

[In the case of an employee needing accommodations for pregnancy or childbirth, a reasonable accommodation may include the temporary suspension of essential functions and/or modifications or adjustments that permit the temporary suspension of essential functions.](#)

In the case of an employee breastfeeding her infant child, the accommodation shall include reasonable break time each day to the employee and a suitable room or other location with privacy, other than a toilet stall, in close proximity to work area for the employee to express breast milk for the child.

All decisions with regard to reasonable accommodation shall be made by the Borough Administrator.

Employees should also offer assistance, to the extent possible, to any member of the public who requests or needs an accommodation when visiting Borough facilities. Any questions concerning

proper assistance should be directed to Borough Administrator.

The Borough is also committed to not discriminating against any qualified employee or applicant because he or she is related to or associated with a person with a disability. If any applicant or employee has questions concerning the Employer's equal employment opportunity policy, he or she should contact the Employer.

Policy Against Harassment:

The Employer is committed to providing a work environment that is free of discrimination. The Employer will not tolerate harassment of or by employees towards anyone, including any supervisor, co-worker, or non-employee, including vendors and citizens.

Applicability. This policy applies to all people employed by the Employer, as well as volunteers working on behalf of the Employer, and prohibits such conduct by or towards all such employees/volunteers. Independent contractors, vendors and all other parties, engaged in a professional business relationship with the Employer are also expected to abide by the policy. In addition, no employee shall be required to withstand behavior from the public which violates this policy.

Purpose. This policy is designed to ensure all employees a work environment free of any type of discrimination based upon a protected status, including freedom from sexual harassment. The purpose of this policy is to inform employees that harassment based upon a protected status is prohibited, to educate employees about harassment based upon a protected status and to provide employees with a procedure to bring complaints to management's attention.

Provisions. All employees are expected to avoid any behavior or conduct of a harassing or discriminatory nature. The Employer prohibits any form of harassment or discrimination related to an employee's protected group status, including race, creed, color, national origin, ancestry, religion, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, familial status, genetic information, sex, gender identity or expression, disability (including perceived disability, physical, mental, and/or intellectual disabilities), atypical hereditary cellular or blood trait, or because of the liability for service in the Armed Forces of the United States, veteran status, citizenship status, or any other group status protected by law. Harassment includes, but is not limited to:

- A. Treating an individual less favorably based on a person's protected group status;
- B. Using derogatory or demeaning slurs to refer to a person's protected group status;
- C. Calling another by an unwanted nickname which refers to one or more protected group statuses, or telling ethnic jokes that harass an employee or create a hostile work environment;
- D. Using derogatory references regarding a protected group status in any job-related communication;
- E. Engaging in threatening, intimidating, or hostile acts, in the workplace, based on a protected group status; or
- F. Displaying or distributing material in the workplace that contains language or derogatory or demeaning images, based on any protected group status.

Any form of harassment or discrimination related to an employee's protected group status violates this policy. A hostile work environment can arise not only from conduct at the workplace, but can also arise from conduct occurring in a work-related context outside of the workplace (i.e., virtually or off-site) and conduct occurring in a non-work related context (i.e., through private phones, computers, or social media accounts) when that conduct impacts the workplace.

This policy applies to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, compensation, fringe benefits, working conditions and career development.

Violations of this policy will result in appropriate disciplinary action up to and including termination of employment.

Sexual Harassment. The Employer prohibits sexual harassment of its employees in any form. Such conduct shall result in appropriate disciplinary action up to and including dismissal from employment.

A. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct, gestures or communications, expressed or implied, of a sexual nature when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment; or
2. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, or
3. That conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment, or creating an intimidating hostile or offensive employment environment.

B. Prohibited Conduct: No supervisory employee shall threaten or insinuate either directly or indirectly, that an employee's refusal to submit to sexual advances will adversely affect the employee's continued employment, evaluation, compensation, assignment, advancement, or any other condition of employment. Similarly, no supervisory employee shall promise or suggest either directly or indirectly, that an employee's submission to sexual advances will result in any improvement in any term or condition of employment for the employee.

Other sexually harassing conduct in the workplace, whether committed by supervisory or non-supervisory personnel is also prohibited. This includes, but shall not be limited to:

1. Sexual flirtations, advances, propositions, subtle pressure for sexual activity, flirtatious whistling, discussing sexual activities;
2. Verbal abuse of a sexual nature including sexually oriented "kidding" or "teasing," "practical jokes," jokes about gender-specific traits, and foul or obscene language or gestures;

3. The display of sexually graphic pictures or pictures of an offensive nature, or objects in the workplace, including sexually suggestive written material such as letters, notes, facsimiles, text messages and e-mails;
4. Any unwelcome sexually motivated touching, including, for example, patting, pinching, hugging, cornering, blocking or impeding movement and repeated brushing against another employee's body.

Sexual harassment also occurs when one person harasses another solely because of the victim's gender. This type of sexual harassment may involve unwelcome sexual demands or overtures, but it may also take the form of other harassing conduct not necessarily sexual in nature. For example, this would include gender stereotyping such as comments about the lesser abilities, capacities, or the "proper role" of females. It also includes subjecting a woman or a man to non-sexual harassment solely because of her or his gender. Sexual harassment is prohibited whether the harasser is male or female, and whether the harassment is opposite sex or same-sex harassment.

Complaint Procedure. Any employee who feels he or she has been subject to harassment should report the incident directly to the designated Affirmative Action Officer. The designated Affirmative Action Officer will ask the employee to complete a Harassment Complaint Form. Employees, however, are not required to complete the complaint form to initiate a harassment complaint under this policy.

All Employer employees should notify the alleged harasser that the behavior in question is thought to be offensive and unwelcome. However, failure to inform the alleged harasser that the behavior is unwelcome does not prevent the victim from filing a complaint pursuant to this policy. The harassment or discrimination does not have to occur on the Employer's property during regular work hours for an employee to file a complaint under this policy.

The Employer strongly encourages employees who witness conduct which they believe violates the Employer's Policy Against Harassment to report the violation pursuant to this complaint procedure. The Employer encourages the prompt reporting of complaints so that rapid response and appropriate action may be taken. Any complaint should be reported within sixty (60) days to be considered current. Nevertheless, due to the sensitive nature of these problems, all complaints will be investigated, regardless of when they are filed.

Investigation Procedure. The Employer shall conduct an investigation into the harassment complaint to determine the merits of the allegations. The designated Affirmative Action Officer shall designate an objective investigator to determine the validity of any complaint. The objective investigator may include any third party deemed appropriate.

The investigation shall be completed in a reasonable time to resolve the issue and minimize the effects of such investigation on the parties involved. The investigation will, at a minimum, include an interview with the employee bringing the complaint and the accused.

If the Employer determines that the complaint has merit, the accused shall face appropriate disciplinary action based upon the severity of the complaint and any prior history of past charges against the individual.

Disciplinary action may include a written warning, suspension, demotion, and/or termination of employment. Any disciplinary action shall be consistent with applicable collective bargaining agreements, regulations and applicable due process safeguards. Upon completion of the investigation, the entire file shall be maintained in a secure location with the Employer.

In the event that the Employer determines the complaint to be intentionally dishonest, appropriate disciplinary action may be taken against the employee who caused the complaint to be filed.

Privacy. To the extent possible, all persons involved in a harassment complaint will be given the utmost protection of privacy. Specifically, the Employer will strive, both during and after the investigation, to maintain confidentiality to the fullest extent possible, including confidentiality of the identities of all persons involved or alleged to be involved in the incident, revealing only those particulars of the matter to the extent necessary for a thorough investigation. Any employee who unnecessarily compromises the confidentiality of an investigation will be subject to appropriate discipline.

Responsibility of Supervisory Personnel. Supervisors are to monitor the work environment to ensure that all subordinates comply with this Policy Against Harassment. When a supervisor learns of a violation of this policy, the supervisor shall assist the victim in reporting the alleged incident(s) of harassment.

Alternatively, the supervisor shall report the matter to the designated Affirmative Action Officer for resolution.

Retaliation Prohibited. The Employer encourages victims of harassment to bring their complaints to management by ensuring that no reprisals or retaliation will result from the good faith reporting of harassment. The filing of a complaint, in good faith, shall not, under any circumstances provide cause for discipline. Additionally, it is a violation of this policy for any personnel to retaliate against another because he or she filed a complaint or otherwise participated in the complaint procedure.

Any supervisor who receives a harassment complaint from any employee must bring it to the attention of the designated Affirmative Action Officer for resolution. Supervisors shall closely monitor the work environment for any forms of retaliation once an allegation has been made. This will include but not be limited to verbal remarks, irregular assignments or any other activity that may contribute to a hostile work environment.

Legal Effect. This Policy Against Harassment is to be construed as a unilateral expression of the policy of the Employer concerning harassment in the workplace. It is not intended to create any contractual rights or duties and any such intention or effect is hereby disclaimed. This policy may be amended, supplemented, modified and/or revised at any time. Any employee with questions regarding the Employer's Policy Against Harassment should contact the designated Affirmative Action Officer.

Training. The Employer recognizes the need to reinforce its policies with effective training. Training is to be provided to all supervisory and non-supervisory employees. Ultimately, the goal of effective training is to build a culture in which all employees feel safe. Training may be conducted in person or through electronic means. To the extent economically and operationally feasible, training should be conducted live whenever possible. Training should empower participants to intervene appropriately when they witness harassment or discrimination. This means not only training participants on the requirements of the policy prohibiting harassment and discrimination, but also training participants on tools for response and lodging complaints. Training should emphasize the negative impact of harassment and discrimination on employees, workplace productivity, workplace culture, and encouraging those employees who either experience harassment/discrimination or witness it to report it.

Monitor for Compliance. The Employer acknowledges the importance of ensuring that employers' policies and procedures are actually working as intended to prevent sexual harassment and other forms of discrimination from occurring in the workplace. It is the expectation of the Employer that all supervisors shall enforce anti-harassment policies and that setting the proper example is part of their job description and part of the evaluation of their job performance. The Employer will engage in proactive efforts to monitor and ensure compliance with its policies within their workplaces.

Whistleblower Policy:

As a matter of policy, the Employer abides by all federal, state, and local laws, rules, and regulations applicable to it and has all its employees do the same. Every employee is responsible for assisting the Employer to implement this policy.

In the ordinary course, a violation of this policy should be reported to an employee's Department Head in writing, signed by the employee. If that is not practical or if that action is taken but does not prevent or correct the perceived violations, the employee is to deliver a written statement, signed and dated to the designated human resources official. The written statement should detail the specific information the employee possesses so that the Employer may undertake an investigation.

The Employer or any of its employees will not retaliate against any employee who makes a good faith report pursuant to this policy, even if an investigation reveals that no violation occurred. More specifically, neither the Employer nor any of its employees will take any retaliatory action or tolerate any reprisal against an employee who:

1. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the Employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;

2. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the Employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care;
3. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any government entity;
4. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the Employer or any governmental entity;
5. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes: (1) is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care; (2) is fraudulent or criminal; or (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment. See N.J.S.A. 34:19-3.

Disclosure to the Employer first, however, is not required where (1) the employee is reasonably certain that the violation is known to one or more officials; (2) where the employee reasonably fears physical harm; or (3) the situation is emergent in nature. The employee must give the Employer a reasonable opportunity to correct the activity, policy or practice. It is the Employer's responsibility to correct or prevent such violations. This is a legal obligation and a practical necessity. A violation can taint the credibility of the Employer and cause the Employer and its employees to be subjected to adverse publicity leading to public distrust.

This policy is important to the Employer. Each employee should seek to resolve any problem within Employer channels before reporting it to any outside person or entity.

Contagious or Life-Threatening Illnesses Policy:

The Borough is committed to providing and maintaining a healthy and safety work environment which allows all employees to perform their jobs in a safe and productive manner. The Borough respects the dignity and worth of every employee through its Equal Opportunity Employment statement, which explains its policy and practice with respect to prohibiting discrimination in every phase of employment. The Borough provides support for individual employees who may be facing the trauma of a life-threatening or catastrophic illness. The purpose of this policy is to support the physical and emotional health of all employees, minimize disruptions of productivity and morale caused by the presence of a worker with a life-threatening illness, and demonstrate the Borough's continued commitment to its affirmative action goals related to physically disabled employees.

If an employee has learned that he or she has a contagious or life-threatening illness, including but not limited to HIV/AIDS, the employee should take all steps to protect further spread of the disease or illness. When appropriate, the employee's Department Head should be notified of any illnesses that may affect the health, safety, and welfare of any co-employee or member of the general public. Employees with such conditions, who are able to meet appropriate standards and whose continued employment does not pose a threat to their own health and safety or that of others, are assured equal employment opportunities and reasonable accommodations in their employment. If an employee is able to work, he or she is expected to be productive. If the individual cannot work, then he or she may be eligible for disability benefits.

Consistent with the concern for employees with life-threatening illness, the Borough offers the following resources through the human resources official:

- 1) Employee education and information on terminal illnesses and specific life-threatening illnesses.
- 2) Referral to agencies and organizations which offer supportive services for life-threatening illnesses.
- 3) Consultation in assisting employees in efficiently managing health, leave and other benefits. The Borough encourages employees who need these resources to contact the human resources official.

The Borough encourages employees with contagious diseases or life-threatening illnesses to continue their normal pursuits, including work, to the extent allowed by their condition. The Borough shall make reasonable accommodations to known physical and mental limitations of all employees, provided that the individual is otherwise qualified to safely perform the essential functions of the job and also provided that the accommodation does not impose an unreasonable hardship on the Borough.

~~The Borough will take reasonable precautions to protect such information from inappropriate disclosure, including the following:~~

- ~~• Medical information may be disclosed with the prior written informed consent of the person who is the subject of the information.~~
- ~~• Information may be disclosed without the prior written consent to qualified individuals for the purpose of conducting management audits, financial audits, and program evaluations, but these individuals shall not identify, either directly or indirectly, the person who is the subject of the record in a report or evaluation, or otherwise disclose the person's identity in any manner. Information shall not be released to these individuals unless it is vital to the audit or evaluation.~~
- ~~• Information may be disclosed to the Department of Health as required by State or Federal law.~~
- ~~• Managers and other employees have a responsibility to maintain the confidentiality of employee medical information. Anyone inappropriately disclosing such information shall be subject to disciplinary action.~~

Safety Policy:

The Borough will provide a safe and healthy work environment and shall comply with the Public Employees Occupational Safety and Health Act (PEOSHA). The Borough is equally concerned about the safety of the public. Consistent with this policy, employees will receive periodic safety training and will be provided with appropriate safety equipment. Employees are responsible for observing safety rules and using available safety devices including personal protective equipment. Failure to do so constitutes grounds for disciplinary action. Any occupational or public unsafe condition, practice, procedure or act must be immediately reported to the Department Head. Any on-the-job accident or accident involving Borough facilities, equipment or motor vehicles must also be immediately reported to the Department Head and Borough Administrator. Failure to do so constitutes grounds for disciplinary action.

The Borough has appointed a Safety Committee that meets on a regular basis to discuss and recommend solutions to safety problems. Employees are encouraged to discuss safety concerns with their Safety Committee Representatives supervisory personnel.

Transitional Duty Policy:

The Borough will endeavor to bring employees with temporary disabilities back on the job as soon as possible and may assign transitional duty to employees who temporarily cannot perform the essential functions of their positions because of injury or illness. Transitional duty is not guaranteed. Transitional duty is meant to be temporary in nature and therefore will not exceed 45 workdays. If a department already has one employee on transitional duty, it is unlikely that another employee from that department will be assigned transitional duty.

An employee requesting transitional duty or the Workers Compensation Physician shall notify the Borough Administrator as soon as the temporarily disabled employee is able to return to work with restrictions. Transitional duty will only be assigned with the appropriate medical documentation and if the employee will probably be able to perform the essential functions of the position after the transitional duty period. The Borough Administrator will consult with the Department Head to determine if there is any meaningful work that can be performed consistent with the restrictions. Transitional duty assignments may be in any department and not just the employee's normal department. The Borough Administrator will decide if it is in the best interest of the Borough to approve a transitional duty request and will notify the employee of the decision. The Borough reserves the right to terminate the transitional duty assignment at any time without cause.

Employees may not refuse transitional duty assignments that are recommended by the Workers Compensation Physician. In such cases, failure to report to work as directed shall constitute immediate grounds for dismissal. If the employee believes that the transitional duty assignment is beyond the employee's abilities, the employee may request a meeting with the Borough Administrator who will render a written response within 24 hours.

Employees on transitional duty will receive their regular salaries and are prohibited from engaging in any outside employment of any kind unless they receive prior written approval from the Borough Administrator. If transitional duty is approved, the employee or Workers' Compensation Physician must keep the Borough Administrator informed of the medical progress. (Employees assigned to transitional duty will be allotted time off to attend medical or physical therapy appointments but must request leave time for any other reason.) If at the end of transitional duty period the employee is not able to return to work without restrictions, the Borough reserves the right at its sole discretion to extend the transitional duty or place the employee back on Workers Compensation or disability. This policy does not affect an employee's rights under the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Contagious or Life Threatening Illnesses Policy or other Federal or State law.

Drugs and Alcohol Free Workplace Policy:

All applicants for positions that require a CDL license and all employees whose job requires them to possess a CDL license shall be excluded from this Alcohol and Drug-Free Workplace policy. Instead, these employees are governed by Federal and State regulations, as well as the CDL Drug and Alcohol Testing Policy (See Administrator for a copy). Employees hired with the understanding that they must obtain a CDL license will be covered under this Alcohol and Drug-Free Workplace Policy until they obtain their CDL license.

YOUR ROLE AND RESPONSIBILITIES

DRUG-FREE WORKPLACE

The Borough of Englewood Cliffs (the Borough) is committed to maintaining a safe, pleasant, and productive working environment. You have the right to come to work without fear of interacting with someone under the influence of drugs or alcohol. This is considered a Health & Safety Policy of the Borough. This Policy highlights the Borough's New Jersey Drug-Free Workplace Policy. The Borough's Designated Employer Representative (DER) is Borough Administrator.

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The Borough recognizes the prime importance to the Borough of protecting the safety, health and welfare of its employees and others with whom we interface such as citizens, contractors and members of the public. The objective of this policy is to maintain a working environment free from the adverse effects of substance abuse. While the Borough has no intention of intruding into the private lives of its employees, the Borough does expect employees to report to work unimpaired able to perform the duties of their job safely and effectively. In addition to absenteeism and accidents, substance abuse can adversely affect performance, productivity and workplace morale. Co-workers may feel that they have to cover up, or work harder because of someone's substance abuse. Ultimately an employee with an alcohol or drugs problem may lose their job and/or suffer devastating effects on their health. The Borough has a duty to safeguard its employees and the public from the risk of harm from employees who work under the influence of alcohol and drugs. Similarly, employees who are working under the influence, and employees who know that a fellow employee is working under the influence, owe such a duty. The failure to honour that duty by taking the right steps to prevent this risk can result in legal liability. All employees and contractors are responsible and accountable for ensuring that they, and their employees, are not under the influence of alcohol or drugs when carrying out work for the Borough. Managers and supervisors are responsible for taking appropriate action where they identify individuals who are at work while under the influence of alcohol or drugs. They should also take appropriate action to protect the health and safety of individuals who may be affected.

To the extent this Policy supplements, and does not conflict with current collective bargaining agreements, it is applicable. However, to the extent this policy may conflict with a current collective bargaining agreement (CBA), the CBA shall prevail.

All testing information is considered confidential information by the Borough and will be maintained in a separate file along with the employee's medical records, separate from other personnel files. An employee has the right to inspect and obtain a copy of his or her drug test results. Drug testing information will only be released to those employees of the Borough with a job related need to know, the DER, to defend against any administrative action brought by the employee against the Borough, in grievance or arbitration proceeding under the terms of a collective bargaining agreement, in a court of law under subpoena, as released by the employee in writing, the MRO, Borough insurers, rehabilitation programs and as otherwise required by law. Our Drug-Free Workplace Policy does not tolerate the abuse of drugs or alcohol in the workplace. Understand that this Policy prohibits illegal drug use on or off the job. We encourage any employee suffering from a substance abuse problem to seek help. If you need help, we can direct you to our Employee Assistance Program (EAP) Substance Abuse Professional (SAP) for a confidential evaluation and referral for substance abuse treatment if necessary. Notice of the Borough's New Jersey Drug-Free Workplace testing will be provided on vacancy announcement and is posted in conspicuous locations on Borough premises.

Our program can help improve your health and help you avoid trouble with the law. Even if you do not use drugs or alcohol, this program will make your workplace safer and more productive, the Borough safer, and will help your friends and co-workers get the help they need. Compliance with this policy is a condition of your hire or continued employment, except to the extent this policy may conflict with a current collective bargaining agreement (CBA), which CBA shall prevail. The Borough has developed its drug-free workplace policy in compliance with New Jersey Laws, and the Fourth Amendment to the United States Constitution as it covers employees of governmental entities. Applicant testing will begin immediately and sixty (60) days after the effective date of Borough, all employees are subject to testing as outlined below. The existing drug and alcohol testing program will remain in place until the effective date of this program.

WHO DO WE TEST?

All employees performing safety-sensitive functions, and all final applicants for positions where safety-sensitive functions are performed, and all other employees where reasonable suspicion exists. All DOT regulated employees are also subject to testing under this policy. Using the criteria below, the following positions have been classified by the Borough as safety-sensitive: *employees who require a CDL*. Elected officials who are not otherwise classified as employees are not subject to testing under this Policy.

SAFETY-SENSITIVE CLASSIFICATIONS

Safety-sensitive employees are those employees who discharge duties fraught with risks of injury to others that even a momentary lapse of concentration can have disastrous consequences. Factors which have been considered in determining whether a position is safety sensitive include handling of potentially dangerous machinery, sharp objects, working at heights, positions requiring a high level of cognitive function, mostly unsupervised responsibility for children, and handling of hazardous substances in an environment where others could be injured. Positions which have been found to be safety-sensitive include firefighters, emergency medical technicians, law enforcement officials who carry firearms, fire and police dispatchers, 911 operators, heavy machinery operators, forklift operators, bus drivers, some (but not all) transportation workers, pipeline operators, gas meter repairmen, jail officers, and those involved in security functions. All Department of Transportation (DOT) regulated employees are determined to be safety-sensitive by those regulations. Unless an employee comes under drug testing regulations of some federal agency, each position, job classification or department, should be individually evaluated to determine whether the employee is safety-sensitive in accordance with the above guidelines. (Attach safety-sensitive job classifications on separate sheet if necessary.)

HOW DO WE TEST?

Drug and alcohol testing is done through chemical analysis which determines without question if a person has drugs or alcohol in his or her system and in conformity with regulations of the New York Department of Health, New Jersey Department of Health, or CLIA. Specimens subject to testing include urine, breath, hair, oral fluids, or blood. Specimen collections, chain of custody and drug and alcohol tests will be in substantial compliance with the U.S. Department of Transportation (DOT) procedures if applicable to the type of specimen being tested. To ensure accuracy, urine lab test procedures shall include a preliminary drug screening, two highly sophisticated scientific tests including adulterant detection, and are reported to an independent certified Medical Review Officer prior to being released to the Borough. Observed urine collections will only be conducted with the consent of the donor, and the observer will be by a person whose gender matches the donor's gender as identified by the donor at the beginning of the observed collection. Observed collections will be conducted in a professional manner that minimizes discomfort to the donor, and a medical professional may serve as the monitor, regardless of gender. The Medical Review Officer may recommend the collection of an alternate specimen (e.g., oral fluid) when a donor is unable to provide a sufficient amount of urine specimen at the collection site. The MRO will verify that chain of custody procedures were adhered to, use of a certified laboratory and that the test results were valid. The Borough provides reasonable accommodations to employees and/or applicants in the alcohol and drug testing program whose physical condition prevents them from producing a urine specimen suitable for testing. You may contact the DER if you wish to make an accommodation request. In accordance with Borough policy, a test result reported by the laboratory as a negative dilute urine test is not considered a

negative test but subjects the donor to immediate retesting; and a second negative dilute urine test will render an applicant ineligible for hire and current employees, where a negative test is required, not currently fit for duty. FDA approved on-site screening devices may be utilized with all initial positive results confirmed by laboratory testing.

All positive initial tests are confirmed by GC/MS at established DOT cut off levels. An Alcohol content of 0.04 or higher using a DOT approved alcohol screening device, or breath alcohol device, is classified as a positive test. The drugs tested for may include all or some of the following: (1) Amphetamines; (2) Cannabinoids; (3) Cocaine; (4) Phencyclidine (PCP); (5) Opioids, designer drugs, or a metabolite of any of the above substances and mind altering synthetic narcotics or designer drugs, or impairing effect medications or substances, taken by employees working in a safety-sensitive classified position, in order for the employer to fulfill its duty to provide a safe place to work as a safety rule. The term "illegal use of drugs" includes any controlled or scheduled drug not used in accordance with a health care provider's lawful prescription for the user, or any substances banned by Federal or applicable State laws.

WHAT IF YOU TEST POSITIVE?

The Medical Review Officer will contact you confidentially to give you an opportunity to discuss your results before reporting them to the Borough as a verified positive. You may discuss the result with the MRO up to seventy-two (72) hours after a positive result and ask questions of the MRO about prescription and non-prescription medications, rebut or explain the test results to the MRO, and provide supporting documentation. During this 72-hour period, any applicant or employee may request that their split specimen be tested at a second laboratory and if positive, they will be responsible for that expense and that cost may be deducted from their paycheck, depending upon the result and, if negative, the employee will be reimbursed by the Borough for the cost of the test and any lost time. Under federal regulations, the MRO has the discretionary authority to notify the Borough that an employee is temporarily medically disqualified from the performance of safety-sensitive work during this evaluation period and also has the duty to notify the Borough if the employee is taking an impairing effect medication. A positive drug or alcohol test is classified as willful misconduct and a violation of the Borough's Policy. Any employee who tests positive, or refuses to be tested, may be subject to appropriate disciplinary action for engaging in willful misconduct connected with work, up to and including immediate termination, for gross misconduct connected with work, and violation of a safety rule for those employees working in a safety-sensitive position and/or forfeit eligibility for Worker's Compensation benefits *N.J. Stat. Ann. § 34:15-7* if post-accident and may adversely affect an employee's eligibility to receive Unemployment Compensation benefits. Any applicant made a conditional offer that tests positive, or refuses to be tested, will be denied employment or have their offer withdrawn.

As it relates to cannabis, an employee will be subject to adverse action if there is both a positive drug test, confirmed by a licensed laboratory, and a determination of reasonable suspicion based on documentation of physical signs or other evidence of impairment during the employee's work hours. When the New Jersey Cannabis Regulatory Commission issues standards for certification of a Workplace Impairment Recognition Expert ("WIRE"), an employee will be subject to adverse action if there is both a positive drug test and a physical evaluation by a WIRE.

Applicants for non-CDL positions will not be denied employment based solely on a positive pre-employment drug test for cannabis, except for law enforcement officers assigned to a federal task force, holding a federally regulated license requiring testing, or applying to an agency that is specifically required to test for cannabis by the terms of a federal contract or federal grant.

WHAT IF YOU FAIL TO FOLLOW SAFETY GUIDELINES?

Often times, impairment from drugs or alcohol will cause an employee to fail to adhere to safety guidelines and other common sense safe working practices. Failure to wear a seatbelt, failure to use Borough provided or required safety equipment, failure to follow safety guidelines, or removal (or disabling) of a safety guard will be willful misconduct connected with work, and subject the employee to discipline, up to and including discharge for violation of Borough Policy.

WHAT ABOUT IMPAIRING EFFECT MEDICATIONS OR SUBSTANCES?

Any employee working in a safety-sensitive position as defined by Borough Policy is required, as a safety rule, to pre-duty disclosure that they are taking or using ANY impairing effect prescription, including medical marijuana, over-the-counter medications, mind altering synthetic or designer drugs or other substance which may have an effect on performance of safety-sensitive duties. If the fact that the employee is taking or using an impairing effect medication or substance is not disclosed pre-duty by a safety-sensitive employee and the employee tests positive, is otherwise determined to be taking or using such, or is determined by the MRO to be a potential safety risk due to taking or using an impairing effect medication or substance, that employee will be subject to discipline, up to and including termination, for violation of this safety rule. If disclosure is made, the Borough reserves the right to send the employee for a Fitness-for-Duty evaluation to evaluate the medication or substance and its effects on the performance of safety-sensitive duties. In advance of testing, employees are encouraged to have their own doctor make an individualized assessment of any safety-related risks of the medications or substances which they are taking or using, providing the doctor a copy of their job description and having the doctor render an opinion on the safety-related risks. The employee need not disclose to the Borough the medication or medical condition involved to fulfill the disclosure obligation of this Policy. All information provided will be kept separate from personnel files and in a confidential manner. The MRO, or another Medical Professional selected by the Borough, will make the final determination on the safety-related risks of any particular medication or substance.

WHAT IF AN ADULTERANT IS FOUND?

The use of an adulterant (something added to a specimen to attempt to hide drug use) is considered a refusal to test and a violation of the Policy. The same would be true if you attempted to substitute a specimen. Any employee who is found to have violated this Policy by attempting to defraud a drug or alcohol test may be subject to appropriate disciplinary action, up to and including termination for willful misconduct connected with work, or withdrawal of a job offer. No last chance opportunity is available under such a circumstance. It is a criminal offense to substitute or adulterate a test specimen. It also is a criminal offense in New Jersey to manufacture, sell, give away, or possess any device or substance designed or commonly used to substitute or adulterate a test specimen. *N.J. Stat. Ann. § 2C:36-10*. The MRO may declare a urine specimen to be adulterated or substituted based on the laboratory report.

WHAT IF I REFUSE?

A refusal to provide a specimen for testing, unless the MRO agrees a medically valid reason exists for your inability, will be considered willful misconduct connected with work. Such willful misconduct connected with work will cause an applicant's offer to be withdrawn and will subject an employee to immediate termination for cause. Under New Jersey law, unemployment compensation benefits may not

be available in such a circumstance. Failure to report for specimen collection within a reasonable time, two (2) hours, of being directed to do so is also classified as a refusal under the Borough Policy.

DRUG EDUCATIONAL INFORMATION

Attached to this Policy you will find drug educational information to assist you in recognizing the impairing effects of drug use. The Borough will conduct employee education of substance abuse education and awareness and supervisor training on how to recognize signs of abuse, how to document and collaborate signs of employee substance abuse, and how to refer substance abusing employees to the EAP.

WHAT IF YOU HAVE A SUBSTANCE ABUSE PROBLEM?

The Borough will provide support for employees who need support and help with alcohol or drug dependency via confidential Employee Assistance Program (EAP), Substance Abuse Professional (SAP) or Medical/Occupational Health support services. Employees who proactively seek treatment will be treated sympathetically and in a confidential manner. In certain cases, this may require a transfer to other duties (e.g. where a person is working in a safety critical role) while the individual is receiving treatment. However, the fact that an employee is seeking or undergoing treatment will not be a defence to a charge of wilful misconduct if the employee reports for work under the influence of alcohol or drugs. Our Policy encourages any employee with a drug or alcohol problem to voluntarily and confidentially seek help through our EAP/SAP program. Coming forward after you have been notified to report for testing is not considered a voluntary report. For confidential help with a substance abuse problem, contact the DER or the EAP/SAP. Counseling and rehabilitation for alcohol or substance abuse is available through the EAP, and may also be available under the health and welfare benefit program for employees, *only to the extent of the current benefits package*. The Borough will assume no direct financial responsibility for counseling or rehabilitation costs of an employee, not covered by the EAP. Any costs in addition to or in excess of any available health benefits are the employee's responsibility. A list of state and national **Substance Abuse Resources** is a part of this Policy.

WHAT ABOUT A LAST CHANCE OPPORTUNITY?

No last chance opportunity is available to a probationary, part time or temporary employee, or in the case of refusal, attempted adulteration, substitution, switching, tampering with, or diluting of a specimen or attempt to defraud a drug test. Employees who receive an EAP/SAP evaluation favorable for rehabilitation may be offered a last chance agreement which will subject the employee to unannounced follow-up testing for up to 12 months, together with other educational and counseling requirements as recommend by the EAP/SAP. A negative return to duty test is required to be placed back on active duty. A positive test, refusal or failure to comply with any term of the last chance agreement during this follow-up period will subject the employee to immediate termination.

WHY AND WHEN DO WE TEST?

- Pre-employment: Drug testing will be performed on all final applicants for safety-sensitive positions, or who transfer into a safety-sensitive position, as a condition of their employment.
- Routine Fitness-for-Duty: Safety-sensitive employees may be required to submit to a drug test as part of a routine Fitness-for-Duty examination and may be based on a particular job classification.

- Reasonable Suspicion: All employees will be required to submit to a drug and/or alcohol test if the Borough has a reasonable suspicion that an employee is under the influence of drugs or alcohol, which adversely affect or could adversely affect the employee's job performance. Employees selected for testing shall be suspended until a negative drug/alcohol screen or laboratory test result is received. If a negative result, the employee will not suffer a loss of pay.
- Post-Accident/Incident Testing: Testing of a safety-sensitive employee may be conducted under any of the following circumstances: 1) the employee involved in the incident/accident was actively engaged in the activity which objectively could have caused or contributed to the injury or damage; or 2) the employee was operating, controlling, or repairing any machinery, tool, device, equipment or vehicle that was involved in the incident/accident; or 3) the employee's action or inaction was likely a contributing factor to the incident/accident or cannot be completely discounted as a contributing factor based on current info; or 4) testing is being conducted as part of the Borough's Post Incident/Accident Investigation related to possible Workers' Compensation Disqualification; or 5) testing is being conducted for other non-injured employees whose actions, or inaction, could have contributed to the incident/accident as part of a root cause investigation; or 6) post-accident drug testing is required by the Workers' Compensation Carrier or Fund.
- Random: Employees in safety-sensitive positions are subject to random drug testing. Those subject to testing are randomly selected, using scientifically valid methods, from a "pool" of covered employees. Non-DOT safety-sensitive employees may be included in a Non-DOT testing "pool." DOT regulated employees should only be placed in a DOT testing "pool."
- Rehabilitation/Follow-up: An employee who has voluntarily requested rehabilitation prior to a positive drug test may be subject to unannounced drug and/or alcohol testing under a work continuation agreement, to determine whether he or she is under the influence of alcohol or drugs after successful completion of the rehabilitation program. The testing will be without notice in conjunction with a referral for treatment.

POLICY PROHIBITIONS

Employees, applicants and Contractors for the Borough are strictly prohibited from engaging in the following conduct:

1. With respect to illegal drugs, employees and applicants violate this Policy by engaging in the following conduct, whether or not during work time or on ***Entity Type*** premises or property and are subject to discipline up to and including discharge, or rejection of the application for employment, or cancellation of contractual agreements:
 - a. Testing positive in a confirmed drug or alcohol test, or refusing to be tested.
 - b. Bringing and/or storing (including in a desk, locker, automobile, or other repository) illegal drugs or drug paraphernalia on Borough premises or property, including Borough-owned or leased vehicles, or vehicles used for Borough purposes.
 - c. Having possession of, being under the influence of, testing positive for, or being in close proximity to persons using illegal drugs, or otherwise having in one's system illegal drugs.

d. Using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling, or dispensing illegal drugs. In addition, the Borough will refer such matters to the appropriate police authority.

e. A conviction or plea of guilty relative to any criminal drug offense occurring in the workplace. All employees must notify the Borough in writing of any criminal drug conviction no later than five (5) calendar days after such conviction. Drug use off-the-job which adversely affects an employee's performance on the job, or which has the potential to jeopardise the health or safety of other employees, the public or the Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action will be taken against employees who are convicted for an off-the job drug offence. In deciding what action will be taken, the incident will be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough.

f. Abuse of prescription drugs which includes exceeding the recommended prescribed dosage or using others' prescribed medications. Such prescriptions brought to work should remain in the original labeled container and show both the prescribing doctor's name and the prescription's expiration date.

g. Switching, tampering with, diluting, or adulterating any specimen or sample collected under this Policy, or attempting to do so.

h. Refusing to cooperate with the terms of this Policy which includes submitting to questioning, drug testing, medical or physical tests or examinations, when requested or conducted by the Borough or its designee, is a violation of Borough Policy and may result in disciplinary action up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.

i. Failure to advise pre-duty the Borough of the use of a prescription or over-the-counter drug which may alter the employee's ability to safely perform the essential functions of his or her job.

j. Failure of an employee to notify his or her supervisor before reporting to work if he or she believes that he or she is under the influence of drugs.

2. With respect to alcohol and cannabis, employees violate this Policy by engaging in the following conduct during work time or on Borough premises or property:

a. Bringing and/or storing (including in a desk, locker, automobile, or other repository) alcohol or cannabis on Borough premises or property, including Borough owned or leased vehicles, or vehicles used for Borough purposes.

b. Having possession of, being under the influence of, testing positive for or having in one's system, alcohol or cannabis. Using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling, or dispensing alcohol or cannabis. As it

relates to a positive drug test for cannabis, an employee violates this policy if there is both positive drug test and evidence-based documentation of physical signs or other evidence of impairment during the employee's work hours. Exceptions to the policy concerning alcohol consumption or possession may be made only upon the prior explicit approval of senior management for specifically identified circumstances.

c. A conviction or plea of guilty relative to any criminal alcohol or cannabis offense occurring in the workplace. All employees must notify Borough in writing of any criminal alcohol or cannabis conviction not later than five calendar days after such conviction. Alcohol or cannabis use off-the-job which adversely affects an employee's performance on the job, or which has the potential to jeopardise the health or safety of other employees, the public or Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action will be taken against employees who are convicted for an off-the job alcohol or cannabis offense. In deciding what action will be taken, the incident will be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough.

d. Switching, tampering with, or adulterating any specimen or sample collected under this Policy, or attempting to do so.

e. Refusing to cooperate with the terms of this Policy which includes submitting to questioning, alcohol or drug testing, medical or physical tests or examinations, when requested or conducted by Borough or its designee, is a violation of Borough Policy and may result in disciplinary action, up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.

f. Failure of employee to notify his or her supervisor before reporting to work if he or she believes that he or she is under the influence of alcohol or cannabis.

~~The Borough recognizes that the possession or use of drugs and the abuse of alcohol pose a threat to the health and safety of all employees. To that end, the Borough has adopted a Drug and Alcohol Free Workplace Policy and all employees are subject to the rules and regulations set forth in that policy. Specifically, the manufacturing, distribution, dispensing, and/or use of alcohol or drugs on the Employer's premises, or during work hours, by employees is strictly prohibited.~~

~~Any employee who is observed by a supervisor or Department Head to be intoxicated or under the influence of alcohol or drugs during working hours or is under reasonable suspicion of same shall~~

~~be immediately tested and is subject to discipline up to and including termination. Employees who are required to maintain a Commercial Driver's License ("CDL") are subject to random drug testing as required by the federal government. Refusal to submit to testing when requested may result in immediate disciplinary action, including termination. The supervisor or Department Head will immediately report any reasonable suspicions to the Borough Administrator. An employee will be required to submit to alcohol, drug or controlled substance testing when the employee's work performance causes a reasonable suspicion that that employee is impaired due to current intoxication, drug or controlled substance use, following any workplace accident, or in cases where employment has been conditioned upon remaining alcohol, drug, or controlled dangerous substance free following treatment. Again, refusal to submit to testing when requested may result in immediate disciplinary action, including termination. Supervisors and Department heads that observe behavior constituting reasonable suspicion are required to notify the Administrator and institute testing and do not have the option of sending the employee home as an alternative.~~

~~Employees must notify their Department Head within five (5) days of conviction for a drug or alcohol related violation, whether or not the violation occurred in the workplace.~~

~~Employees using prescription drugs that may affect job performance or safety must notify the Borough Administrator who is required to maintain the confidentiality of any information regarding an employee's medical condition in accordance with the Health Insurance Portability and Protection Act.~~

~~No prescription drug should be used by any person other than the individual to whom it is prescribed. Such substances or non-prescription (over the counter) drugs should be used only as prescribed or indicated. Employees are prohibited from consuming prescription drugs that are not prescribed in their name on Borough property or while performing Borough business. Soliciting or distributing prescription drugs for or to other employees is also strictly prohibited.~~

~~As it relates to cannabis, an employee will be subject to adverse action if there is both a positive drug test, confirmed by a licensed laboratory, and a determination of reasonable suspicion based on documentation of physical signs or other evidence of impairment during the employee's work hours. When the New Jersey Cannabis Regulatory Commission issues standards for certification of a Workplace Impairment Recognition Expert ("WIRE"), an employee will be subject to adverse action if there is both a positive drug test and a physical evaluation by a WIRE.~~

~~Applicants for non-CDL positions will not be denied employment based solely on a positive pre-employment drug test for cannabis, except for law enforcement officers assigned to a federal task force, holding a federally regulated license requiring testing, or applying to an agency that is specifically required to test for cannabis by the terms of a federal contract or federal grant.~~

~~With respect to alcohol and cannabis, employees violate this Policy by engaging in the following conduct during work time or on Borough premises or property:~~

~~A. — Bringing and/or storing (including in a desk, locker, automobile, or other repository) alcohol or cannabis on Borough premises or property, including Borough owned or leased vehicles, or vehicles used for Borough purposes.~~

~~B. — Having possession of, being under the influence of, testing positive for or having in one's system, alcohol or cannabis. Using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling, or dispensing alcohol or cannabis. As it relates to a positive drug test for cannabis, an employee violates this policy if there is both positive drug test and evidence-based documentation of physical signs or other evidence of impairment during the employee's work hours. *Exceptions to the policy concerning alcohol consumption or possession may be made only upon the prior explicit approval of senior management for specifically identified circumstances.*~~

~~C. — A conviction or plea of guilty relative to any criminal alcohol or cannabis offense occurring in the workplace. All employees must notify the Borough Administrator in writing of any criminal alcohol or cannabis conviction not later than five calendar days after such conviction. Alcohol or cannabis use off the job which adversely affects an employee's performance on the job, or which has the potential to jeopardize the health or safety of other employees, the public or Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action will be taken against employees who are convicted for an off the job alcohol or cannabis offense. In deciding what action will be taken, the incident will be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough.~~

~~D. — Switching, tampering with, or adulterating any specimen or sample collected under this Policy, or attempting to do so.~~

~~E. — Refusing to cooperate with the terms of this Policy which includes submitting to questioning, alcohol or drug testing, medical or physical tests or examinations, when requested or conducted by Borough or its designee, is a violation of Borough Policy and may result in disciplinary action, up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.~~

~~F. — Failure of employee to notify his or her supervisor before reporting to work if he or she believes that he or she is under the influence of alcohol or cannabis.~~

~~Please see the Borough Administrator for a full copy of our policy.~~

Domestic Violence Policy:

Purpose

The purpose of the State of New Jersey Domestic Violence Policy for Public Employers (herein "policy") is to set forth a uniform domestic violence policy for all public employers to adopt in accordance with N.J.S.A. 11A:2-6a. The purpose of this policy is also to encourage employees

who are victims of domestic violence, and those impacted by domestic violence, to seek assistance from their human resources officers and provide a standard for human resources officers to follow when responding to employees.

Definitions

The following terms are defined solely for the purpose of this policy:

Domestic Violence - Acts or threatened acts, that are used by a perpetrator to gain power and control over a current or former spouse, family member, household member, intimate partner, someone the perpetrator dated, or person with whom the perpetrator shares a child in common or anticipates having a child in common if one of the parties is pregnant. Domestic violence includes, but is not limited to the following: physical violence; injury; intimidation; sexual violence or abuse; emotional and/or psychological intimidation; verbal abuse; threats; harassment; cyber harassment; stalking; economic abuse or control; damaging property to intimidate or attempt to control the behavior of a person in a relationship with the perpetrator; strangulation; or abuse of animals or pets.

Abuser/Perpetrator - An individual who commits or threatens to commit an act of domestic violence, including unwarranted violence against individuals and animals. Other abusive behaviors and forms of violence can include the following: bullying, humiliating, isolating, intimidating, harassing, stalking, or threatening the victim, disturbing someone's peace, or destroying someone's property.

Human Resources Officer (HRO) - An employee of a public employer with a human resources job title, or its equivalent, who is responsible for orienting, training, counseling, and appraising staff. Persons designated by the employer as the primary or secondary contact to assist employees in reporting domestic violence incidents.

Intimate Partner - Partners of any sexual orientation or preference who have been legally married or formerly married to one another, have a child or children in common, or anticipate having a child in common if one party is pregnant. Intimate partner also includes those who live together or have lived together, as well as persons who are dating or have dated in the past.

Temporary Restraining Order (TRO) - A civil court order issued by a judge to protect the life, health or well-being of a victim. TROs can prohibit domestic violence offenders from having contact with victims, either in person or through any means of communication, including third parties. TROs also can prohibit offenders from a victim's home and workplace. A violation of a TRO may be a criminal offense. A TRO will last approximately 10 business days, or until a court holds a hearing to determine if a Final Restraining Order (FRO) is needed. In New Jersey, there is no expiration of a FRO.

Victim - A person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a

present household member or was at any time a household member. A victim of domestic violence is also any person, regardless of age, who has been subjected to domestic violence by one of the following actors: a person with whom the victim has a child in common; a person with whom the victim anticipates having a child in common, if one of the parties is pregnant; and a person with whom the victim has had a dating relationship.

Workplace-Related Incidents - Incidents of domestic violence, sexual violence, dating violence, and stalking, including acts, attempted acts, or threatened acts by or against employees, the families of employees, and/or their property, that imperil the safety, well-being, or productivity of any person associated with a public employee in the State of New Jersey, regardless of whether the act occurred in or outside the organization's physical workplace. An employee is considered to be in the workplace while in or using the resources of the employer. This includes, but is not limited to, facilities, work sites, equipment, vehicles, or while on work-related travel.

Persons Covered By This Policy - All employees are covered under this policy, including full and part time employees, casual/seasonal employees, interns, volunteers and temporary employees at any workplace location.

Responsibility Of Employers to Designate A Human Resources Officer

The Employer hereby designates the following employees as the Primary HRO and Secondary HRO, to assist employees who are victims of domestic violence.

Primary HRO:

Borough Administrator, [Roberta Stern](#)
482 Hudson Terrace, Englewood Cliffs, New Jersey 07632
(201) 569-5252 X483
Rstern@englewoodcliffsnj.org

The designated HRO shall receive training on responding to and assisting employees who are domestic violence victims in accordance with this policy.

Managers and supervisors are often aware of circumstances involving an employee who is experiencing domestic violence. Managers and supervisors are required to refer any employee who is experiencing domestic violence or who report witnessing domestic violence to the designated HRO. Managers and supervisors must maintain confidentiality, to the extent possible, and be sensitive, compassionate, and respectful to the needs of persons who are victims of domestic violence.

The name and contact information of the designated HRO will be provided to all employees. This policy does not supersede applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General Directives and guidelines that impose a duty to report. For example, if there is any indication a child may also be a victim, reporting is mandatory

to the Department of Children and Families, Child Protection and Permanency, under N.J.S.A. 9:6-8.13.

Domestic Violence Reporting Procedures

Employees who are victims of domestic violence are encouraged to seek immediate assistance from their HRO. Employees who have information about or witness an act of domestic violence against an employee, are encouraged to report that information to the designated HRO, unless the employee is required to report the domestic violence pursuant to applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General directives and guidelines that impose a duty to report, in which case the employee must so report to the appropriate authority in addition to reporting to the designated HRO. Nothing in this policy shall preclude an employee from contacting 911 in emergency situations. Indeed, HROs shall remind employees to contact 911 if they feel they are in immediate danger.

The designated HRO shall:

A. Immediately respond to an employee upon request and provide a safe and confidential location to allow the employee to discuss the circumstances surrounding the domestic violence incident and the request for assistance.

B. Determine whether there is an imminent and emergent need to contact 911 and/or local law enforcement.

C. Provide the employee with resource information and a confidential telephone line to make necessary calls for services for emergent intervention and supportive services, when appropriate. The HRO or the employee can contact the appropriate Employee Assistance Program to assist with securing resources and confidential services.

D. Refer the employee to the provisions and protections of The New Jersey Security and Financial Empowerment Act, N.J.S.A. 34:11C-1 et seq. (NJ SAFE Act), referenced in this policy.

E. If there is a report of sexual assault or abuse, the victim should be offered the services of the Sexual Abuse Response Team.

F. Maintain the confidentiality of the employee and all parties involved, to the extent practical and appropriate under the circumstances, pursuant to this policy.

F.G. Upon the employee's consent, the employee may provide the HRO with copies of any TROs, FROs, and/or civil restraint agreements that pertain to restraints in the workplace and ensure that security personnel are aware of the names of individuals who are prohibited from appearing at the work location while the employee who sought the restraining order is present. All copies of TROs and FROs shall be maintained in a separate confidential personnel file.

Confidentiality Policy

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In responding to reports of domestic violence, the HRO shall seek to maintain confidentiality to protect an employee making a report of, witnessing, or experiencing domestic violence, to the extent practical and appropriate under the circumstances and allowed by law. Thus, this policy does not supersede applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General Directives and guidelines that impose a duty to report.

This confidentiality policy shall not prevent disclosure where to do so would result in physical harm to any person or jeopardize safety within the workplace. When information must be disclosed to protect the safety of individuals in the workplace, the HRO shall limit the breadth and content of such disclosure to information reasonably necessary to protect the safety of the disclosing employee and others and comply with the law. The HRO shall provide advance notice to the employee who disclosed information, to the extent possible, if the disclosure must be shared with other parties in order to maintain safety in the workplace or elsewhere. The HRO shall also provide the employee with the name and title of the person to whom they intend to provide the employee's statement and shall explain the necessity and purpose regarding the disclosure. For example, if the substance of the disclosure presents a threat to employees, then law enforcement will be alerted immediately.

This policy does not supersede applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General Directives and guidelines where mandatory reporting is required by the appointing authority or a specific class of employees.

Confidentiality Of Employee Records

To ensure confidentiality and accuracy of information, this policy requires the HRO to keep all documents and reports of domestic violence in confidential personnel file separate from the employee's other personnel records. These records shall be considered personnel records and shall not be government records available for public access under the Open Public Records Act. See N.J.S.A. 47:1A-10.

The New Jersey Security and Financial Empowerment Act

The New Jersey Security and Financial Empowerment Act, N.J.S.A. 34:11C-1, et seq. (NJ SAFE Act), is a law that provides employment protection for victims of domestic or sexual violence.

The NJ SAFE Act allows a maximum of 20 days of unpaid leave in one 12-month period, to be used within 12 months following any act of domestic or sexual violence. To be eligible, the employee must have worked at least 1,000 hours during the 12-month period immediately before the act of domestic or sexual violence. Further, the employee must have worked for an employer in the State that employs 25 or more employees for each working day during 20 or more calendar weeks in the current or immediately preceding calendar year. This leave can be taken intermittently in days, but not hours.

Leave under the NJ SAFE Act may be taken by an employee who is a victim of domestic violence, as that term is defined in N.J.S.A. 2C:25-19 and N.J.S.A. 30:4-27.6, respectively. Leave may also be taken by an employee whose child, parent, spouse, domestic partner, civil union partner, or other relationships as defined in applicable statutes is a victim of domestic or sexual violence.

Leave under the NJ SAFE Act may be taken for the purpose of engaging in any of the following activities, for themselves, or a child, parent, spouse, domestic partner, or civil union partner, as they

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relate to an incident of domestic or sexual violence:

- 1) Seeking medical attention;
- 2) Obtaining services from a victim services organization;
- 3) Obtaining psychological or other counseling;
- 4) Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase safety;
- 5) Seeking legal assistance or remedies to ensure health and safety of the victim; or
- 6) Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence.

Public Employer Domestic Violence Action Plan

The Employer has developed the following action plan to identify, respond to, and correct employee performance issues that are caused by domestic violence, pursuant to N.J.S.A. 11A:2-6a, and in accordance with the following guidelines:

- A. Designate an HRO with responsibilities pursuant to this policy.
- B. Recognize that an employee may need an accommodation as the employee may experience temporary difficulty fulfilling job responsibilities.
- C. Provide reasonable accommodations to ensure the employee's safety. Reasonable accommodations may include, but are not limited to, the following: implementation of safety measures; transfer or reassignment; modified work schedule; change in work telephone number or work-station location; assistance in documenting the violence occurring in the workplace; an implemented safety procedure, or other accommodation approved by the employer.
- D. Advise the employee of information concerning the NJ SAFE Act; Family and Medical Leave Act (FMLA); or Family Leave Act (FLA); Temporary Disability Insurance (TOI); or Americans with Disabilities Act (ADA); or other reasonable flexible leave options when an employee, or his or her child, parent, spouse, domestic partner, civil union partner, or other relationships as defined in applicable statutes is a victim of domestic violence.
- E. Commit to adherence to the provisions of the NJ SAFE Act, including that the employer will not retaliate against, terminate, or discipline any employee for reporting information about incidents of domestic violence, as defined in this policy, if the victim provides notice to their Human Resources Office of the status or if the Human Resources Office has reason to believe an employee is a victim of domestic violence.
- F. Advise any employee, who believes he or she has been subjected to adverse action as a result of making a report pursuant to this policy, of the civil right of action under the NJ SAFE ACT. And advise any employee to contact their designated Labor Relations Officer, Conscientious Employees Protection Act (CEPA) Officer and/or Equal Employment Opportunity Officer in the event they believe the adverse action is a violation of their collective bargaining agreement, the Conscientious Employees Protection Act or the New Jersey Law Against Discrimination and

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corresponding policies.

G. Employers, their designated HRO, and employees should familiarize themselves with this policy. This policy shall be provided to all employees upon execution and to all new employees upon hiring. Information and resources about domestic violence are encouraged to be placed in visible areas, such as restrooms, cafeterias, breakrooms, and where other resource information is located.

Resources

This policy provides an Appendix listing resources and program information readily available to assist victims of domestic violence. These resources should be provided by the designated HRO to any victim of domestic violence at the time of reporting.

Distribution Of Policy

WHO will be responsible for distributing this policy to employees, volunteers, and other employees identified above.

WHO will be responsible for updating this policy at least annually to reflect circumstances changes in the organization.

WHO will be responsible for monitoring the Division of Local Government Services in the Department of Community Affairs for modifications thereto, to public employers.

Other Applicable Requirements

In addition to this policy, the HRO and the public employer's appointing authority must follow all applicable laws, guidelines, standard operating procedures, internal affairs policies, and New Jersey Attorney General Directives and guidelines that impose a duty to report. Additionally, to the extent that the procedures set forth in this policy conflict with collective negotiated agreements or with the Family Educational Rights and Privacy Act (FERPA), the provisions of the negotiated agreements and the provisions of FERPA control.

Policy Modification and Review

A public employer may seek to modify this policy, to create additional protocols to protect victims of domestic violence but may not modify in a way that reduces or compromises the safeguards and processes set out in this policy.

Policy Enforceability

These provisions do not create any promises or rights that may be enforced by any persons or entities.

Policy & Effective Date

Any questions concerning the interpretation or implementation of this policy shall be addressed to the Borough Administrator, or their designee. This policy shall be enforceable upon the HRO's completion of training on this policy.

Workplace Violence Policy:

The Borough has adopted this Zero Tolerance Policy for workplace violence because it recognizes that workplace violence is a growing problem nationally that needs to be addressed by all employers. Consistent with this policy, acts or threats of physical violence, including intimidation, harassment, and/or coercion which involve or affect the Borough, its employees or which occur on the Borough's property will not be tolerated.

Threats or Acts of Violence Defined. "Threats or acts of violence" include conduct against persons or property that is sufficiently severe, offensive, or intimidating to alter the employment conditions with the Borough, or to create a hostile, abusive, or intimidating work environment for one or more employees.

Examples of Workplace Violence. General examples of prohibited workplace violence include, but are not limited to, the following:

All threats or acts of violence occurring on Borough property, regardless of the relationship between the Borough and the parties involved in the incident.

All threats or acts of violence not occurring on Borough property but involving someone who is acting in the capacity of a representative of the Borough.

All threats and acts of violence not occurring on Borough property involving an employee of the Borough if the threats or acts of violence affect the legitimate interest of the Borough.

Any threats or acts resulting in the conviction of an employee or agent of the Borough, or of an individual performing services on the Borough's behalf on a contract or temporary basis, under any criminal code provision relating to threats or acts of violence that adversely affect the legitimate interests and goals of the Borough.

Specific Examples of Prohibited Conduct. Specific examples of conduct which may be considered "threats or acts of violence" prohibited under this policy include, but are not limited to:

Hitting, fighting, pushing, or shoving an individual or throwing objects;

Threatening to harm an individual or his/her family, friends, associates, or their property;

The intentional destruction or threat of destruction of property owned, operated, or controlled by the Borough;

Making harassing or threatening telephone calls, letters or other forms of written or electronic

communications;

Intimidating or attempting to coerce an employee to do wrongful acts that would affect the business interests of the Borough;

Harassing surveillance, also known as “stalking,” the willful, malicious and repeated following of another person and making a credible threat with intent to place the other person in reasonable fear of his or her safety;

Making a suggestion or otherwise intimating that an act to injure persons or property is “appropriate,” without regard to the location where such suggestion or intimidation occurs;

Unauthorized possession or inappropriate use of firearms, weapons, or any other dangerous devices on Borough property.

While employees of the Borough may be required as a condition of their work assignment to possess firearms, weapons or other dangerous devices, or permitted to carry them as authorized by law, employees are to use them only in accordance with departmental operating procedures and all applicable State and Federal laws.

Application of Prohibition. The Borough’s prohibition against threats and acts of violence applies to all persons involved in the Borough’s operation, including but not limited to Borough personnel, volunteer, contract and temporary workers, and anyone else on Borough property. Violation of this policy by any individual on Borough property, by any individual acting as a representative of the Borough while not on Borough property, or any individual acting off of the Borough property when his or her actions affect the public interest or the Borough’s business interests will be followed by legal action, as appropriate. Violation by an employee of any provision of this policy may lead to disciplinary action up to and including termination.

Warning Signs, Symptoms and Risk Factors. The following are examples of warning signs, symptoms, and risk factors which MAY indicate an employee’s potential for workplace violence:

Dropping hints about a knowledge of firearms;

Making intimidating statements like: “You know what happened at the Post Office,” “I’ll get even,” or “You haven’t heard the last from me”;

Possessing reading material with themes of violence, revenge and harassment;

Physical signs of hard breathing, reddening of complexion, menacing stare, loudness, fast profane speech;

Acting out either verbally or physically;

Disgruntled employee or ex-employee who is excessively bitter;

Being a loner;

Having a romantic obsession with a co-worker who does not share that interest;

History of interpersonal conflict;

Intense anger, lack of empathy;

Domestic problems, unstable/dysfunctional family;

Brooding, depressed strange behavior, “time bomb ready to go off.”

Supervisors should be alerted to and aware of these indicators. If an employee exhibits such behavior, the employee should be monitored and such behavior should be documented.

Procedures for Dealing with Acts of Workplace Violence. When a violent act occurs in the workplace: If a violent act or altercation constitutes an emergency, call 9-1-1 or the local police department. In instances that are not emergency situations, contact your Department Head or the designated human resources official. If possible, separate the parties involved in the violent altercation. If the parties cannot be separated, or if it would be too dangerous for the employee to separate the parties, call 9-1-1 or the local police department, and contact your Department Head or the designated human resources official. The Department Head will contact the designated human resource officer, who will take responsibility for coordinating a response to the incident.

In instances that involve criminal situations, the designated human resources official will contact the appropriate local police department for assessment, and if necessary, a criminal investigation.

Employee Reporting Obligations and Procedure. Each employee and every person on Borough property is encouraged to report incidents or threats or acts of physical violence of which he or she is aware. In cases where the reporting individual is not an employee, the report should be made to the local police department. In cases where the reporting individual is an employee, the report should be made to the employee’s Department Head or the designated human resources official. Each Department Head shall promptly refer any such incident to the designated human resources official.

The Borough will promptly and thoroughly investigate all reports of threats of (or actual) violence and/or suspicious individuals or activities. Any individual determined to be responsible for conduct in violation of this policy will be subjected to disciplinary action up to and including termination of employment, arrest and prosecution.

Nothing in the policy alters any other reporting obligation established in the Borough’s policies or in state, federal or other applicable law.

Confidentiality and Retaliation. This policy prohibits retaliation against any employee who, in good faith, reports a violation of this policy. Every effort to the extent practicable will be made to protect the safety and identity of anyone who comes forward with concerns about a threat or act of violence. Employees shall refer any questions regarding his or her rights and obligations under the policy to the designated human resources official. ~~The Borough will not tolerate workplace violence. Violent acts or threats made by an employee against another person or property are cause~~

for immediate dismissal and will be fully prosecuted. This includes any violence or threats made on Borough property, at Borough events or under other circumstances that may negatively affect the Borough's ability to conduct business.

Prohibited conduct includes:

- Causing physical injury to another person;
- Making threatening remarks;
- Aggressive, hostile, or bullying behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress;

- ~~Intentionally damaging employer property or property of another employee;~~
- ~~Possession of a weapon while on Borough property or while on Borough business except with the authority of the Police Chief; and~~
- ~~Committing acts motivated by, or related to, sexual harassment or domestic violence.~~

~~Any potentially dangerous situations must be immediately reported. The Borough will actively intervene in any potentially hostile or violent situation.~~

Employee Complaint Policy:

Employees who observe actions they believe to constitute harassment, sexual harassment, or any other workplace wrongdoing should immediately report the matter to their Department Head, or, if they prefer, or do not think that the matter can be discussed with their Department Head, they should contact the Borough Administrator . Reporting of such incidents is encouraged both when an employee feels that he or she is subject to such incidents or observes such incidents in reference to other employees. Employees should report incidents in writing using the Employee Complaint form, but may make a verbal complaint at their discretion. If the employee has any questions about what constitutes harassment, sexual harassment, or any other workplace wrongdoing, they may ask their Department Head or one of the individuals listed above. All reports of harassment, sexual harassment, or other wrongdoing will be promptly investigated by a person who is not involved in the alleged harassment or wrongdoing.

No employee will be penalized in any way for reporting a complaint. There will be no discrimination or retaliation against any individual who files a good-faith harassment complaint, even if the investigation produces insufficient evidence to support the complaint, and even if the charges cannot be proven. There will be no discrimination or retaliation against any other individual who participates in the investigation of a complaint.

If the investigation substantiates the complaint, appropriate corrective and/or disciplinary action will be swiftly pursued. Disciplinary action up to and including discharge will also be taken against individuals who make false or frivolous accusations, such as those made maliciously or recklessly. Actions taken internally to investigate and resolve harassment complaints will be conducted confidentially to the extent practicable and appropriate in order to protect the privacy of persons involved. Any investigation may include interviews with the parties involved in the incident, and if necessary, with individuals who may have observed the incident or conduct or who have other relevant knowledge. The complaining employee will be notified of a decision at the conclusion of the investigation within a reasonable time from the date of the report an incident.

Grievance Policy:

A grievance is any formal dispute concerning the interpretation, application and enforcement of any personnel policy or procedure of the Borough. Grievances submitted by union employees will

be addressed pursuant to the terms of the applicable bargaining unit agreement. All grievances from non-union employees must be presented within five (5) working days after arising. Failure to report a grievance within such time period shall be deemed as a waiver of the grievance. In the event of a settlement or ruling that results in a determination of monetary liability, such liability shall not exceed more than thirty (30) working days prior to the date the grievance was first presented in writing.

- **Step One:** Any employee or group of employees with a grievance shall communicate the grievance to their supervisor or Department Head who will discuss the matter with the Borough Administrator. The supervisor or Department Head will communicate the decision to the employee within five (5) working days.
- **Step Two:** If the employee is not satisfied with the decision, the employee must submit a written grievance to the Borough Administrator detailing the facts and the relief requested. The decision in Step One will be deemed final if the employee fails to submit a written grievance within five (5) days working days of the Step One decision. The Borough Administrator will render a written decision to the employee within five (5) working days after receipt of the written grievance.

The above referenced grievance procedures do not apply to employee complaints made under the Borough's Anti-Harassment and Discrimination Policies.

Conflict of Interest Policy:

Employees including Borough officials must conduct business according to the highest ethical standards of public service. Employees are expected to devote their best efforts to the interests of the Borough. Violations of this policy will result in appropriate discipline including termination.

The Borough recognizes the right of employees to engage in outside activities that are private nature and unrelated to Borough business. However, business dealings that appear to create a conflict between the employee and the Borough's interests are unlawful under the New Jersey Local Government Ethics Act. Under the Act, certain employees and officials are required to annually file with the Borough Clerk a state mandated disclosure form. The Borough Clerk will notify employees and Borough officials subject to the filing requirements of the Act.

A potential or actual conflict of interest occurs whenever an employee including a Borough official is in a position to influence a Borough decision that may result in a personal gain for the employee or an immediate relative including a spouse or significant other, child, parent, stepchild, sibling, grandparents, daughter-in-law, son-in-law, grandchildren, niece, nephew, uncle, aunt, or any person related by blood or marriage residing in an employee's household. Employees are required to disclose possible conflicts so that the Borough may assess and prevent potential conflicts. If there are any questions whether an action or proposed course of conduct would create a conflict of interest, immediately contact the Borough Administrator or the Borough Attorney to obtain clarification.

Employees are allowed to hold outside employment as long as it does not interfere with their Borough responsibilities. Employees are prohibited from engaging in outside employment activities while on the job or using Borough time, supplies or equipment in the outside employment activities. The Borough Administrator may request employees to restrict outside employment if the quality of Borough work diminishes. Any employee who holds an interest in, or is employed by, any business doing business with the Borough must submit a written notice of these outside interests to the Borough Administrator.

Employees may not accept donations, gratuities, contributions or gifts that could be interpreted to affect their Borough duties. Under no circumstances accept donations, gratuities, contributions or gifts from a vendor doing business with or seeking to do business with the Borough or any person or firm seeking to influence Borough decisions. Meals and other entertainment valued in excess of \$10.00 are also prohibited. Employees are required to report to the Borough Administrator any offer of a donation, gratuity, contribution or gift including meals and entertainment that is in violation of this policy.

Political Activity Policy:

Employees have exactly the same right as any other citizen to join political organizations and participate in political activities, as long as they maintain a clear separation between their official responsibilities and their political affiliations. In accordance with State law, employees are prohibited from engaging in political activities while performing their public duties and from using Borough time, supplies or equipment in any political activity. Political activities include, but are not limited to, advocating the election or appointment of any candidate for office, verbally or otherwise, and soliciting funds for campaign or campaign materials.

Additionally, State law precludes employees from directly or indirectly using their position to control or affect the political action of another person. In accordance with the Hatch Act and Federal regulations, an employee whose principal employment is with a program financed in whole or in part by Federal funds or loans shall not:

- Be a candidate for public office in a partisan election. (This provision does not apply to the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs.)
- Use his/her official authority to influence, to interfere with or affect election results or nominations for office.
- Directly or indirectly coerce contributions from any employee to support a political party or candidate. See The Hatch Act, 5 U.S.C. § 1501, et. seq.

Violations of either State or Federal laws are serious matters and such violations should not be taken lightly. Any employee engaging in such political activities during working hours will be subject to disciplinary action up to and including termination of employment. Employees who engage in political activities during their non-working hours must not represent themselves as

spokespersons for the Borough. Employees should report any violation of this policy to their supervisor or Department Head.

Protection and Safe Treatment of Minors Policy:

Purpose and Scope:

Under New Jersey law (N.J.S.A. 6-8.21), an abused or neglected child is anyone “under the age of 18 who is caused harm by a parent, guardian or other person having custody or control of that minor.” A child who is under the age of eighteen (18) is considered to be abused or neglected when a parent, caregiver, another child or another adult does one of more of the following:

1. Inflicts or allows to be inflicted physical injury by other than accidental means that creates substantial harm or risk of substantial harm, and/or
2. Fails to provide proper supervision or adequate food, clothing, shelter, education or medical care although financially able or assisted to do so, and/or
3. Commits or allows to be committed an act of sexual abuse against a child.

Child abuse can have long-term effects on victims. A lack of trust and difficulty with healthy relationships is common, as is a core feeling of worthlessness and low self-esteem. There may even be long-term trouble with regulating emotions that can lead to destructive behaviors. Please see the Borough Administrator for a complete copy of policy.

Employee Evaluation Policy:

The Borough recognizes that an employee job performance evaluation system is the basis for assisting in employee growth and development. The Borough requires supervisors to conduct performance appraisals to ensure that:

1. each employee receives feedback on objectives, accomplishments, strengths, and areas for improvement;
2. each employee receives advice from his or her supervisor on ways to improve performance and has the chance to identify with his or her supervisor areas where greater contribution is possible, or where either feels more development would be beneficial; and
3. essential information is recorded concerning strengths and weaknesses of all employees in relation to career development, including potential for advancement and suitability for other positions and training.

The performance evaluation provides the vehicle for a dialogue between the employee and the supervisor and ensures shared expectations of the requirements for the employee's job and the employee's performance in the job. Accordingly, the Borough will use a performance

review/evaluation system for all employees.

During performance reviews, supervisors will consider, among others:

- Initiative, dependability and effort
- Knowledge of work
- Attitude and willingness
- Quantity and quality of work
- Disciplinary record
- Attendance and tardiness

A copy of an employee performance evaluation shall be maintained in the employee's personnel file. As a part of the evaluation, employees have the right to request a conference with the Borough Administrator.

Discipline and Termination Policy:

Corrective disciplinary action, as appropriate, will be taken against any employee found to be in violation of established procedures. All disciplinary action shall be based upon total concern for the employee, the employee's relationship with his/her fellow workers, the employee's relationship with his/her supervisor, and the best interest of the Borough. Such disciplinary action shall be of a positive, educational and corrective nature, and shall not be used in an abusive or vindictive manner.

Discipline is considered to be major or minor. Major discipline shall include:

- Removal
- Disciplinary demotion
- Suspension of greater than five (5) days

Minor discipline is a formal written reprimand or a suspension of five (5) or less days. This policy covers non-union employees. It also covers union employees to the extent that their collective bargaining agreements do not cover this subject matter.

An employee may be subject to discipline for any of the following reasons:

- Incompetency, inefficiency or failure to perform duties;
- Insubordination;

- Inability to perform duties;
- Chronic or excessive absenteeism or lateness;
- Conviction of a crime;
- Conduct unbecoming a public employee;
- Neglect of duty;
- Misuse of public property, including motor vehicles;
- Discrimination that affects equal employment opportunity, including sexual harassment;
- Violation of federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and state and local policies issued thereunder;
- Falsification of public records, including attendance and other personnel records;
- Failure to report absence;
- Harassment of co-workers and/or volunteers and visitors;
- Theft or attempted theft of property belonging to the Borough, fellow employees, volunteers or visitors;
- Unauthorized absences and/or chronic or excessive absences;
- Fighting on Borough's property at any time;
- Being under the influence of intoxicants (e.g., liquor) or illegal drugs (e.g., cocaine or marijuana) on Borough property and at any time during work hours;
- Failure to report to work on the day or days prior to or following a vacation, holiday and/or leave, and/or any other unauthorized day of absence;
- Possession, sale, transfer or use of intoxicants or illegal drugs on Borough property and at any time during work hours;
- Entering the building without permission during non-scheduled work hours;
- Soliciting on Borough premises during work time. This includes but is not limited to distribution of literature or products or soliciting membership in fraternal, religious, social or political organizations, and for sales of products, such as those from Avon, Amway, etc.;

- Careless waste of materials or abuse of tools, equipment or supplies;
- Deliberate destruction or damage to Borough property or the property of other employees;
- Sleeping on the job;
- Carrying weapons of any kind on Borough premises and/or during work hours, unless carrying a weapon is a function of your job duties;
- Violation of established safety and fire regulations;
- Unauthorized absence from work area, and/or roaming or loitering on the premises, during scheduled work hours;
- Defacing walls, bulletin boards or any other property of the Borough or other employees;
- Unauthorized disclosure of confidential Borough information;
- Gambling on Borough premises;
- Horseplay, disorderly conduct and use of abusive and/or obscene language on Borough premises;
- Deliberate delay or restriction of your work effort, and/or incitement of others to delay or restrict their work effort;
- Conviction of a crime or disorderly persons offense;
- Violating any Borough rules, procedures, regulations or policies;
- Unauthorized use of computers, Internet, email, voicemail, telephone and cellular phone; and
- Other sufficient cause.

These are mere examples and not an exhaustive list or binding on the Borough. Additionally, the Borough reserves the right to use any and all forms of discipline on a case-by-case basis and is not obligated to use progressive discipline. Employment with the Borough may be terminated at any time with or without cause or reason by the employee or Borough.

Major disciplinary action includes termination, disciplinary demotion or suspension exceeding five working days. Minor discipline includes a formal, written reprimand or a suspension of five (5) working days or less. Employees who object to the terms or conditions of the discipline are entitled to a hearing under the applicable grievance procedure. In every case involving employee

discipline, employees will be provided with an opportunity to respond to charges either verbally or in writing.

In cases of employee misconduct, the Borough believes in corrective action for the purpose of correcting undesirable behavior and preventing a recurrence of that behavior. The corrective action taken will be related to the gravity of the situation, the number and kind of previous infractions and other circumstances. In every case, employees will be given an opportunity to state the situation from their point of view.

In order to correct undesirable behavior Department Heads and managers may utilize the following corrective tools: verbal reprimand; Borough Administrator review; written reprimand; suspension; and, dismissal. At the discretion of Borough, action may begin at any step, and/or certain steps may be repeated or by-passed, depending on the severity and nature of the infraction and the employee's work/disciplinary record.

Neither this manual nor any other Borough guidelines, policies or practices create an employment contract. Employment with Borough may be terminated at any time with or without cause or reason by the employee or Borough.

There will be occasions, however, where employees perform at an unsatisfactory level, violate a policy, or engage in inappropriate behavior. Except as otherwise provided by a collective negotiations agreement or by law, employment may be terminated at-will by the employee or the Borough at any time with or without cause and without following any system of discipline or warnings.

Resignation Policy:

An employee who intends to resign in good standing must notify the Borough Administrator in writing at least fourteen (14) days in advance. The Borough may waive this requirement and consent to shorter notice. If the employee resigns without giving the required notice, he/she will be considered to have resigned not in good standing.

After giving notice of resignation, employees are expected to assist their Department Head and co-employees by providing information concerning their current projects and help in the training of a replacement. During the last two weeks, the employee may not use paid time off, except paid holidays. The Borough Administrator will prepare an Employee Action form showing any pay or other money owed the employee. The Borough Administrator may conduct a confidential exit interview to discuss benefits including COBRA options, appropriate retirement issues and pay due. A COBRA notification letter will be sent to the employee's home address. The exit interview will also include an open discussion with the employee. If the Borough Administrator does not conduct an exit interview, the Borough Administrator will advise the employee as to the status of various employee benefits.

On the last day of work, and prior to receiving the final paycheck, the employee must return all

keys/cards/fobs and equipment. At this time, the employee will sign the termination memo designating all money owed and this memo will be retained in the official personnel file.

Work Force Reduction Policy:

The Borough may institute layoff actions for economy, efficiency or other related reasons, but will first consider voluntary alternatives. Seniority, lateral or other re-employment rights for employees will be determined by the Borough Administrator.

Driver's License Policy:

Any employee whose work requires that the operation of Borough vehicles must hold a valid New Jersey State Driver's License.

All new employees who will be assigned work entailing the operating of a Borough vehicle will be required to submit to a Department of Motor Vehicles driving records check as a condition of employment. A report indicating a suspended or revoked license status may be cause to deny or terminate employment.

Periodic checks of employee's drivers' licenses through visual and formal Department of Motor Vehicles review checks shall be made by Department Heads or Division Department Heads. Any employee who does not hold a valid driver's license will not be allowed to operate a Borough vehicle until such time as a valid license is obtained.

Any employee performing work which requires the operation of a Borough vehicle must notify the immediate Department Head in those cases where a license is expired, suspended or revoked and/or who is unable to obtain an occupational permit from the State Department of Licensing. An employee that fails to report such an instance, is subject to disciplinary action, including demotion or termination. An employee who fails to immediately report such revocation or suspension to their Department Head and continues to operate a Borough vehicle shall be subject to possible termination.

Any information obtained by the Borough in accordance with this section shall be used by the Borough only for carrying out its lawful functions and for other lawful purposes in accordance with the Driver's Privacy Protection Act (18 U.S.C. S 2721 et seq.)

SECTION TWO: WORKPLACE POLICIES

Attendance Policy:

All employees are expected to be at work and ready to assume their duties at the beginning of the scheduled workday. Lateness and absence will be tolerated only in emergencies or when the Department Head gives prior approval. All absences must be reported to the Department Head prior to the start of the normal workday. The normal working hours for administrative departments are 9 AM to 4 PM. The working hours for other departments are established by departmental procedures and bargaining unit agreements.

Early Closing and Delayed Opening Policy:

In the event of unsafe conditions, the Borough Administrator may authorize Department Heads to close operations earlier than the normal working hours. If conditions exist prior to scheduled openings, the Borough Administrator shall notify Department Heads of a delayed opening and a new opening time. Each Department will have a calling system in place. If the employee chooses not to report to work, a full vacation day or compensating time will be charged. Sick time will only be charged for a legitimate illness. If work is called off for the day, no time will be charged for the day. This provision does not apply to the Department of Public Works, Police, Emergency Services or any personnel who may be required to assist in an emergency.

Breaks:

Employees are entitled to a thirty minute lunch break, scheduled by their Department Head. Other employees are entitled to a lunch break as detailed by contract.

Dress Code Policy:

Each employee is expected to dress appropriately for the job. Dress, grooming and personal hygiene must be appropriate for the position. Uniforms are required for certain jobs and are to be worn in accordance with applicable departmental standards. All other employees are required to dress in a manner that is normally acceptable in similar business establishments and consistent with applicable safety standards. The following factors are relevant to determining appropriate dress:

- nature of work
- safety, including necessary precautions when working with or near machinery
- nature of employee contact with the public and the normal expectations of outside parties toward employees

- practices of others in similar jobs
- consideration of the image the Borough wishes to project

Employees shall not wear suggestive attire, jeans, athletic clothing, shorts, sandals, T-shirts, novelty buttons, baseball hats and similar items of casual attire that do not present a businesslike appearance. Hair, sideburns, moustaches and beards must be clean, combed and neatly trimmed. Shaggy, unkempt hair is not permissible regardless of length. Body piercings, other than earrings, may not be visible.

Additionally, some Departments may have more detailed and restrictive rules governing appearance. Employees are required to abide by applicable Department rules.

With the advance approval of the Borough Administrator, the Borough will make reasonable religious accommodations that do not violate safety standards. Employees violating this policy shall be required to take corrective action or will be sent home without pay.

This policy incorporates by reference all references to uniform and dress contained in all collective negotiations agreements in force between the Borough and its employees. Failure to abide by the terms of such agreements shall be deemed improper conduct.

No Smoking Policy:

The New Jersey Legislature has declared that in all governmental buildings the rights of non-smokers to breathe clean air supersedes the rights of smokers. In accordance with State law, the Borough has adopted a smoke-free policy for all buildings. Borough facilities shall be smoke-free and no employee or visitor will be permitted to smoke anywhere in Borough buildings. Employees are permitted to smoke only outside Borough buildings and such locations as not to allow the re-entry of smoke into building entrances. Smoking inside vehicles owned by the Borough and near equipment that may be sensitive to smoke is also prohibited. This policy shall be strictly enforced and any employee found in violation will be subject to disciplinary action.

Use of Borough Vehicles (Non-Law Enforcement) Policy:

The Borough owns and maintains a fleet of vehicles (“Borough Vehicles”) that are used in furtherance of the business of the Borough. The following policy governs the use of all Borough Vehicles (with the exception of vehicles utilized for law enforcement purposes) and supersedes all other vehicle policies previously in effect. Any employee violating the provisions contained herein will be subject to disciplinary action, up to and including termination, in accordance with applicable laws and regulations. Violations of this policy may also result in the denial of indemnification and/or defense by the Borough to the employee in any civil or criminal matter brought in any Court arising from improper use of a Borough vehicle. The Borough also expressly reserves its right to seek indemnification and/or contribution from employees (including their personal automobile insurance policies) found to have acted in violation of this policy to the maximum extent permitted by law.

Driving Privileges and Licensure. The use of a Borough Vehicle by an employee is subject to the approval and discretion of the Borough Administrator . Any employee operating a Borough Vehicle must have, in his or her possession, a valid driver's license issued by a state regulatory body within the United States. Licenses issued by any territory or possession of the United States, the District of Columbia, or any international agency (including any province of the Dominion of Canada) must be expressly approved by the Borough's insurance carrier before an employee will be permitted to operate a Borough Vehicle.

A. Employees are required to file a copy of a valid driver's license with the Borough prior to the use of a Borough Vehicle.

1. Upon request, an employee must provide a copy of their driver's license or other required documents within twenty-four (24) hours of said request.
2. Employees shall inform the Borough within twenty-four (24) hours of any changes in the status of their driving privileges.
3. Failure to comply with the requirements of this section will result in an immediate suspension of an employee's privilege to operate a Borough vehicle and may also result in the denial of indemnification and/or defense by the Borough to the employee in any civil or criminal matter brought in any Court arising from the use of a Borough vehicle while said employee's driving privileges were suspended or revoked.

B. The Borough reserves the right to obtain a driving abstract record from the New Jersey Motor Vehicle Service Commission or other regulatory and law enforcement agencies.

1. The Borough reserves the right to suspend an employee's Borough driving privileges if the Borough deems necessary based on the employee's driving record.
2. The Borough shall utilize information obtained pursuant to this section only for the purposes of furthering the objectives of this Policy and for no other reason and will not reveal personal or other information contained in an employee's driving abstract record to any party except where required by applicable law.

C. The Borough occasionally offers safe driving courses and reserves the right to compel employee attendance at such courses.

D. If requested by the Borough Administrator or human resources official, the employee must agree to consent to a simulated road test to determine his/her fitness to safely operate a vehicle.

E. In the event that the employee is under the influence of any medication (prescribed or over-the-counter) that might impair his/her ability to safely operate a vehicle, he/she must refrain from driving until he/she notifies the Borough and await clearance to resume driving.

Official Use Only. The use of Borough Vehicles is restricted to official Borough business only. Employees shall not be permitted to use Borough vehicles for travel or activity unrelated to Borough business. Likewise, no supervisor may authorize such use or any use of a Borough Vehicle for other than Borough business or use which is otherwise inconsistent with this policy.

Borough Vehicles assigned to employees under this policy are to be operated only by the employee while acting within the scope of their employment. No employee shall authorize or permit any other non-Borough employee, including but not limited to family members of the employee, to operate or ride as a passenger in an assigned Borough Vehicle, unless said passengers are assisting in the official business of the Borough.

Location of Vehicles. Employees who are assigned the regular use of a Borough Vehicle for official business may, with written permission of his/her Department Head, take the Borough Vehicle home at night and keep said vehicle at home while off duty.

If the employee will be absent from duty for more than two (2) working days, or more than five (5) consecutive days, including weekends and holidays, he/she must surrender the Borough vehicle to his/her direct supervisor unless directed otherwise. An employee storing the vehicle at his residence must provide safe parking for the vehicle at all times.

Commuting. The use of a Borough Vehicle for driving to and from work is voluntary and does not entitle the employee to compensation or pay while engaged in that activity.

Accidents and Incidents. Prior to operation of any Borough vehicle, employees must consult their Department Head as to the appropriate steps to take if they become involved in an accident (filling out accident reports, obtaining witness names, etc.)

A. In the event of an incident or accident involving the use of a Borough Vehicle, employees must immediately contact their supervisor and/or Department Head. All required reports and documentation must be submitted to the Borough Administrator within two (2) business days of receipt.

B. An employee may be required to submit to an alcohol or drug screening test following an accident or incident if there is a reasonable suspicion to believe that the employee's use of drugs or alcohol may have contributed to the cause of the accident or as otherwise required by law or other policy of the Borough.

Citations and Violations. Operators of Borough Vehicles are expected to follow all laws, regulations and rules proscribed by the Motor Vehicle Commission. Drivers are responsible for paying any moving violation tickets and MUST notify the Borough of said violations within forty-eight (48) hours of receipt of said ticket (regardless of the employee's decision to contest such ticket in municipal court). Drivers are responsible for paying all parking tickets incurred. The Borough should be notified of the receipt of a parking ticket within 48 hours of receipt of said ticket.

Drivers are responsible for all “Notice of Delinquent Toll Payment Violations” (including but not limited to EZ-Pass). Upon having been notified of said violation, either by direct mail or notice from the Borough, an employee shall, within ten (10) business days of such notice, provide acceptable proof to the Borough that the outstanding toll and any related fees have been paid.

General Policies and Procedures. Employees authorized to use a Borough Vehicle for official business must adhere to the policies and procedures set forth in this Policy. Failure to comply with the provisions below will result in a loss of privileges:

A. Drivers must ensure that all required documents (driver's license, LD. badge/card, registration, insurance card) are in their possession while operating the vehicle. Vehicle registration and insurance cards should be kept in a locked compartment of the vehicle when not in use.

B. Employees assigned exclusive use of a Borough Vehicle are responsible for scheduling all repairs and manufacturer recommended maintenance with the Borough, in order to maintain all manufacturers' warranties (including routine oil changes).

C. Vehicles are to be kept clean at all times, and should be washed and vacuumed regularly (unless prohibited by the New Jersey Department of Environmental Protection or other similar regulatory body).

D. No smoking is allowed in Borough Vehicles at any time.

E. In accordance with N.J.S.A. 39:4-97.3 and any other applicable statutes and regulations, the use of hand-held phones or electronic devices (BlackBerry, navigation systems, etc...) while driving Borough Vehicles is prohibited. This prohibition includes the sending or reading of e-mails, text messages and other similar communications.

F. All occupants must wear seat belts at all times when the vehicle is in use and observe all road safe rules and regulations, such as “Wipers On, Lights On.”

G. Employees are expected to operate vehicles in a safe and courteous manner at all times and are expressly reminded to avoid tailgating or other unsafe practices.

H. Employees are reminded of the risks inherent from driving while drowsy. In the event that a driver becomes tired while operating a vehicle, they should pull off the road and seek appropriate assistance.

Violation of this policy may result in disciplinary action up to and including the suspension of the employee's privilege to operate a Borough Vehicle and/or termination.

Telephone and Personal Communication Usage Policy:

Land-line Telephones. Borough telephones are for official business use only during working

time. Charges for all other usage, including personal calls and unauthorized use of such devices, must be reimbursed to the Borough. Working time shall be defined as any time in which the employee is engaged in or required to be performing work tasks for the Borough, and excludes times when employees are properly not engaged in performing work tasks, including break periods and meal times.

Borough-Issued Mobile Phones/Devices. Borough-issued mobile devices may be issued to certain employees in the course of their employment with the Borough. Such Borough-issued devices are the sole and exclusive property of the Borough and are only to be utilized by employees in the course and scope of their employment during working time (any time in which the employee is engaged in or required to be performing work tasks for the Borough not to include times when employees are properly not engaged in performing work tasks, including break periods and meal times.) Employees will be charged for costs incurred due to their personal use of such devices. Accordingly, the Borough reserves the right to monitor the use of the Borough-issued cell-phones without notice, at any time, and any such data collected from the mobile device equipment is the sole and exclusive property of the Borough to be used for any purpose.

Similarly, the Borough reserves the right to review the manner and use of these mobile devices and physically inspect the equipment at any time with or without notice. Accordingly, the employee shall have no reasonable expectation of privacy in any transmissions made or received using a Borough-issued mobile device.

Employees are expected, at all times, to respect the integrity of the Borough-issued mobile devices and to maintain the equipment in proper working condition. If an employee discovers or recognizes that the mobile device is not in proper working condition, it is the employee's responsibility to bring this fact to the attention of his or her supervisor immediately.

Upon termination of employment or in the instance of an upgrade to the employee's phone or service, the employee must return the Borough-issued device to the Borough.

Prohibited Use of Personal Communication Devices. To alleviate distraction and disruption of regular work routines, personal communication devices are strictly prohibited from use during working time (any time in which the employee is engaged in or required to be performing work tasks for the Borough not to include times when employees are properly not engaged in performing work tasks, including break periods and meal times.) while in work areas, except where the Borough has provided such device(s) to employees for business use, or in case of an emergency (such as illness, accident, and calls of a similar emergent nature).

Employees are prohibited from using their personal communication device to copy and/or upload any, confidential information (i.e. Social Security numbers, medical and/or HIPAA protected information, dependent information or other information protected from unlawful disclosure). Employees must make reasonable efforts to obtain supervisor approval prior to making emergency calls during working time. Personal communication devices are defined as, but not limited to, cellular or two-way phones, text-messaging devices, iPhones, Android-enabled devices, BlackBerrys and pagers.

Other Personal Electronic Devices. Employees are not permitted to utilize electronic devices such as personal laptops, tablet devices, game systems, MP3 players, portable DVD players or any other type of personal entertainment systems while at work.

Violation of this policy may subject an employee to disciplinary action up to and including termination.

Computer Use, and Electronic Mail and Internet Policy:

The Borough's e-mail, voicemail, computer systems and Internet service are for official Borough business and use for all other non-business purposes during working time is prohibited. "Working time" shall be defined as any time in which the employee is engaged in or required to be performing work tasks for the Borough. Working time excludes times when employees are properly not engaged in performing work tasks, including break periods and meal times. This includes, but is in no way limited to, the use of computers or Borough-issued mobile devices, use of social networking, gaming or TV/video.

Note: All e-mail, voicemail, text, and internet messages are official documents subject to the provisions of the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq.

The Borough operates in an environment where the use of computers, e-mail and the Internet are essential tools for certain employees. Those employees are encouraged to use computers, e-mail and the Internet; however, it is the responsibility of the employee to guarantee that these systems are solely used for business-related purposes during working time, (as defined above) and are used in a proper and lawful manner at all times.

- Employees are advised that all computers owned by the Borough are to be used for business purposes only during working time (as defined above), and that they have no expectation that any information stored on a Borough computer is private. Because e-mail messages are considered as business documents, the Borough expects employees to compose e-mails with the same care as a business letter or internal memo.
- Downloading or misusing software available through the Internet could violate copyright laws or licensing requirements.
- Personal use of any computer during working time (as defined above) should be limited.
- The Borough reserves the right to block or cancel an employee's access to Internet sites or the Internet as a whole while using business computers or on the Borough's time.
- The e-mail, telephone, and Internet systems, as well as the messages thereon, are the property of the Borough.
- The Borough reserves its right to monitor its computer systems, including but not limited to, e-mail messages, computer files and Internet usage, with or without notice,

at any time, at the Borough's discretion. The Borough also reserves the right to access and disclose such communications and recordings to third parties in certain circumstances. Therefore, employees shall have no expectation of privacy in any transmissions made or received using Borough computers or e-mail accounts.

- Employees must be aware that the mere deletion of a file or message may not fully eliminate that file or message from the system.
- The existence of personal access codes, passwords and/or “message delete functions,” whether provided by the Borough or generated by the employee, do not restrict or eliminate the Borough's access to any of its electronic systems as the employees shall be on notice that they should not have any expectation of privacy when using these systems.
- Employees shall not share personal access codes or passwords, provide access to an unauthorized user, or access another's e-mail or Internet account without authorization.
- The Borough's network, including its connection to the Internet, is to be solely used for business-related purposes during working time (as defined above). If permission is granted, an employee's personal use of the Borough's computer, e-mail and connection to the Internet shall not interfere with the employee's duties and shall comply with the Borough's policies and all applicable laws.
- Any messages or transmissions sent outside of the organization via e-mail or the Internet will pass through a number of different computer systems, all with different levels of security. Accordingly, employees must not send privileged and/or confidential communications (i.e., Social Security numbers, medical and/or HIPAA protected information, dependent information or other information protected from unlawful disclosure), via e-mail or the Internet unless the message is properly encrypted, and should consider a more secure method of communication for such data.
- Because postings placed on the Internet may display the Borough's address or other Borough-related information, and thus reflect on the Borough, make certain before posting such information that it exhibits the high standards and policies of the Borough. Under no circumstances shall data of a confidential nature (i.e., Social Security numbers, medical and/or HIPAA protected information, dependent information or other information protected from unlawful disclosure) be posted on the Internet.
- If you identify yourself as an employee in any manner on any internet posting or blog, comment on any aspect of the Borough's business or post a link to the Borough, you must include the following disclaimer in an openly visible location: “the views expressed on this post are mine and do not necessarily reflect the views of the Borough of Englewood Cliffs or anyone associated/affiliated with the Borough of Englewood Cliffs.”
- Subscriptions to news groups or mailing lists are permitted only when the subscription

is for a work-related purpose and authorized by Borough. Any other subscriptions are prohibited.

- All files downloaded from the Internet, e-mail attachments or the like should be checked for possible viruses. If uncertain whether your virus-checking software is current, you must check with the Borough's Network Administrator before downloading.
- Any “unauthorized use” of e-mail or the Internet is strictly prohibited while at work or while using a Borough computer. “Unauthorized use” includes, but is not limited to: connecting, posting, or downloading obscene, pornographic, violent, sexually suggestive, or discrimination based material; attempting to disable or compromise the security of information contained on the Borough's computer systems; or sending or receiving obscene, violent, harassing, sexual or discrimination based messages. If an employee receives a message that is representative of an “unauthorized use” of the Borough's electronic media from someone outside of the Borough, it is the employee's duty to immediately inform the sender of such materials that he or she must refrain from sending such materials.
- Your Internet postings SHOULD NOT VIOLATE ANY OTHER APPLICABLE Borough POLICY, including, but not limited to, the following: the Borough’s Anti-Harassment and Discrimination Policies.
- Borough business which is conducted by an employee on his or her personal computer or device is subject to this policy and may be subject to the provisions of OPRA.

Any employee who violates this policy shall be subject to disciplinary action, up to and including termination. This policy shall not be construed to restrict employees' rights to share information about their employment terms and conditions communicate with each other; or engage in other concerted activities for their mutual aid and protection.

Social Network Postings

For purposes of this policy, a social network is defined as a site that uses internet services to allow individuals to construct a profile within that system, define a list of other users with whom they share some connection, and view and access their list of connections and those made by others within that system. The type of network and its design vary from site to site. Examples of the types of internet-based social networking activities include: blogging, networking, photo sharing, video sharing, microblogging, podcasting, as well as posting comments on the sites. The absence of, or lack of explicit reference to a specific site or activity does not limit the extent of the application of this provision.

The use of the internet and social networking sites, including but not limited to Snapchat, Facebook, Instagram and Twitter, is a popular activity; however, employees must be mindful of the negative impact of inappropriate or unauthorized postings upon the Borough and its relationship with the community. This provision identifies prohibited activities by employees on

the internet where posted information is accessible to members of the general public, including, but not limited to, public postings on social networking sites.

Specifically, the Borough reserves the right to investigate postings, private or public, that violate work-place rules, such as the prohibition of sexual harassment and other discriminatory conduct, where such postings lawfully are made available to the Borough by other employees or third parties. Employees should use common sense in all communications, particularly on a website or social networking site accessible to anyone. If you would not be comfortable with your supervisor, coworkers, or the management team reading your words, you should not write them.

Be advised that employees can be disciplined for commentary, content, or images that are defamatory, pornographic, proprietary, harassing, libelous, or that can create a hostile work environment. You can also be sued by agency employees or any individual who views your commentary, content, or images as defamatory, pornographic, proprietary, harassing, libelous or creating a hostile work environment. What you say or post on your site or what is said or posted on your site by others could potentially be grounds for disciplinary action, up to and including termination. However, nothing in this social networking policy is designed to interfere with, restrain, or prevent social media communications during non-working hours by employees engaging in protected concerted activities regarding wages, hours, or other terms and conditions of employment pursuant to the New Jersey Employer-Employee Relations Act or to prevent communications which are protected by the First Amendment freedom of speech clause, unless such communications are made as part of the employees' official job duties.

Security Policy

The Borough makes every effort to provide for employees' safety and security while at work. The Borough, however, does not accept responsibility for the protection of employees' personal property. The Borough is not liable for loss or damage to personal property.

The Borough maintains a work environment that is free of illegal drugs, alcohol, unauthorized firearms, explosives, or other improper materials. To this end, the Borough prohibits the possession, transfer, sale, or use of such materials on its premises. The Borough requires the cooperation of all employees in administering this policy. Desks, lockers, other storage devices, and Borough vehicles may be provided for the convenience of employees but remain the sole property of the Borough. Accordingly, they, as well as any articles found within them, can be inspected by any agent or representative of the Borough at any time, either with or without prior notice. The Borough may conduct video surveillance of Borough property to, among other things, identify safety concerns, detect theft, and discourage or prevent acts of harassment and workplace violence. Additionally, the Borough may monitor employee e-mails.

Security is everyone's responsibility. If any employee sees or suspects that an individual is breaching security, it is the employee's responsibility to notify his or her supervisor or Department Head immediately. In the event a serious incident occurs, employees must report it to their Department Head promptly. The following are examples of serious incidents that should be reported immediately:

1. Any accident which results in the injury of a third party while on the premises.
2. Any incident in which physical force is either used by or against an employee.
3. Any incident which involves a crime, or an attempt to commit a crime, such as robbery or the theft of money.
4. Any incident in which a serious unfavorable reaction from the public might be expected.
5. The loss of Borough keys.
6. Any other incident, which an employee believes is of a nature that it should be brought to the attention of the Department Head without delay.

Employees are encouraged to make any reports, in writing, so that they may be properly addressed by the Borough.

Bulletin Board Policy:

The bulletin boards located in the Borough administrative building and other facilities are intended for official notices regarding policies, procedures, meetings and special events. Only personnel authorized by the Borough Administrator may post, remove, or alter any notice.

Local Government Generative Artificial Intelligence Policy:

I. Purpose

Artificial Intelligence (AI)'s impact on the workplace is not fully known; however, technology and the use of AI are rapidly developing. It is anticipated by 2032, that Generative AI (Gen AI) will have significantly shifted the way people approach work productivity, as it is projected that 52% of all jobs will change as Gen AI is integrated into automated tasks.

The use of AI in local government has potential benefits:

- Ability to analyze large amounts of information, identify patterns, answer questions, make recommendations, and summarize findings.
- Reduce time spent on regular tasks, including creating documents such as memos, emails, job descriptions, and reports, and assist with rapid knowledge acquisition.
- Improved decision-making by discovering and exploring scenarios, evaluating options, and analyzing relevant data.
- Assist in developing new content, such as policies and procedures, website content, and social media posts, including rewording and improving grammar.

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The Borough of Englewood Cliffs uses reliable, collaborative, and secure information technology solutions to support the efforts of employees in delivering high-quality services to its community. As new, relevant local government technologies arise, the Borough often assesses the value that each can deliver. The Borough has a Council Technology Subcommittee and collaborated with other key stakeholders to maximize generative AI's benefits and reduce risks, such as security, privacy, and content issues. This policy provides rules and guidance for Borough staff to support the responsible use of generative AI tools. The Borough is committed to encouraging the use of emerging technologies that promote progress and innovation, increase organizational performance and quality service delivery, and serve the public good.

II. Policy

While AI is a broad and deep topic, this policy is currently concerned with solutions that use a specific type of AI called generative AI (Gen AI). This policy provides requirements for the Borough on the acceptable and ethical use of Gen AI as defined by this policy. This policy also acknowledges that the boundaries of such solutions can be complex to explain, and the nature of the technology is changing at a high rate. In the event of uncertainty in how any part of this policy applies, employees should seek guidance from the Borough Administrator or the Information Technology Manage Service Provider.

III. Use of AI

A. Definitions

1. Artificial Intelligence (AI): A machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems use machine and human-based inputs to perceive real and virtual environments and use model inference to formulate options for information or action.
2. Algorithm Bias (AI Bias): The tendency for AI algorithms to exhibit bias or discrimination based on factors such as race, gender, and socioeconomic status due to the data used to train them.
3. Generative AI Systems (Gen AI): The class of AI models that emulate the structure and characteristics of input data to generate derived synthetic content. This can include images, videos, audio, text, and other digital content.
4. Personal information: Includes, but is not limited to, any person's name, date of birth, social security number, other unique number identifiers, home or work address, next of kin, other associate's names, phone number, picture, image, or video of a person.

B. Authorized Gen AI Use

Authorized Agency Gen AI Systems (if any):

1. Agency Gen AI Systems are permitted to be utilized by members of the Borough subject to the prior approval from the Borough Administrator. It is likely that some current software applications and third-party vendors currently contracted with the Borough currently installed on agency hardware systems contain Gen AI capability. The Borough Administrator and the IT Manage Service Provider should identify such systems. The Borough Administrator and/or the IT Manage

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Service Provider might also suggest to the public entity leader that certain positions, tasks, or those assigned specific capacities are not authorized to use Gen AI.

2. External Gen AI Systems (Gen AI Systems available from other agencies or organizations):

a. Using any External Gen AI System requires the pre-approval of a Borough Administrator and must adhere to the standards associated with using Agency Gen AI, as delineated in this policy. Any use of External Gen AI Systems and the output of any such use must be verified by the employee prior to reliance or distribution of such results. No employee may rely solely upon the results or output from Gen AI without verification.

3. Specific Uses: Employees shall check with the Borough Administrator or IT Manage Service Provider for a current list of permissible specific uses of Gen AI.

Possible Examples May Include:

1. Letters
2. Emails
3. Project documentation
4. Speaker notes
5. Presentation slides
6. Social media posts RFPs, and similar web content
7. Reports
8. Procedures
9. Policies
10. Job descriptions
11. Press releases.
12. Copying a document into a generative AI tool for the purposes of summarizing and/or querying it (Gen AI Assist)
13. Suggesting writing improvements
14. Learning about and exploring topics.
15. Analyzing different types of data
16. Idea generation.
17. Research

C. AI Principals

1. Employees who utilize Gen AI must do so only in accordance with this policy.
2. It is the responsibility of every employee who utilizes Gen AI to verify the accuracy of the information. AI can produce content, but humans are responsible for its outcomes.
3. Every employee of the Borough is responsible for and must ensure that its use of Gen AI-related capabilities and the resulting information, including Gen AI, is trusted, safe, and secure to the best extent possible.
4. Whenever an employee utilizes Gen AI for any task approved by this policy, they must inform their supervisor, who will thoroughly review the material.

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5. It shall be the policy of the Borough to prioritize privacy and protect citizens' data as AI systems are developed, implemented, and procured. To ensure the highest data security and protection, the public entity leader must approve any development, procurement, or trial of Gen AI applications, software, tools, or applications that include Gen capability.

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6. All images and videos created by Gen AI systems must be attributed to the appropriate Gen AI system.

7. Whenever source citations are required or deemed appropriate for any written materials, and whenever Gen AI is utilized as a source, it shall be cited in the same manner as any other source.

D. Protecting Data

Employees of the Borough utilizing Gen AI systems shall:

1. Ensure that only the most necessary data is used in AI systems and that no personal information of any kind, as defined in this policy, is entered or utilized in any fashion.

2. Do not enter any propriety information of the Borough into a Gen AI system.

3. Do not enter into a Gen AI system:

- a) Personal information of any person.
- b) Property history information for any location.
- c) Personnel or staffing structure.
- d) Organizational policies or procedures or any portion thereof.
- e) System passwords or software codes.
- f) Town logos or insignias.
- g) Court records or tax records of any person or property.

4. Assume that all use of generative AI tools and content are subject to relevant public records requests and must adhere to the existing Borough data retention requirements where appropriate

E. Gen AI Prohibitions

1. Prior to any use of Gen AI for work-related activity, Employees shall check with the Borough Administrator or IT Manage Service Provider to confirm whether such use is prohibited.

2. Using any personal Gen AI System for any non-work-related activity is prohibited during work hours.

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3. The use of Gen AI shall never be utilized for:

- a) Performance evaluations
- b) Letters of reprimand
- c) Termination Letters

4. The use of Gen AI on any personal device during work hours is prohibited.

F. AI Gen Monitoring

1. The Borough will ensure that Gen AI systems' development, use, and deployment are evaluated for compliance with this policy. This is the responsibility of Borough Administrator and the IT Manage Service Provider.
2. As with all computer systems and software, there is no expectation of privacy when using any Gen AI System, and an employee's use of Gen AI is subject to review at any time.
3. The Borough will work to ensure that AI systems perform reliably and consistently under expected use conditions and that ongoing evaluation of system accuracy throughout the development and/or deployment lifecycle is managed and governed to the greatest extent possible.
4. The monitoring and random review process should aim to identify any use of Gen AI that has resulted in an algorithm bias or has or appears to have a disparate impact. The person responsible for the monitoring and audits shall report the audit findings to the Borough Administrator annually.

G. Leadership and Planning

1. The Borough Administrator and IT Manage Service Provider are responsible for regularly monitoring relevant Gen AI technology as best as possible, as new developments emerge rapidly.

H. Obligation to Report

1. Any employee learning of any Gen AI output or a Gen AI use that may be considered discriminatory, having a disparate impact, producing an algorithm bias, or in violation of this policy must report such to their immediate supervisor.

I. Community Transparency

1. The Borough values transparency and accountability and understands the importance of these values while using authorized AI systems.

J. Training:

1. A training program will be developed and must be completed by all employees prior to the use of any Gen AI. Any employee unsure of the requirements associated with the use of Gen AI or has questions concerning any Gen AI tool or application should consult with their immediate supervisor.

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SECTION THREE: PAID AND UNPAID TIME OFF POLICIES

Scope:

These policies cover non-union employees. They also cover union employees to the extent that their collective bargaining agreements do not cover these issues.

Paid Holiday Policy:

Employees are entitled to the following paid holidays:

- New Year's Day
- Martin Luther King's Birthday
- President's Day
- Good Friday
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Day after Thanksgiving (except Sanitation personnel who receive one extra day)
- Christmas Day
- Floating Holiday (to be deciding on a yearly basis collectively for all employees)

A holiday falling on a Saturday will be observed on the preceding Friday, and a holiday falling on a Sunday will be observed on the following Monday.

Vacation Leave Policy:

Vacation is an accrued benefit based on the following schedule:

- Five (5) days after the first six (6) months;
- Ten (10) days after the completion of one year through the fifth year;
- Fifteen (15) days for the sixth year through the tenth year;
- Twenty (20) days for the eleventh year through twentieth year.

- Twenty-five (25) days for the twenty first year and ongoing.

Employees must receive their Department Head's approval at least two (2) weeks in advance of the first vacation day. Employees who do not use all of their vacation allowance may add their unused days to their allowance for the following year. However, if these days are not used in the second year, they will be forfeited. No more than two consecutive weeks may be taken at a time. Any exceptions to this policy will be considered on a case-by-case basis.

Sick Leave Policy:

Sick days are an accrued benefit based on the following schedule:

- Ten (10) days during the first two years of employment;
- Fifteen (15) days for each year during the third year of employment through the fifth year of employment;
- Thirty (30) days per year beginning in the sixth year of employment.

For every 30 hours worked, an employee shall accrue one hour of sick leave. An employee may accrue or use in any year, or carry forward from one year to the next, no more than 40 hours of earned sick leave.

The Borough permits an employee, pursuant to N.J.S.A. § 34:11D-3(a), to use the earned sick leave accrued for any of the following instances:

1. Time needed for diagnosis, care, or treatment of, or recovery from, the employee's own mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee;
2. To aid or care for a family member during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member;
3. If an employee or a family member are a victim of domestic or sexual violence, and are obtaining services from a designated domestic violence agency or other victim services organization, medical attention, legal services, counseling, or are relocating due to the domestic or sexual violence;
4. Closure of an employee's workplace, or of the school or place of care of an employee's child, due to an epidemic or public health emergency, or because of the issuance by a public health authority of a determination that the presence of the employee or their family member in the community would jeopardize the health of others;

5. During a state of emergency declared by the Governor, or upon the recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the presence in the community of the employee or family member would jeopardize the health of others; or
6. If an employee needs to attend a school-related conference, meeting, function or other event requested or required by an administrator, teacher, or other professional school staff member responsible for the education of the employee's child, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

Notwithstanding the above, an employee may elect to use up to two (2) sick days for any purpose.

In regard to the above, the Borough requires three (3) days' notice for any foreseeable use of leave. If the use of leave is unforeseeable, the employee should notify the Borough as soon as practicable of their need to use same. Should an employee need to use three (3) or more consecutive days of leave, said employee must provide the Borough with reasonable documentation that the leave is being taken for one of the purposes permitted above. Reasonable documentation shall be as defined in N.J.S.A. § 34:11D-3(b).

An employee is eligible to use the earned sick leave beginning on the 120th calendar day after the employee starts work. The employee may subsequently use earned sick leave as soon as it is accrued. Employees will not be paid for any unused sick leave, except as expressly required by federal or State laws, or an applicable collective negotiations agreement.

An employee who exhausts all paid sick leave in any one year shall not be credited with additional paid sick leave until the beginning of the next calendar year.

Employees Covered under a Collective Bargaining Agreement – The employment details set out in this policy work in conjunction with, and do not replace, amend or supplement any terms or conditions of employment stated in any collective bargaining agreement that a union has with the Borough. Wherever employment details in this policy differ from the terms expressed in a collective bargaining agreement with the Borough, the specific terms of the collective bargaining agreement will control.

Bereavement Leave Policy:

Full-time employees are entitled to four (4) consecutive working days of bereavement leave for a death of an employee's immediate family or immediate family of the employee's spouse. "Immediate family" includes spouse, child, legal ward, grandchild, foster child, father, mother, legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, aunt, uncle, son-in-law, daughter-in-law, or any relative residing in the employee's household.

Employees shall be granted one (1) working day of bereavement leave with pay upon the death of an employee's spouse's aunt, uncle or grandparent.

In no event shall any part of bereavement leave occur more than fifteen (15) days from the date of death. The Borough may require that the employee produce reasonable proof of death and relationship. Bereavement leave shall not be charged to sick or vacation leave and such leave is not cumulative.

Procedure. To use bereavement leave:

1. Employees who request bereavement leave must notify their Department Head of their intent to take such leave as soon as possible. Unless impracticable, employees should request bereavement leave in writing.
2. The Department Head or his or her designee shall notify the designated human resources official that an employee is using bereavement leave.
3. Employees who request an extension of bereavement leave beyond the established number of days shall have such extensions charged to accumulated unused vacation or sick leave. If an employee has used all of his or her accrued leave time, extended bereavement leave will be considered as a request for a leave of absence without pay.

Jury Duty Policy:

When an employee is called for jury duty and for the duration of such service, the employee shall be entitled to a temporary leave with pay provided that:

- The employee submits a written request with a copy of the summons to his or her supervisor or Department Head within three (3) business days after receipt of the summons;
- The employee inquires about the anticipated length of service and informs his or her supervisor or Department Head of the expected duration in advance of accepting service;
- The employee notifies his or her supervisor or Department Head as soon as possible if the length of jury duty has been extended beyond the original return date;
- The employee communicates with their supervisor or Department Head to determine when they will report to work at such time as his or her presence as a juror is not required;
- The employee provides his or her supervisor or Department Head with an appropriate certification or order from the assignment judge, clerk of the court or such other officer as shall be appropriate setting forth the period of such jury duty service to be attached

to the weekly time sheet; and

- The employee reimburses the Borough for any payments or fees received as a result of such jury service less any meal or travel expenses.

Witness Duty Leave of Absence. The Borough is aware that employees may be subpoenaed to appear as witnesses in trials before the court. The Borough will provide employees with a paid leave of absence for matters stemming from their employment. For personal matters, employees will use available personal days or vacation days.

Leave of Absence Policy:

Employees may be granted a personal leave of absence for up to six (6) months at the sole discretion of the Borough Administrator if the leave does not cause undue operational disruption. The leave must include the use of any accrued vacation and sick leave time, regardless of the length of leave requested. The portion of the leave that runs beyond the exhaustion of vacation and sick leave will be without pay or longevity credit. In exceptional circumstances, the Borough Administrator may extend a leave of absence for an additional six months, if such extension is considered in the best interests of the Borough.

Personal leaves are not granted for the purpose of seeking or accepting employment with another employer, or for extended vacation time. Employees on personal leave of absence for more than two weeks in any month will not receive holiday pay, and will not accrue personal leave, sick leave or vacation time for that month. Health benefits may also be impacted. Refer to the Borough Health Benefits Policy. A personal leave is granted with the understanding that the employee intends to return to work for the Borough. If the employee fails to return within five (5) business days after the expiration of the leave, the employee shall be considered to have resigned.

Family and Medical Leave Act Policy:

In accordance with the federal Family and Medical Leave Act (“FMLA”), the Borough provides eligible employees with up to twelve (12) weeks of unpaid medical and family leave during any twelve (12) month period and up to twenty-six (26) workweeks to care for a Covered Service member. At the conclusion of the leave, subject to some exceptions, an employee generally has a right to return to the same or an equivalent position. The following outlines employees’ rights and obligations under the FMLA and the Borough’s policies implementing the FMLA.

Leave Available. Eligible employees may take up to a total of twelve (12) weeks of unpaid leave during any twelve (12) month period for any one or more of the following reasons:

- The birth, adoption or placement for foster care of the son or daughter of an employee, and to care for such child;
- A serious health condition of a spouse, son, daughter or parent of an employee if the

employee is needed to care for such family member; or

- A serious health condition of an employee that makes an employee unable to work. Generally, the incapacity must result in the employee's inability to work for more than three (3) consecutive days (although there are certain exceptions to this rule);
- Any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is a member of the Regular Armed forces, National Guard or Reserves on active-duty status during the deployment to a foreign country, and or has been notified of an impending call to active-duty status as such in support of a contingency operation.

In addition, eligible employees who are either spouse, son, daughter, parent or next of kin of a Covered Servicemember shall be entitled to a total of twenty-six (26) workweeks of unpaid leave during a single twelve (12) month period to care for the Covered Servicemember. During this single twelve (12) month period, an eligible employee who qualifies for leave to provide care for the Covered Servicemember shall be entitled to no more than a combined total of twenty-six (26) workweeks of leave.

Definitions.

"Covered Servicemember" means a member of the Armed Forces, including a member of the National Guard or Reserves, or a recent veteran who has been discharged, other than dishonorably, within the five years preceding the family member's initial request for leave, who has a serious injury or illness who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

"Eligible Employee" means an individual who has been employed by the Employer for at least twelve (12) months, has worked at least 1,250 hours during the preceding twelve (12) month period, and is employed at a worksite with at least fifty (50) employees within seventy-five (75) miles of that worksite.

"Next of kin" means the nearest blood relative of the individual.

"Qualifying Exigency" covers a number of broad categories of reasons and activities, including short-notice deployment to a foreign country, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities agreed to by the Borough and the employee.

"Serious Health Condition" means an illness, injury, impairment or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. It generally includes a period of incapacity due to pregnancy, prenatal care, a chronic health condition, a permanent or long-term health condition, or restorative or preventive treatment.

"Serious Injury or Illness" means an injury or illness incurred by a Covered Service member in the

line of duty or on active duty in the Armed Forces, National Guard of Reserves, incurred in the line of duty on active duty or whose pre-existing condition has been aggravated by his/her active duty service, that may render the service member medically unfit to perform the duties of the member's office, grade, rank or rating.

Eligibility. Any employee who has been employed by the Borough for twelve (12) months or more and worked 1,250 hours or more in the twelve (12) month period preceding the first day of the requested leave may be eligible for an unpaid leave of absence of up to twelve (12) weeks during any twelve (12) month period.

The twelve (12) month period shall be determined by using a rolling twelve (12) month period that commences with the first day of leave taken.

Leave to care for a child after birth, adoption, or foster care must conclude within twelve (12) months of the child's birth or placement. If both spouses work for the Borough, they may only take a total of twelve (12) weeks between them during the twelve (12) month period in order to care for a child after birth, adoption, or foster care or to care for a parent with a serious health condition and a combined twenty-six (26) weeks in a single twelve (12) month period for military caregiver leave or a combination of military caregiver leave and other FMLA qualifying reasons. Each spouse may be entitled to additional leave for other qualifying reasons under the FMLA, such as the employee's own illness or for the serious illness of the employee's child.

Notice. When the leave is foreseeable, at least thirty (30) days' advance notice to the Borough, in writing, is required. If thirty (30) days' notice cannot be provided, as much notice as is practical should be provided. Failure to give reasonable notice may delay the availability of the leave.

Certification. Where leave is taken to care for a family member with a serious health condition or because of the employee's own serious health condition, medical certification is required and periodic recertification may be required. In addition, where the leave is taken because of the employee's own serious health condition, a certification of fitness to return to work will be required.

The Borough, at its expense, may require an examination by a second healthcare provider designated by the Borough. If the second healthcare provider's opinion conflicts with the original medical certification, the Borough, at its expense, may require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion.

For military exigency leave, an employee may be required to provide certification that the covered military member is a member of the regular Armed Forces, National Guard or Reserves who is on active duty or called to active duty in support of a contingency operation, as well as certification from the employee about the nature and details of the specific exigency, the amount of leave needed, and the employee's relationship to the military member. For military caregiver leave, the employee may be required to provide information from the health care provider and employee and/or Covered Service member to support such leave.

Absent unusual circumstances, medical certifications must be provided within fifteen (15) days. The Borough will also require periodic status reports from employees concerning their intended return date.

Failure to provide requested documentation may result in denial of leave. The Borough may attempt to clarify or authenticate the certification or may require additional certifications to support the need for leave. When leave is taken to care for a family member, the Borough may require the employee to provide documentation or a statement of family relationship (e.g., birth certificate or court document) and proof of the need to care for the family member.

Utilization of Paid Leave. Generally, FMLA leave is unpaid. However, depending upon the circumstances, employees may be entitled to receive short-term disability, workers' compensation benefits, paid family leave benefits, or other state-sponsored wage replacement benefits which pay a portion of normal compensation. These benefits will run concurrently with the employee's unpaid leave. An employee who is eligible for these benefits may also choose to use accumulated paid leave during their approved unpaid leave. Employees may not receive more than 100% of salary at any time. An employee may choose to use any available accumulated paid leave concurrently with the employee's FMLA leave.

Coordination with other Leave Policies. The period of time attributable to the employee's absence due to any workers' compensation, disability, or sick leave, will be counted against available leave under this policy to the extent permitted by law. In the event that additional family, medical or sick leave is available pursuant to state laws, this leave will also run concurrently with FMLA leave to the extent permitted by law.

Intermittent Leave. When medically necessary, leave taken because of a serious health condition of an employee or family member or to care for a Covered Service member may be taken on an intermittent or reduced work schedule basis. The employee and Borough shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the Borough's operations, subject to the approval of the employee's health care provider. The Borough may require an employee taking intermittent or reduced work schedule leave to transfer temporarily to an alternative position with equivalent pay and benefits that is better suited to the leave schedule.

Employment and Benefits Protection. During the leave, health benefits will continue for up to twelve (12) weeks in each rolling twelve (12) month period under the same conditions as if the employee continued to work. Employees must, however, pay the same amount for any benefits continued as they do prior to the leave. Other benefits, if any, will continue during the leave under the same conditions as if the employee continued to work.

If paid leave is substituted for unpaid FMLA leave, the Borough will deduct the employee's portion of the health plan premium as a regular payroll deduction. If the employee's FMLA leave is unpaid, the employee must pay his/her portion of the premium in accordance with a payment method that is devised and mutually agreed upon between the employee and the Borough.

Employees should consult with their Department Head and human resources official prior to taking an approved leave. If you fail to return to work after your FMLA leave for any reason except for circumstances beyond your control, you must pay back all unpaid health insurance premiums. With regard to the employee's contribution portion of his/her health benefits pursuant to Chapter 78, P.L. 2011 and any voluntary supplemental benefits that the employee may have, the employee is solely responsible for making payment arrangements with the Borough or for any voluntary benefits, to the respective insurance company. Your healthcare coverage may cease if your premium payment is more than thirty (30) days late. With regard to any pension contribution that you may have, you must contact the human resources official to make payment arrangements concerning contributions or credits paid toward your pension benefits. If you fail to return to work after your FMLA leave for any reason except for circumstances beyond your control, you must pay back all unpaid health insurance premiums.

Before returning to work following a medical leave (except for intermittent or reduced schedule leave) due to the employee's own serious health condition, the employee will be required to present a fitness for duty certification from his/her health care provider that he/she is medically able to resume work. If the date on which the employee is scheduled to return to work from FMLA leave changes, the employee is required to give notice of the change, if foreseeable, to the Borough within two (2) business days of the change.

Subject to some exceptions, most employees will be returned to the position they left or to a position equivalent in pay, benefits and other terms of employment. Individuals identified as "key employees" (the highest paid 10% of salaried employees at the work site or within a seventy-five (75) mile radius of that work site) at the beginning of their leave may not be returned to their former or equivalent position if restoration will cause substantial economic injury to the Borough. Employees will be informed of their key employee status at the beginning of the leave period.

A failure to return from FMLA leave for reasons other than the employee's own serious health condition may result in termination of employment. In the event that an employee cannot return to work at the end of FMLA leave due to a continuation of his/her own serious health condition, they must contact the Borough before the expiration of the leave to discuss their options under state and federal law. State leave laws may provide additional leave similar to that provided under the FMLA. The Borough will comply with these state law provisions to the extent they provide for more generous benefits. State leave law benefits will run concurrently with FMLA benefits to the extent permitted by law.

Family Temporary Disability. During a period of unpaid leave to care for a family member with a serious health condition or a newborn or adopted child or child placed into foster care with the employee, the employee may be eligible for up to twelve (12) weeks of Family Leave Insurance ("FLI") payments through the State in a twelve (12) month period. FLI is a monetary benefit paid by the State and not a separate leave entitlement and will thus run concurrently with FMLA and/or NJFLA leaves.

New Jersey Family Leave Act Policy:

The Borough provides eligible employees with up to twelve (12) weeks of unpaid, job-protected leave for specified family reasons under the New Jersey Family Leave Act (NJFLA).

Eligible Employees. To be eligible for NJFLA leave, an employee must have worked at least twelve (12) months for the Borough and have worked at least 1,000 hours for the Borough over the previous twelve (12) months.

Qualifying Reasons for Leave. An employee may take NJFLA leave to care for:

- A newly born or adopted child or a child placed into foster care with the employee, but the leave must start within twelve (12) months of the birth of the child or the placement of the child.
- A family member (sibling, grandparent, grandchild, child, spouse, domestic partner, civil union partner, parent-in-law, or parent of a covered individual, or any other individual related by blood to the employee, and any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship) with a serious health condition.
- In the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease, which:
 - i. requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency;
 - ii. prompts the issuance by a public health authority of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee, would jeopardize the health of others; or
 - iii. results in the recommendation of a health care provider or public health authority, that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee, would jeopardize the health of others.

Leave taken to care for a newly born or adopted child or a child placed into foster care with the employee may be consecutive or intermittent and must begin by the end of the twelve (12) month period after the birth or placement for adoption or foster care.

Leave Benefits. An employee may take up to a maximum of twelve (12) weeks of NJFLA leave in a twenty-four (24) month period, which is measured as a rolling twenty-four (24) month period that commences with the first day of NJFLA leave taken.

You may take NJFLA leave to care for a seriously ill family member:

- As a single block of time.
- By reducing your normal work schedule for no more than twenty-four (24) consecutive weeks in a twenty-four (24) month period.
- Intermittently when medically necessary.

Employees permitted to take intermittent or reduced-schedule leave must try to schedule their leave so that it will not unduly disrupt the Borough's operations. The total time within which an intermittent leave is taken may not exceed a twelve (12) month period if such leave is taken in connection with a single serious health condition.

Intermittent leaves taken in connection with more than one serious health condition episode must be taken within a consecutive twenty-four (24) month period, or until such time as the employee's twelve (12) week family leave entitlement is exhausted, whichever is shorter. An employee taking a family leave on a reduced leave schedule shall not be entitled to such leave for more than a consecutive twenty-four (24) week period. An eligible employee shall be entitled to only one leave on a reduced leave schedule during any consecutive twenty-four (24) month period. Any remaining family leave to which the employee is entitled subsequent to the expiration of a leave taken on a reduced leave schedule may be taken on a consecutive or intermittent basis.

Depending on the purpose of the employee's leave, the employee may be required to or may choose to use accrued paid leave, concurrently with some or all of his/her NJFLA leave. The employee will not be eligible to accrue seniority or benefits, including vacation and holidays, during any period of NJFLA leave. The Borough will notify employees of their options to continue to participate in our group health plans during NJFLA leave.

Required Notice and Certifications. When requesting NJFLA leave, an employee must provide the Borough thirty (30) days' advance written notice. For employees requesting leave on an intermittent basis, at least fifteen (15) days advance written notice must be provided. If advance written notice is not possible because of an emergency, the employee must provide the Borough with reasonable oral notice and then follow up with written notice.

The employee also must give the Borough a medical certification supporting the need for leave. The Borough reserves the right to require second or third medical opinions and periodic recertifications. The employee must also provide periodic reports during the leave regarding the employee's status and intent to return to work as deemed appropriate by the Borough. If an employee fails to provide the required documentation, the Borough may delay the start of the employee's NJFLA leave, withdraw any designation of NJFLA leave or deny the leave, in which

case the absences will be treated in accordance with the Borough's standard leave of absence and attendance policies and the employee may be subject to discipline up to and including termination of employment.

If an employee provides false or misleading information or omits material information about an NJFLA leave, the employee will be subject to discipline up to and including immediate termination of employment.

Benefits Protection. During a family leave of absence, the employee's health benefits will be maintained under the same conditions as if the employee continued to work. If the employee decides to return to work when his/her family leave of absence ends, the employee may be reinstated to the same or equivalent job with the same pay, benefits, and terms and conditions of employment. If the employee decides not to return to work when the family leave of absence ends, the employee may be required to reimburse the Borough for the health insurance premiums paid on his/her behalf during the leave of absence (except if the failure to return to work was caused by the continuation, recurrence, or onset of serious health condition which would entitle the employee to a leave of absence under the law or other circumstances beyond the employee's control).

With regard to any pension contributions, the employee must contact the human resources official to make payment arrangements concerning contributions or credits paid toward his/her pension benefits. Employees should consult with the Borough prior to taking an approved leave.

Returning to Work after NJFLA Leave. On returning to work after NJFLA leave, eligible employees will typically be restored to their original job or to an equivalent job with equivalent pay, benefits and other employment terms and conditions. Any employee who fails to return to work as scheduled after NJFLA leave or exceeds the twelve (12) week NJFLA entitlement will be subject to the Borough's standard leave of absence and attendance policies. This may result in termination if the employee's continued absence is unauthorized (for example, if the employee has no other Borough-provided leave available to him/her).

Retaliation Prohibited. The Borough and the NJFLA prohibit the interference with, restraint of or denial of any right provided under the NJFLA and/or discharge or discrimination against any person for opposing any practice made unlawful by the NJFLA or for involvement in any proceeding under or relating to the NJFLA. The Borough encourages employees to bring any concerns or complaints about retaliation or compliance with the NJFLA to the attention of the human resources official.

New Jersey Family Leave Insurance. During a period of unpaid leave to care for a family member with a serious health condition or a newborn or adopted child or child placed into foster care with the employee, the employee may be eligible for up to twelve (12) weeks of Family Leave Insurance ("FLI") payments through the State in a twelve (12) month period. FLI is a monetary benefit paid by the State and not a separate leave entitlement and will thus run concurrently with FMLA and/or NJFLA leaves.

An employee's job is not protected while receiving FLI benefits – unless the employee is eligible for leave under the FMLA, NJFLA, or is otherwise designated for an approved family leave of absence.

Employees must provide the Borough with advance notice of need for leave, as follows:

- At least thirty (30) days before leave to bond with a newborn or newly adopted child, unless the time of the leave is unforeseeable or the time of the leave changes for unforeseeable reasons.
- In a reasonable and practicable manner for leave to care for a seriously ill family member on a continuous, non-intermittent basis, unless an emergency or other unforeseen circumstance precludes advance notice.
- At least fifteen (15) days before leave to care for a seriously ill family member or leave to bond with a newborn or newly adopted child on an intermittent basis unless an emergency or other unforeseen circumstance precludes advance notice.

Domestic Violence Leave:

The New Jersey Security and Financial Empowerment Act, N.J.S.A. 34:11C-1, et seq. (NJ SAFE Act), is a law that provides employment protection for victims of domestic or sexual violence.

The NJ SAFE Act allows a maximum of twenty (20) days of unpaid leave in one 12-month period, to be used within 12 months following any act of domestic or sexual violence. To be eligible, the employee must have worked at least 1,000 hours during the 12-month period immediately before the act of domestic or sexual violence. Further, the employee must have worked for an employer in the State that employs twenty-five (25) or more employees for each working day during twenty (20) or more calendar weeks in the current or immediately preceding calendar year. This leave can be taken intermittently in days, but not hours.

Leave under the NJ SAFE Act may be taken by an employee who is a victim of domestic violence, as that term is defined in N.J.S.A. 2C:25-19 and N.J.S.A. 30:4-27.6, respectively. Leave may also be taken by an employee whose child, parent, spouse, domestic partner, civil union partner, or other relationships as defined in applicable statutes is a victim of domestic or sexual violence.

Leave under the NJ SAFE Act may be taken for the purpose of engaging in any of the following activities, for themselves, or a child, parent, spouse, domestic partner, or civil union partner, as they relate to an incident of domestic or sexual violence:

1. Seeking medical attention;
2. Obtaining services from a victim services organization;
3. Obtaining psychological or other counseling;

4. Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase safety;
5. Seeking legal assistance or remedies to ensure health and safety of the victim; or
6. Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence.

In certain circumstances, the basis for the leave may also qualify under the federal Family and Medical Leave Act and/or the New Jersey Family Leave act. If so, the Borough will treat the leave concurrently with the leave under those statutes. Employees may be required to use accrued paid vacation leave, personal time or sick leave concurrently.

The Borough shall protect the privacy of employees who seek leave by holding the request for leave, the leave itself or the failure to return to work “in the strictest confidence.”

The Borough shall not retaliate, harass or discriminate against any employee exercising his/her right to take the leave provided by this policy.

Military Service Leave Policy:

The Borough provides military leave in accordance with applicable State and Federal law. In all cases involving military leave, the employee must, as soon as possible, provide his or her supervisor or Department Head with a certificate verifying the call to military duty prior to beginning the military leave.

Organized Militia. Any permanent or temporary full-time employee, who is a member of the organized reserve of the Army of the United States, United States Naval Reserve, United States Air Force Reserve or United States Marine Corps Reserve, or other affiliated organization, including the National Guard of other states, shall be entitled to a leave of absence without loss of pay or time on all work days on which he or she is engaged in any period of Federal active duty, up to thirty (30) work days in any calendar year. A military leave of absence is in addition to the employees’ regular vacation or other accrued leave.

Any leave of absence for such duty in excess of thirty (30) workdays will be without pay but without loss of time. A temporary full-time employee who has served under such temporary appointment for less than one year will receive military leave without pay but without loss of time.

New Jersey Organized Militia. New Jersey’s organized militia consists of the National Guard (Army and Air), the Naval Militia, and the State Guard. Any permanent or full-time employee who is a member of the New Jersey organized militia shall be entitled, in addition to pay received, if any, as a member of the organized militia, to a leave of absence without loss of pay or time on all days during which he or she shall be engaged in State or Federal active duty, up to ninety (90) work days in any calendar year.

Any leave of absence for such duty in excess of ninety (90) workdays will be without pay but without loss of time. A full-time temporary employee who has served under such temporary appointment for less than one year will receive military leave without pay but without loss of time.

Reinstatement. To be reinstated by the Borough without loss of privileges or seniority, the employee must report for duty with the Borough within the time required by law following release from active duty under honorable circumstances.

In accordance with legal requirement, employees who take military leave are required to:

- Provide the Borough with proper notice of the leave;
- Apply for reinstatement within the time required by law;
- Have a creditable military record including completion of all required training and fulltime service and be discharged under honorable conditions.

On return from a military leave of absence, the employee will be reinstated as required by law. See The Uniformed Services Employment and Reemployment Act (“USERRA”). Failure to comply with the requirement enumerated above or as required by law will jeopardize an employee’s reemployment rights.

Employees on military service will also continue to receive paid health insurance coverage during the period of the paid leave plus an additional thirty-days calendar days after the paid leave is exhausted. After this period has expired, employees may continue coverage for themselves or their dependents under the Borough group plan by taking advantage of the COBRA provision. Members of the State administered retirement systems (PERS and PFRS) will continue accruing service and salary credit in the system during the period of paid leave.

SECTION FOUR: COMPENSATION & EMPLOYEE BENEFITS POLICIES

Scope:

These policies cover non-union employees. They also cover union employees to the extent that their collective bargaining agreements do not cover these issues.

Payroll Policy:

Salary ranges are established by ordinance, and the salary must fall within the minimum and maximum ranges for the employee's title. Employees are paid every two (2) weeks. Employees who are going on vacation and would like their checks in advance must make a written request at least two weeks in advance of the vacation.

The Borough will not accept responsibility for any employee's personal finances. The Borough will acknowledge judgments against an employee's pay, but will not act as a mediator between the employee and creditors.

Overtime Compensation Policy:

The Borough complies with all applicable Federal and State laws with regard to the payment of overtime work, including the New Jersey Wage and Hour Law and the federal Fair Labor Standards Act.

Under the Federal Fair Labor Standards Act, certain employees in managerial, Department Head, administrative, computer or professional positions are exempt from the provisions of the Act. There are also employees who may be exempt because their compensation exceeds \$107,432 per year (which may be increased by law), depending upon their job duties. The Borough Administrator shall notify all exempt employees of their status under the Act. Exempt employees are not eligible to receive overtime compensation and are required to work the normal workweek and any additional hours needed to fulfill their responsibilities. Time off consideration for large amounts of additional hours may be provided with the Borough Administrator's prior approval and at the sole discretion of the Borough.

Depending on work needs, employees may be required to work overtime. Employees are not permitted to work overtime unless the overtime is budgeted and approved by the Department Head and the Borough Administrator. Employees working overtime without prior approval will be subject to disciplinary action.

All other employees are classified as Non-Exempt and are subject to the provisions of the Act. Depending on work needs, Non-Exempt employees may be required to work overtime. Non-Exempt employees are not permitted to work overtime unless the overtime is budgeted and approved by the Department Head and the Borough Administrator. Non-Exempt employees working overtime without prior approval will be subject to disciplinary action.

Non-Exempt employees will receive overtime compensation for hours worked in excess of forty (40) in a weekly period at the rate of one and one-half (1½) times the regular rate of pay. Employees may choose overtime compensation in the form of overtime pay or compensating time off. The maximum number of hours that an employee may accrue for future compensating time off is sixty (60). Once this maximum has been accumulated, all additional hours will be compensated by overtime pay. Accrued and taken overtime compensating hours must be noted on the employee's time sheet. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.

Employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28.

Non-Exempt employees will receive one and one-half (1½) hours of overtime compensation for each hour worked in excess of forty (40) hours in a weekly period. For purposes of overtime compensation, hours worked are computed to the nearest one-half (½) hour per day. Previously scheduled vacation time and holiday time are considered time worked for purposes of determining overtime compensation, but sick time and personal time are not.

In addition to the requirements of the Federal Fair Labor Standards Act, Non-Exempt employees will also receive overtime compensation for work in excess of thirty-five (35) hours but not greater than forty (40) hours in a weekly period. This other compensation will be one hour for each hour worked in excess of thirty-five hours.

Employees must make a request to their Department Head at least two (2) days in advance when they want to take compensating time off. The Department Head will approve the request if the absence does not cause undue hardship to the department.

Accrued and taken overtime compensating hours must be noted on the employee's time sheet. Only time actually worked is considered for purposes of determining overtime compensation.

Timesheets:

Non-exempt employees and exempt employees are required to report their sick time, vacation time and holiday time on the designated time record. Non-exempt and exempt employees should turn the time record into his/her Department Head.

The Department Head shall review the record for accuracy and approve it and submit it to the designated payroll representative.

Payment for Accumulated Absence:

To the extent that a local ordinance or resolution, collective bargaining agreement, or an employment agreement provides for compensation for accumulated absence, the Borough will only make such payment if the Chief Financial Officer certifies that such amount is due and that proper documentation establishing that the amount of the accumulated absence has been provided and funds are available to pay. Proper documentation includes:

- A copy of the agreement, ordinance and/or resolution;
- Documentation of the amount of accumulated absence time; and
- The total value of the compensation due.
- Accumulated absence means sick days or other leave time which the Borough permits employees to accumulate over time to be paid upon retirement.

Nothing in this section grants employees compensation for absences from work.

Health Insurance Policy:

PLEASE NOTE: Full details of employee's health, medical and hospitalization plans can be found in the official insurance plan documents. If there is any conflict or inconsistency between the information in the policy and procedures manual and the official documents, the official documents will govern. The Borough reserves the right to modify, revoke, suspend, terminate or change any or all such plans, in whole or in part, at any time with or without notice in accordance with applicable law. The Borough also reserves the right to change insurance carriers in accordance with applicable law.

Full-time employees and their immediate family members, including civil union partners, are provided health insurance coverage administered by the State Health Benefits Plan. The Borough reserves the right to change provider networks, claims agents, and insurance mechanisms (fully insured versus health insurance fund, e.g.). The complete benefit plan is on file in the CFO's office and a Summary Plan Description will be provided to all employees. Benefit levels for non-unionized employees are subject to change at the discretion of the Municipality Health insurance coverage for employees on a Leave of Absence or who cease Borough employment will terminate at the end of the month in which the leave begins or employment is terminated except coverage will continue for up to twelve (12) weeks for employees on leave pursuant to the Family and Medical Leave Act and up to thirty (30) weeks for employees on Military Leave. Upon termination of coverage, employees may extend health insurance coverage for themselves or their dependents by taking advantage of the Public Health Service Act provision for a period of up to eighteen (18) months to thirty-six (36) months. All newly hired employees and their spouses shall receive a notice of Consolidated Omnibus Budget Reconciliation Act (COBRA) rights upon being hired. For more information, consult the Borough Administrator.

Employees who retire with twenty-five (25) years of service to the Borough may continue to receive paid health insurance coverage. Employees receiving retiree health benefits must notify the Borough Administrator in writing, with proof of enrollment, when they become eligible for Medicare Parts A and B. For more information, consult the Borough Administrator.

Dental Benefits Policy:

All full-time employees and their dependents are eligible for coverage in the Delta Dental Plan of New Jersey. A schedule of services is available in the Office of the Administrator.

Drug Prescription Benefit Policy:

All full-time employees and their dependents are automatically enrolled in the Local Prescription Drug Program provided by the New Jersey State Health Benefits Act.

Deferred Compensation Policy:

The Borough has established a deferred compensation plan, which is available to all eligible employees, pursuant to Section 527 of the Internal Revenue Code.

HIPAA Compliance:

The Borough is committed to upholding both the letter and the spirit of the Health Insurance Portability and Accountability Act (“HIPAA”) regarding the use, maintenance, transfer, and disposition of personal health care information. To the extent that the Borough maintains such information about its employees and others, its elected officials and employees are committed to protecting the privacy and confidentiality of that information.

Retirement Policy:

Under State law, all eligible employees must enroll in the New Jersey Public Retirement System or the Police and Fire Fighters Retirement System as applicable. The employee's contribution to the Plan will be deducted from the employee's pay. An employee who has completed the required number of years and who has reached the required age under the Plan may retire by notifying the Borough Administrator in writing. The State retirement plans request six months advance notice to process the application. After giving notice of retirement, employees are expected to assist their Department Head and co-employees by providing information concerning their current projects and help in the training of a replacement. The Department Head will prepare an Employee Action form showing any pay or other money owed the employee. The Borough Administrator will conduct a confidential exit interview to discuss benefits including COBRA options, appropriate retirement issues and pay due. For those employees not eligible for New Jersey State Health Benefits a COBRA notification letter will be sent to the employee's home address. The exit interview will also include an open discussion with the employee. On the last day of work, and prior to receiving the final paycheck, the employee must return the Employee Identification Card,

all keys and equipment. At this time, the employee will sign the termination memo designating all money owed and this memo will be retained in the official personnel file.

Workers' Compensation Policy:

Employees who suffer job-related injuries and illnesses may be entitled to medical expenses, lost income and other compensation under the New Jersey Workers' Compensation Act. Any occupational injury or illness must be immediately reported to the supervisor or Department Head. All required medical treatment must be performed by a workers' compensation physician appointed by the Borough or workers' compensation carrier. Workers' Compensation is not a leave entitlement but only a wage replacement arrangement.

Payment for unauthorized medical treatment may not be covered. No temporary Workers' Compensation benefits other than the payment of medical bills shall be paid until the employee has been disabled for a period of seven (7) calendar days from the work-related injury, unless otherwise required by law.

While receiving workers' compensation benefits, the pension portion of an employee's benefits will still be paid by the Borough. If, however, an employee is receiving workers' compensation with pay, (which is defined as one hundred (100%) percent compensation of salary) the employee is responsible for all deductions, including pension.

The Borough will not tolerate retaliation or discrimination against an individual because the individual has filed a claim for workers' compensation benefits. This prohibition includes denying or limiting any request for leave because an individual asserted a claim for workers' compensation benefits.

Workers' Compensation Light Duty Policy. The Borough will endeavor to bring employees with temporary work-related injuries or illnesses back on the job as soon as possible. The Borough may recognize a special obligation arising out of the employment relationship and create a temporary light duty position for an employee when s/he has been injured while performing work for the Borough and, as a consequence, is unable to perform his/her regular job duties.

The Borough will not treat an employee with a disability less favorably than an individual without a disability or screen out an individual on the basis of disability in granting such requests for light duty. The Borough will grant such request, at its sole discretion, and on a case-by case basis in consideration of the medical report submitted by the workers' compensation physician, the recommendation of the insuring entity, and staffing needs and requirements. The Borough reserves the right to grant, refuse or terminate a light duty assignment at any time without cause unless it is in conflict with the mandates of the ADA, FMLA, or NJFLA or other state or federal leave laws, where applicable.

The employee and/or the Third-Party Administrator ("TPA") are obligated to inform the Borough of the employee's medical progress and the Borough shall have the right to review same periodically. Light duty assignments may be in any department and not just the employee's normal

department. Employees on light duty will receive their regular salaries. If light duty is approved, the employee or TPA must keep the Borough Administrator and/or designated human resources official informed of the medical progress. If, at the end of light duty period the employee is not able to return to work without restrictions, the employee should contact the Borough Administrator and/or designated human resources official to discuss his or her options under state or federal law.

Unless explicitly provided for in a bargaining agreement, the Borough will only pay, either directly or through its Workers' Compensation insurer, those benefits that are specifically provided for under the Workers' Compensation Act and will not supplement these benefits with additional benefits pursuant to N.J.S.A. 11A:6-8.

This policy does not affect an employee's rights under the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Contagious or Life Threatening Illnesses Policy, or other Federal or State law.

Employee Assistance Policy:

The Borough offers assistance to all employees having personal problems, including alcoholism through the Bergen County Employees Assistance Program. Information is available in the Office of the Borough Administrator.

Conference and Seminar Policy:

Requests to attend a conference or seminar must be approved by the Department Head and the Borough Administrator. Requests shall be made sufficiently in advance to take advantage of discounts for early registration, and must be submitted to the Department Head at least thirty (30) days before the event. Requests must be in writing including the conference schedule, registration information and estimated costs. The Department Head is responsible to detail all training requests during the budget formulation process. Approval of any conference or seminar request is conditioned upon the availability of funds.

SECTION FIVE: MANAGERIAL/DEPARTMENT HEAD PROCEDURES

Employment Procedure:

Recruitment: The Borough Administrator will coordinate the employment recruitment process for all vacancies to ensure compliance with contractual, legal, and Equal Opportunity Commission (“EEOC”) requirements. When a vacancy occurs, it is the responsibility of the Department Head to notify the Borough Administrator who will distribute notification of the vacancy to all departments. The Borough Administrator will undertake to recruit qualified applicants in accordance with applicable Federal and State law. Where positions are advertised, the media or other periodical utilized must have as wide circulation as possible to encourage applications from candidates from diverse backgrounds and must prominently state that the Borough is an equal opportunity employer.

Applications: All candidates must fully complete an application form. A resume will not be considered as a substitute for this form. The application is a confidential document and will not be available to anyone who is not directly involved in the hiring process, except as required by law.

Interviews: The Borough Administrator will coordinate the interview process including the scheduling of applicants, development of interview questions and standards to measure candidate responses. All questions must be in accordance with the New Jersey Division of Civil Rights Guidelines for Pre-Employment Inquiries. The Borough will make reasonable accommodations to known physical and mental limitations of all applicants with disabilities, provided that the individual is otherwise qualified to safely perform the essential functions of his or her job and also provided the accommodation does not impose an unreasonable hardship on the Borough.

Physical Examinations: Pursuant to the Americans with Disabilities Act, after an offer of employment is made and prior to commencing employment, the Borough Administrator may require applicants to pass a physical examination in order to ensure that they can perform the duties of their position without injury to themselves or others. The same post-offer physical examination must be performed on all applicants for a particular position. The Borough Administrator may require periodic physical examinations to determine the employee's continued ability to perform the duties of the position. All physical examinations must be performed by a physician chosen by the Borough at the expense of the Borough. All medical records of employees and prospective employees are confidential and are to be maintained by the Borough Administrator separate from the employee's official personnel file. Medical exams may include tests for drug and alcohol use.

Criminal Background Checks: Criminal background checks are required of all candidates, 18 years and older, whether paid or volunteer, that may work directly or indirectly with children/youth/minors in accordance with the procedures outlined in the Section of this ordinance entitled “Background Checks and Procedures for Candidates, Employees and Volunteers”.

Job Offers: The final decision will be made after all references and other information has been verified. Every effort shall be made to offer reasonable accommodations to known physical and mental limitations of all applicants with disabilities, provided that the individual is otherwise

qualified to safely perform the essential functions of the job and also provided that the accommodation does not impose an unreasonable hardship on the Borough.

Acceptances and Rejections: If the first offer is rejected, the Mayor and Council will decide to hire another candidate or re-open the position. Once a candidate accepts the employment offer, all other candidates will be notified in writing that they were not accepted for the position.

Employability Proof: After acceptance, but before starting employment, all new employees shall be required to fill out an employment verification form (19) and to provide acceptable proof of right to employment in the United States.

Record Retention: All applications, notes made during interviews and reference checks, job offers and other documents created during hiring process must be returned to the Borough Administrator. Documents related to the successful candidate will be placed in the employee's official personnel file except medical records including physical examinations must be maintained in a separate file. All records documents related to other candidates must be retained for at least one year. Records and documents created during the hiring process are confidential and must be retained in a locked cabinet.

Background Checks and Procedures for Candidates, Employees and Volunteers:

Background checks required: Criminal background checks are required of all candidates over the age of 18, whether for paid or volunteer positions, who will be working directly or indirectly with children/youth/minors. Criminal background checks will also be performed every three years for each employee or volunteer that works directly or indirectly with children/youth/minors. The titles of employees subject to background checks include recreational positions, crossing guards, playground assistance.

Background check procedure: The Borough Administrator will perform or initiate criminal background checks and be the recipient of reports from outside agencies or contractors. These reports shall include, but are not limited to, court records; police department and corrections agency records; registries or watch lists; state criminal record repositories; and the Interstate Identification Index maintained by the FBI. The Borough Administrator will discuss potentially disqualifying information received with the employee's or volunteer's department head, and a determination that the information is disqualifying shall be made based on whether the disqualification is job-related for the position and is consistent with business necessity. Written information received as a result of a "Request for Criminal History Record Information For A Noncriminal Justice Purpose" will be destroyed immediately after it has served its authorized purpose, as required by the State Police. Such information will be kept confidential and will not be published or disclosed in any manner not consistent with the procedures listed herein. Such information will not be deemed a public record under P.L. 1963, c.73 (C:47:1A-1, et seq.) as amended and supplemented by P.L. 2001, c.404 (C:47:1A-5, et seq.).

When a disqualification decision has been made as a result of the Borough's "targeted screening process" described below, the Business Administrator will inform the candidate, volunteer, or

employee, in writing, of any information that would disqualify the person from working with children/youth. If the Borough contracts with an outside vendor to process the background checks, that contractor may be authorized to inform the person in writing of any information that would disqualify the person from working with children/youth/minors. In addition, the individual shall be advised that he/she has the opportunity to explain the criminal record and to demonstrate why the exclusion based on the Borough's targeted screening process should not apply to him/her under the circumstances. This information may include evidence of an error in the criminal record; facts surrounding the conviction; age at the time of the conviction and/or release from prison; evidence of a clean criminal and employment record since release; rehabilitation efforts; positive references; and evidence that he/she is bondable. Thereafter, the Borough shall give the individual further consideration. Existing employees or volunteers will be placed on immediate suspension pending the outcome of a hearing or appeal. Employee suspensions may be with or without pay at the discretion of the Borough Administrator.

Conditions Under Which An Employee Will Be Disqualified From Working With Children/Youth: A candidate, volunteer, or employee may be disqualified from employment in a position that works with children/youth/minors if that person's criminal record history background check reveals a record of conviction of any of the following crimes and disorderly persons offenses as defined by New Jersey law or by analogous laws in other States:

- Homicide (N.J.S.A. 2C:11)
- Assault, reckless endangerment, threats, stalking (N.J.S.A. 2C:12)
- Kidnapping (N.J.S.A. 20:13)
- Sexual Offenses (N.J.S.A. 2C:14)
- Offenses Against the Family, Children and Incompetents (N.J.S.A. 2C:24)
- Controlled Dangerous Substances (N.J.S.A. 2C:35 except for 2C:35-10(a)(4))
- Robbery (N.J.S.A. 2C:15)
- Theft (N.J.S.A. 2C:20)

A disqualification from any position will be based only on a conviction for one or more of the above disqualifying crimes and offenses as a result of the Borough's targeted screening process, by which the Borough has taken into account the following factors: (a) The nature and gravity of the offense or conduct, including the consideration of (i) the harm caused by the crime; (ii) the legal elements required to prove the crime; and (iii) the classification of the crime (i.e., felony or misdemeanor, etc.); (b) The time that has elapsed since the offense, conduct, and/or completion of the sentence; (c) The nature of the job held or sought, including the consideration of: (i) the job duties (not merely the job title); (ii) the level of supervision to be provided; (iii) the working environment (e.g., private home, outdoors, warehouse); (iv) interaction with others, especially with vulnerable individuals such as

children/youth/minors; and (v) the relationship of the criminal history to the job to be performed. An acquittal, a dismissal, successful completion of Pre-Trial Intervention (PTI), or an expungement of a criminal offense, including a disqualifying criminal offense, is not a disqualifying conviction. Further, an arrest record standing alone may not be used to disqualify a candidate, volunteer, or employee from an employment opportunity. However, the Borough may make a disqualification decision based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question, in which case the conduct, not the arrest, is relevant for employment purposes.

Appeal Process: The Appeals Committee will be comprised of the Mayor, Police Chief or other designated superior officer, and the Borough Administrator, unless otherwise provided by Ordinance.

Once a candidate, employee or volunteer has been notified of a disqualifying conviction, the employee has 14 calendar days to file a Notice of Appeal with the Borough. Such Notice of Appeal must be sent in writing to the Borough Administrator title. The Notice of Appeal shall include a Notice of Rehabilitation and/or a Notice that the information is inaccurate or incorrect, pursuant to NJAC 13:59-1.6.

During the 14-day period listed above, and until the issuance of the decision of the Appeals Committee, an employee will be on a suspension with pay, pending the outcome of the Notice of Appeal.

In making a determination on the appeal, the following information will be considered:

1. The nature and responsibility of the position which the convicted individual would hold, has held, or currently holds, as the case may be.
2. The nature and seriousness of the crime or offense.
3. The circumstances under which the crime or offense occurred.
4. The date of the crime or offense.
5. The age of the individual when the crime or offense was committed.
6. Whether the crime or offense was an isolated or a repeated incident.
7. Any social conditions which may have contributed to the commission of the crime or offense.
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received.
9. Acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

The Borough will issue a written determination on the employee's appeal of their disqualifying conviction, setting forth the reasons for the determination.

Nepotism Procedure:

The hiring, promoting, transferring, demoting or reassigning of relatives is prohibited if the employment of such an individual would result in the creation of a prohibited employment relationship.

A prohibited relationship is created when:

- One relative would have the authority to supervise either directly or from one level above, appoint, remove, discipline, evaluate or otherwise affect the work or employment of another relative;
- The relative would be responsible for auditing the work of the other; or
- Other circumstances exist that place the relatives in a situation of actual or reasonably foreseeable conflict between the Borough's interest and their own interest.

Employees who marry or become related by marriage may continue in their employment if the marriage does not result in the creation of a prohibited relationship. Where the marriage results in the creation of a prohibited relationship, the Borough will explore potential accommodations including the reassignment of one or both employees to available positions for which the employees are qualified. Relative includes spouse, parent, stepparent, child, step-child, sibling, step sibling, half-sibling, father-in-law, mother-in-law, sister-in-law, brother-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, and first cousins.

This policy applies to all employees hired, promoted, transferred, demoted, or reassigned on or after the date of adoption and to all prohibited relationships created on or after the date of adoption.

Open Public Meetings Act Procedure concerning Personnel Matters:

Discussions by the governing body or any public body concerning appointment, termination, terms and conditions of employment, performance evaluation, promotion or discipline of any current or prospective officer or employee may be held in closed session. Ultimately, the guidance as to notification of employees and the right to have the discussion in executive or the open session should be discussed with and be based upon the guidance and advice of the legal counsel for the public entity and recent court decisions.

Initial Employment Period Procedure:

Except where State requirements direct otherwise, new employees (or present employees transferring to new positions) will be hired subject to an initial employment period of not less than six (6) months. During this initial employment period, the new employee or transferee will be

provided with training and guidance from the Department Head. At the end of the initial employment period, the Department Head will conduct an employee evaluation (see Performance Evaluation Procedure). New employees may be discharged at any time during this period if the Borough Administrator concludes that the employee is not progressing or performing satisfactorily. Under appropriate circumstances, the Borough Administrator may extend the initial employment period. Newly hired employees are not eligible for payment of paid time off except holidays until the successful completion of their initial employment period.

Nothing in the procedure set forth in this section shall alter the Borough's employment at will policy. Employment with Borough is at will and may be terminated at any time with or without cause or notice by the Borough or the employee.

Performance Evaluation Procedure:

Periodic evaluations are conducted to create a formal record of an employee's performance over time and establish a foundation for personnel actions such as promotion and termination. In addition to day-to-day feedback to the employee, a performance evaluation may be conducted for all employees from time to time. When conducted, the completed appraisal becomes part of an employee's permanent record.

Disciplinary Action Procedure:

All employees are expected to meet the Borough's work performance standards. The intent of the Disciplinary Action Procedure is to formally document problems and provide the employee with a reasonable time to improve performance. The process should encourage development by providing employees with guidance in areas that need improvement such as poor work performance, attendance problems, personal conduct, general compliance with the Borough's policies and procedures and other disciplinary problems.

Should a Department Head believe that an employee is not conforming to the Borough's policies and rules or to specific instructions, or has acted improperly, the Department Head will first privately discuss the matter with the employee to obtain the employee's view. If the Department Head determines that the employee has acted improperly, the Department Head shall take one of the following actions depending upon the gravity and the employee's past record. At the discretion of the Department Head and the Borough Administrator, action may begin at any step, and/or certain steps may be repeated or by-passed.

Verbal Reprimand: Depending on the circumstances, the Department Head may verbally notify the employee that the employee's actions have been improper and warn the employee against further occurrences. The Department Head will prepare a record of the verbal reprimand including the date, time and what was discussed with the employee. This record must be forwarded to the Borough Administrator for the employee's official personnel file.

Borough Administrator Review: Should the Department Head consider the offense sufficiently serious to warrant consideration by the Borough Administrator, the employee will be so advised

and a meeting arranged with the Borough Administrator at the earliest possible date. All facts should be detailed at this meeting and, if possible, a determination will be made at that time of disciplinary action, if any.

Written Reprimand: When a Department Head determines that a written reprimand is appropriate, the situation must be discussed with the Borough Administrator. The reprimand should clearly identify the problem and outline a course of corrective action within a specific time frame. The employee should clearly understand both the corrective action and the consequence (i.e., termination) if the problem is not corrected or reoccurs. The employee should acknowledge receipt of the warning and may include additional comments. A copy of the written reprimand with the signed acknowledgement and comments must be forwarded to the Borough Administrator for the employee's official personnel file.

Suspension: Whenever an employee is recommended for suspension, the Borough Administrator will make the decision and may seek the advice of the Labor Attorney if appropriate. Suspended Employees may request a hearing under the applicable grievance procedure.

Dismissal: Whenever an employee is recommended for dismissal, the Mayor and Council will make the decision only after seeking the advice of the Labor Attorney. There must be a complete review of the employee's personnel file and all other facts to determine if there is sufficient cause for the dismissal. Terminated employees may request a hearing under the applicable grievance procedure.

Confidentiality of Personnel Records:

The human resources official will ensure that adequate personnel records are maintained for each employee in accordance with applicable Federal and State requirements. These records shall include: dates of appointments, transfers, promotions and terminations, job titles, salaries, commendations, complaints, performance evaluations, disciplinary actions, amount of leave accrued and used, a record of the employee's training and other related matters, and attendance records.

A new employee's employment application, letters of reference, reference verification and any other supporting documents will be included in the personnel file. Confidential medical records are maintained in a separate file.

Personnel records, other than name, title, salary, compensation, dates of service, reason for separation, and information on specific educational or medical qualifications required for employment, are confidential and are available only to the employee, an authorized representative of the employee, and the human resources official. Personnel records may also be available to the Borough Administrator, other members of management, the Borough's legal counsel, and members of the governing body on a need-to-know basis in connection with official duties. Additionally, the Borough will make the records available as required by law.

Employees are entitled to review the contents of their personnel folder, except for reference checks and other information provided to the Borough in the hiring process, but may not review the

contents of other employees' personnel file. Employees who want to review their own personnel folder should request an appointment with the human resources official. Employees should provide the Borough with at least twenty-four (24) hours advance notice of his or her need for an appointment to review his or her personnel file. To protect the integrity of the personnel files, the employee will review the personnel file in the presence of the human resources official or his/her designee. Employees will not be permitted to photocopy the contents of their folder, take personnel folders outside of the human resources office or remove any documents from the folder.

Employees whose duties require access to personnel documents or information must maintain their confidentiality. Violators of this confidentiality will be subject to disciplinary action up to and including termination.

Employee Complaint Investigation Procedure:

Employees have the right to formally or informally report any statement, act, or behavior by a co-employee, Department Head, elected official or visitor that they believe to be improper.

Reporting: Employees should be asked to report complaints in writing utilizing the Employee Complaint form, but are not compelled to do so.

Identification/Screening: The Department Head, or Labor Attorney must report all written or verbal complaints to the Borough Administrator unless the complaint is against the Borough Administrator. Upon receipt, the Borough Administrator will determine if the complaint was made pursuant to the General Anti-Harassment Policy, the Anti-Sexual Harassment Policy, the Whistle Blower Policy, a grievance procedure or is another form of complaint. A file will be established including the written complaint, the investigation procedure followed and the response action plan. As soon as possible but no later than ten days after receiving the complaint, the Borough Administrator or investigator appointed by the Borough Administrator will interview the employee. If the employee is reluctant to sign a written complaint, the Borough Administrator or investigator will prepare written notes of the date, time and place of the complaint and the specific allegations. These notes will be read back to the employee who will be asked to affirm, preferably in writing the information's accuracy.

Investigation: The Borough Administrator will seek the advice of the Labor Attorney when planning the investigation. The investigation should be conducted by the Labor Attorney or county prosecutor if it involves potential criminal charges. The investigation should establish the frequency and nature of the alleged conduct and whether the complaint coincides with other employment events such as a poor performance evaluation. The investigation should also determine if other employees were subjected to similar misconduct. It is important to protect the rights of both the person making the complaint and the alleged wrongdoer.

Response Plan - No Corrective Action Required: The Borough Administrator will discuss the conclusions with the Labor Attorney and render a decision within fourteen days after the investigation is complete. If the validity of a complaint cannot be determined or the complaint is groundless, the complaining employee should be notified in writing. Care should be taken to avoid

being too specific, confrontational or accusatory and to avoid any language that might be construed as defamatory. A general statement is usually more appropriate that the claim was thoroughly investigated, but could not be sufficiently documented or confirmed to justify taking formal action. The employee should be assured that future complaints will be investigated and that the Borough is committed to eliminating wrongful employment practices when they are found to exist. If the investigation reveals that the complainant intentionally and maliciously levied false charges against the alleged wrongdoer, the complainant must be notified of the seriousness of filing a false complaint, and the appropriate disciplinary penalty under the circumstances, up to and including termination.

Response Plan - Corrective Action Required: If the investigation reveals that the complaint is justified and substantiated, the Borough Administrator will formulate with the advice of the Labor Attorney a corrective action plan as well as possible disciplinary action. The complaining employee will be notified, in writing that it appears that the complaint was justified and an appropriate response plan has been formulated. A copy of the response plan should be attached to the letter. The response plan should provide for appropriate remedial action to prevent a recurrence of the wrongful act or behavior.

Employment References

To ensure that individuals who work for the Borough are well-qualified and have a strong potential to be productive and successful, it is the policy of the Borough to check the employment references of all applicants at the Borough's discretion.

Employees should not, under any circumstances, provide another individual with information regarding a current or former employee. Any employee, including Department Heads, who receives a request for reference information should forward the request to the human resources official. Generally, unless otherwise required by law, the Borough will only confirm employees' name, title, salary, compensation, dates of service, reason for separation, if applicable, and specific educational or medical qualifications required for employment. The Borough's response to a request for reference information shall be communicated in writing only. The Borough does not honor oral requests for employment references.

A current or former employee may also authorize the Borough to release additional information. Unless otherwise required by law, the Borough will only release additional information if the current or former employee provides authorization, in writing.

Requests for Employment Verification and Reference Procedure:

Inquiries and written requests for references or employment verification regarding a current or former employee must be referred to the Borough Administrator. No employee may issue a reference letter without the permission of the Borough Administrator. Under no circumstances should any information be released over the phone.

In response to a request for information, the Borough Administrator will only verify an employee's name, dates of employment, job title, department and final salary. No other data or information will be furnished unless (1) the Borough is required to release the information by law or (2) the employee or former employee authorizes the Borough in writing to furnish this information and

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releases the Borough from liability.

Continuing Education Procedure:

The Borough, in conjunction with the Labor Attorney will arrange for employment practices seminars at least annually to train all managerial/supervisory personnel. The Borough will also offer non-mandatory training to all other employees with special emphasis on employee rights and protections under various Federal and State laws as well as Borough employment practices. Records will be maintained in the official personnel files of all employees trained under this procedure.

Managerial and supervisory personnel will also update employees periodically by department meetings and memos that should address specific problems and concerns that may arise. Every effort will be made to encourage employee suggestions about ways to avoid employer-employee disputes and violations of employment rights.

Receipt for Personnel Policies and Procedures Manual and Employee Handbook

I acknowledge that I have received a copy of the Borough's Personnel Policies and Procedures Manual. I agree to read it thoroughly. I agree that if there is any policy or provision in the Manual that I do not understand, I will seek clarification from my Department Head or the Chief Administrative Officer. I understand that the Borough is an "at will" employer and consistent with applicable Federal and State law (as well as applicable bargaining unit agreements), employment with the Borough is not for a fixed term or definite period and may be terminated at the will of either party, with or without cause, and without prior notice. No supervisor or other representative of the Borough has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above. In addition, I understand that this manual states the Borough's personnel policies in effect on the date of publication. I understand that nothing contained in the manual may be construed as creating a promise of future benefits or a binding contract with the Borough for benefits or for any other purpose. I also understand that these policies and procedures are continually evaluated and may be amended, modified or terminated at any time.

~~I acknowledge that I have received a copy of Borough's Personnel Policies and Procedures Manual and Employee Handbook, including but not limited to the Borough's Protection and Safe Treatment of Minors Policy, Anti Harassment and Anti Discrimination policies. I agree to read it thoroughly. I agree that if there is any policy or provision in the manual that I do not understand, I will seek clarification from my Department Head or the Borough Administrator. I understand that Borough is an "at will" employer and consistent with applicable Federal and State law, as well as applicable bargaining unit agreements, employment with the Borough is not for a fixed term or definite period and may be terminated at the will of either party, with or without cause, and without prior notice. No Department Head or other representative of the Borough has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above. In addition, I understand that this manual states Borough's personnel policies in effect on the date of publication. I understand that nothing contained in the manual may be construed as creating a promise of future benefits or a binding contract with Borough for benefits or for any other purpose. I also understand that these policies and procedures are continually evaluated and may be amended, modified or terminated at any time.~~

Please sign and date this receipt and return it to the Borough Administrator.

Date: _____

Signature: _____

Print Name: _____

Department: _____

APPENDIX A
CDL Drug and Alcohol Testing Policy
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SECTION A - GENERAL

This policy and 49 CFR Part 40 Regulations of the U. S. Department of Transportation Procedures For Transportation Workplace Drug And Alcohol Testing Programs and Urine Specimen Collection Guidelines, Office of Drug and Alcohol Policy and Compliance, U.S. Department of Transportation, are integral parts of this Policy and apply to all covered employees. They may be viewed at <http://www.dot.gov/odapc> Collection procedures, laboratory procedures, MRO review, alcohol testing, record keeping and all other procedural requirements shall adhere to 49 CFR Part 40.

The Borough of Englewood Cliffs shall test, in accordance with Federal regulations, employees required to have a Commercial Driver's License (CDL) for the use of controlled substances that violate law or Federal regulation and the misuse of alcohol.

PURPOSE 382.101

The purpose of this policy, in addition to meeting Federal regulations, is to establish a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

APPLICABILITY 382.103

(a) This policy applies to every person of the Borough of Englewood Cliffs who operates a commercial motor vehicle in commerce in any State, and is subject to:

- (1) The commercial driver's license requirements of part 383;
- (2) All Drivers Operating Commercial Motor Vehicles for the Borough of Englewood Cliffs; or
- (3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this policy that apply to employers and the requirements in this policy that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

The COVERED EMPLOYEE CERTIFICATE OF RECEIPT contains the name, address, and phone number of the responsible individual(s). The CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY complies with requirements of the Department of Transportation regulations as set forth in 49 CFR § 382 and 49 CFR Part 40. The DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (random, post-accident, reasonable suspicion, etc.); maintaining a locked file system on all test results; and overseeing the referral of employees for evaluation and treatment. The Borough shall ensure that all covered employees are aware of the provisions and coverage of the Borough of Englewood Cliff's CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY and that all employees are notified prior to testing.

BOROUGH OF ENGLEWOOD CLIFFS SERVICE AGENT CONTACT INFORMATION

DESIGNATED EMPLOYER REPRESENTATIVE (DER)

TITLE: _____ Borough Administrator

ADDRESS: 482 Hudson Terrace, Englewood Cliffs, New Jersey 07632
PHONE: 201-569-5252 x 483
HOURS WHEN AVAILABLE: Monday-Friday 9am to 4 pm (excluding holidays).

ALTERNATE DESIGNATED EMPLOYER REPRESENTATIVE (DER)

TITLE: Department of Public Works Superintendent

MEDICAL REVIEW OFFICER (MRO)

NAME: Trionaid Associates, Inc.
ADDRESS: 616 Washington Street, Suite #5, Toms River, New Jersey 08753
PHONE: 732-998-8406
FAX: 732-612-1317

LABORATORY

NAME: Trionaid Associates, Inc.
ADDRESS: 616 Washington Street, Suite #5, Toms River, New Jersey 08753

SUBSTANCE ABUSE PROFESSIONAL (SAP)

NAME: Trionaid Associates, Inc.
ADDRESS: 616 Washington Street, Suite #5, Toms River, New Jersey 08753
PHONE: 732-998-8406

CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)

NAME: Trionaid Associates, Inc.
ADDRESS: 616 Washington Street, Suite #5, Toms River, New Jersey 08753
PHONE: 732-998-8406

PERIOD OF WORKDAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE

Safety-Sensitive Functions as covered under 49 CFR Part 382: In accordance with 49 CFR 382 drivers who possess CDL licenses are subject to DOT regulated alcohol and drug testing at all times from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment as required by 49 CFR 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR 393.76);
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

A driver is required to be in compliance with this policy during that period of the workday when they are on-duty performing safety-sensitive functions (See Definitions).

DRIVER FITNESS FOR DUTY 391.11

DOT regulations provide that the Borough of Englewood Cliffs as a DOT regulated employer makes the final determination of who is a qualified individual to drive a commercial motor vehicle. 49 CFR § 391.11(a). The Borough of Englewood Cliffs shall not permit a person to drive a commercial motor vehicle unless the person meets all DOT minimum qualifications and such other more stringent qualifications and requirements relating to safety of operation and employee safety and health as it may decide in its judgment and discretion. The Borough of Englewood Cliffs shall use the services of independent Certified Medical Examiners, Occupational Medicine Physicians, Medical Review Officers, as well as other medical and industry professionals to make its final fitness for duty determinations.

TESTING PROCEDURES 382.105

The Borough of Englewood Cliffs shall ensure that all alcohol or controlled substances testing conducted under this policy complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol or controlled substances testing are made applicable to the Borough of Englewood Cliffs by 382.105.

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DEFINITIONS 382.107

Words or phrases used in this policy are defined in Sections 386.2, 390.5 and 40.3 of Federal regulations, except as provided herein.

Actual knowledge for the purpose of Section B of this policy means actual knowledge by the Borough of Englewood Cliffs that a driver has used alcohol or controlled substances based on the Borough's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 382.307.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol's including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this policy.

Alcohol use means the drinking or swallowing of any beverage, liquid mixture, or preparation, (including any medication), containing alcohol. [Caution: Certain brands and types of cough medicines contain alcohol.]

CFR means Code of Federal Regulations.

Commerce means:

- (1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and
- (2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in (1) of this definition.

It is the position of the Federal Motor Carrier Safety Administrator that the above section (2) language covers all municipal vehicles which fit within the "Commercial Motor Vehicle" definition below, even if that vehicle does not cross state lines.

Commercial driver's license Drug and Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of 49 CFR Part 382.701-727 requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations. Effective January 6, 2020, the FMCSA will establish a mandatory database and the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

- (1) A verified positive, adulterated, or substituted drug test result;

- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to any test required by subpart C of this part;
- (4) An employer's report of actual knowledge, as defined at § 382.107;
- (5) On duty alcohol use pursuant to § 382.205;
- (6) Pre-duty alcohol use pursuant to § 382.207;
- (7) Alcohol use following an accident pursuant to § 382.209; and
- (8) Controlled substance use pursuant to § 382.213;
- (9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (10) A negative return-to-duty test; and
- (11) An employer's report of completion of follow-up testing.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

- (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
- (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of Federal regulations.

Controlled substances mean those substances identified in 40.85. As of January 1, 2018, the drugs tested for may include all or some of the following: (1) Amphetamines; (2) Cannabinoids; (3) Cocaine; (4) Phencyclidine (PCP); and (5) Opioids.

Designated employer representative (DER) is an individual identified by the Borough of Englewood Cliffs as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the Borough of Englewood Cliffs. Service agents cannot serve as DERs.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- (1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) Exclusions:

- i. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- ii. Tire disablement without other damage even if no spare tire is available.
- iii. Headlight or taillight damage.
- iv. Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653, and 654) in accordance with 49 CFR part 40.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed Commercial Motor Vehicle drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

Employer means an entity, including a municipal employer, employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this Federal regulation. The term, as used in this policy, refers to the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this policy and any applicable DOT agency regulations. Service agents are not employers for the purpose of Federal regulations.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Negative return-to-duty test means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in § 40.305.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive alcohol test means an alcohol test with an alcohol concentration of greater than or equal to 0.04.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

Refuse to submit (to an alcohol or controlled substances test) means that you as a driver:

- (a)(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (see §40.61(a));
- (2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;
- (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;
- (4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));
- (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));

(6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, Sec.40.197 (b));

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under Sec. 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or

(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).

(9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.

(10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.

(11) Admit to the collector or MRO that you adulterated or substituted the specimen.

(12) For a breath alcohol test, refusing to sign the certification at Step 2 of the ATF 40.261 (a) (3).

(b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. 40.191

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, using a vehicle for road clearing, snow removal, trash and recycling removal, remaining in readiness to operate the vehicle, and

(5) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

(1) In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Service agent means any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

PREEMPTION OF STATE AND LOCAL LAWS 382.109

(a) Except as provided in paragraph (b) of this section, the Federal regulation requiring this alcohol and controlled substances testing preempts any State or local law, rule, regulation, order to the extent that:

- (1) Compliance with both the State or local requirement and the Federal regulation is not possible; or
- (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement of this Federal regulation.

(b) This policy, and the Federal regulation requiring it, shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, the Borough of Englewood Cliffs, or the general public.

OTHER REQUIREMENTS IMPOSED BY THE BOROUGH OF ENGLEWOOD CLIFFS 382.111

Except as expressly provided in this policy, nothing in the Federal regulation 382 and 49 CFR part 40 shall be construed to affect the authority of the Borough of Englewood Cliffs, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

REQUIREMENT FOR NOTICE 382.113

Before performing an alcohol or controlled substances test under the Federal regulation, the Borough of Englewood Cliffs shall notify a driver that the alcohol or controlled substances test is required by Federal regulation. The Borough of Englewood Cliffs shall not falsely represent that a test is administered under Federal regulation.

STARTING DATE FOR TESTING PROGRAMS 382.115

- (a) All domestic-domiciled employers must implement the requirements of this policy the date the employer begins commercial motor vehicle operations.
- (b) All foreign-domiciled employers must implement the requirements of this policy on the date the employer begins commercial motor vehicle operations in the United States.

PUBLIC INTEREST EXCLUSION 382.117

The Borough of Englewood Cliffs shall not use the services of a service agent who is subject to a public interest exclusion (PIE) in accordance with 49 CFR part 40, Subpart R. *This is a service agent who has been found by the DOT to be disqualified from providing services to DOT regulated employers.*

EMPLOYEE ADMISSION OF ALCOHOL AND CONTROLLED SUBSTANCE USE 382.121

(a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this policy and 49 CFR part 40, provided that:

- (1) The admission is in accordance with the Borough's written voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;
- (2) The driver does not self-identify in order to avoid testing under the requirements of this part;
- (3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and
- (4) The driver does not perform a safety sensitive function until the Borough is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

(b) A qualified voluntary self-identification program or policy must contain the following elements:

- (1) It prohibits the Borough from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;
- (2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;

- (3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;
- (4) It must ensure that:
 - (i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or
 - (ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and
- (5) It may incorporate employee monitoring and include non-DOT follow-up testing.

DRIVER IDENTIFICATION 382.123

- (a) For each alcohol test performed, the Borough shall provide the driver's commercial driver's license number and State of issuance in Step 1, Section B of the Alcohol Testing Form (ATF).
 - (b) For each controlled substance test performed under this part, the ***Entity Type*** shall provide the following information, which must be recorded as follows:
 - (i) The driver's commercial driver's license number and State of issuance in Step 1, section C of the Federal Drug Testing Custody and Control Form (CCF).
 - (ii) The employer's name and other identifying information required in Step 1, section A of the ATF.
-

SECTION B - PROHIBITIONS

ALCOHOL CONCENTRATION 382.201

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If the Borough of Englewood Cliffs has actual knowledge that a driver has an alcohol concentration of 0.04 or greater, the driver will not be permitted to perform or continue to perform safety-sensitive functions.

ON-DUTY USE 382.205

No driver shall use alcohol while performing safety-sensitive functions. If the Borough of Englewood Cliffs has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, that driver shall not be permitted to perform or continue to perform safety-sensitive functions.

PRE-DUTY USE 382.207

No driver shall perform safety-sensitive functions within four (4) hours after using alcohol. If the Borough of Englewood Cliffs has actual knowledge of a driver who has used alcohol within four (4) hours, that driver will not be permitted to perform or continue to perform safety-sensitive functions.

USE FOLLOWING AN ACCIDENT 382.209

No driver required to take a post-accident alcohol test under 382.303 shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.

REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST 382.211

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under 382.303, a random alcohol or controlled substances test required under 382.305, a reasonable suspicion alcohol or controlled substances test required under 382.307, or a follow-up alcohol or controlled substances test required under 382.311. The Borough of Englewood Cliffs shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

DISCLOSURE OF OFF-DUTY DUI AND DRUG OFFENSE ARREST AN/OR CONVICTION 382.111

Safety Rule requiring mandatory reporting by Drivers of off – duty DUI and Drug Offense Arrest and/or Conviction. In accordance with the authority granted to the Borough by the DOT in 49 CFR 382.111 to impose other requirements to prevent alcohol misuse by Drivers, it is mandatory that Drivers disclose to their supervisor by the end of the business day arrest and/or convictions for all alcohol and/or drug related offenses committed while operating any motor vehicle. This will allow the Borough to immediately remove from safety sensitive functions, Drivers who have engaged in off – duty unsafe behavior related to alcohol or drug misuse (which is directly related to their safety sensitive functions performed for the Borough) to make determinations as follows: 1) if the Driver is fit for duty; 2) if the Driver is still qualified under DOT regulations to operate a CMV for the Borough; 3) if the Driver is still insurable at standard rates under the Borough fleet policy; and 4) if the Driver can still meet the essential job functions for the position of Driver. It is an Essential Job Function of every DOT regulated Driver that they be qualified and licensed to operate a CMV without the use of a judicially ordered interlocking device, or similar device as part of a diversion or conviction for an alcohol related offence.

PRE-DUTY DISCLOSURE OF ANY IMPAIRING EFFECT MEDICATION OR SUBSTANCES 382.213

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) The Borough of Englewood Cliffs, having actual knowledge that a driver has used a controlled substance, shall not permit the driver to perform or continue to perform a safety-sensitive function.

(c) The Borough of Englewood Cliffs may require a driver to inform the Borough of any therapeutic drug use.

All drivers of the Borough of Englewood Cliffs are required, as a safety rule and under DOT regulations, to pre-duty disclosure that they are taking ANY impairing affect therapeutic drug, prescription medication (including medical marijuana), over-the-counter medication, mind altering synthetic or designer drugs or substances which may have an effect on their ability to safely operate a commercial motor vehicle or the performance of safety-sensitive duties. It is an essential function of every driver's position at the Borough to be able to work in a constant state of alertness and in a safe manner. If the fact that the driver is taking an impairing effect drug,

medication or substance is not disclosed pre-duty by a driver, and the driver tests positive or is determined by the MRO to be a potential safety risk due to a drug, medication or substance, that driver will be subject to discipline, up to and including termination for violation of this safety rule. If disclosure is made, the Borough, in accordance with its authority under 49 CFR Part 391.11(a), reserves the right to send the driver for a Fitness-for-Duty evaluation to evaluate the medication and its possible adverse effects on the driver's ability to safely operate a commercial motor vehicle or the performance of other safety-sensitive duties. In determining whether the employee has a legally valid prescription so as to constitute a legitimate medical explanation, consistent with the Controlled Substances Act (CSA), the MRO will use the CSA standard when conducting his medical review (49 CFR Part 40.137).

In advance of the operation of a commercial motor vehicle, or the performance of other safety-sensitive duties, or testing, drivers are strongly encouraged (and mandated by DOT Regulations) to have their own doctor make an individualized assessment of any safety related risks of the drug, medication or substance which they are taking, providing the doctor a copy of their job description or specific duties, and having the doctor render an opinion on the safety related risks. The driver need not disclose to their supervisor the drug, medication or substance, or the medical condition involved, to fulfill this pre-duty disclosure obligation of this safety policy, but may do so confidentially to the DER. All information provided will be kept separate from personnel files and in a confidential manner by the DER. The MRO will make the final determination on the driver's ability to safely operate a commercial motor vehicle or the safety related risks of any particular drug, medication or substance, although the Borough shall make the final determination on whether the driver is qualified to drive/operate a commercial motor vehicle.

CONTROLLED SUBSTANCES TESTING 382.215

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. The Borough of Englewood Cliffs, having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances, shall not permit the driver to perform or continue to perform safety-sensitive functions. In accordance with 49 CFR Part 40.171, when the MRO has notified the driver that he or she has a verified positive drug test and/or refusal to test because of adulteration or substitution, the driver has 72 hours from the time of notification to request a test of the split specimen.

EMPLOYER RESPONSIBILITIES 382.217

No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

- (a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40;
- (b) The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration conducted under part 40;
- (c) The driver refused to submit to a test for drugs or alcohol required under § 382; or
- (d) The driver used alcohol prior to a post-accident alcohol test in violation of § 382.209.

CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B Any driver who engages in conduct prohibited by Section B of this policy will be subject to disciplinary action up to and including termination.

SECTION C - TESTS REQUIRED

TESTS REQUIRED

Required testing includes pre-employment (controlled substances required, alcohol at option of the Borough of Englewood Cliffs), post-accident, random, and reasonable suspicion. Return-to-duty and follow-up-testing is also required if the ***Entity Name*** allows a "positive" test employee to return to a safety-sensitive function after the required evaluation by a Substance Abuse Professional and the required rehabilitation.

BOROUGH OF ENGLEWOOD CLIFFS RESERVES RIGHT TO CONDUCT NON-DOT DRUG AND ALCOHOL TESTING

In addition to drug and alcohol testing conducted by the Borough pursuant to 49 CFR Part 40 and 49 CFR Part 382, The Borough reserves the independent authority to screen and/or test employees under the Borough's Policy including, but not limited to, laboratory testing and point of collection test (POCT) devices utilizing alternative body specimens including hair, urine and oral fluid (saliva), for the detection of illegal drugs, prescription and over-the-counter medications or substances which have an impairing affect and/or alcohol, taken by those who are considered safety-sensitive employees, as may be permitted and/or restricted by applicable state or local laws or regulations and applicable collective bargaining agreements. The term "illegal use of drugs" includes any mind altering synthetic or designer drugs as well as any controlled or scheduled substance not used in accordance with a health care provider's lawful prescription for the user. These collections will be performed in addition to, and not as a substitute for, DOT regulated tests and these urine specimens will not be poured from or taken from the same specimen collected for a DOT urine test or alcohol test [40.13] and will not be conducted using DOT forms [40.47, 40.227]. This may also include a "zero tolerance" policy for the use of drugs or alcohol.

PRE-EMPLOYMENT 382.301

(a) Prior to the first time a driver performs safety-sensitive functions for the Borough of Englewood Cliffs, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the Borough of Englewood Cliffs uses the exception in paragraph (b) of this section. The Borough of Englewood Cliffs shall not allow a driver, who the Borough intends to hire or use, to perform safety-sensitive functions unless the Borough of Englewood Cliffs has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver. *The Borough of Englewood Cliffs shall require a re-collection of a urine specimen on any pre-employment, return-to-duty and follow-up drug test if the result is negative-dilute. The MRO has authority to direct the re-collection be observed. If the second test result is also negative-dilute, the Borough shall accept the result as a negative test.*

(b) The Borough is not required to administer a controlled substances test required by paragraph (a) of this section if:

- (1) The driver has participated in a controlled substances testing program that meets the requirements of this policy within the previous 30 days; and
- (2) While participating in that program, either--
 - (i) Was tested for controlled substances within the past 6 months (from the date of application with the Borough), or
 - (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the Borough); and
- (3) The Borough ensures that no prior employer of the driver of whom the Borough has knowledge has records of a violation of this policy or the controlled substances use rule of another DOT agency within the previous six months.

(c) (1) If the Borough exercises the exception in paragraph (b) of this section, the Borough shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

- (i) Name(s) and address(es) of the program(s).

- (ii) Verification that the driver participates or participated in the program(s).
- (iii) Verification that the program(s) conforms to part 40 of Federal regulations.
- (iv) Verification that the driver is qualified under the rules of this policy, including that the driver has not refused to be tested for controlled substances.
- (v) The date the driver was last tested for controlled substances.
- (vi) The results of any tests taken within the previous six months and any other violations of Section B of this policy.

(2) If the Borough of Englewood Cliffs who uses, but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with 382.401. If the Borough cannot verify that the driver is participating in a controlled substances testing program in accordance with this policy and part 40 of Federal regulations, the Borough shall conduct a pre-employment controlled substances test.

(d) The Borough of Englewood Cliffs may, but is not required to, conduct pre-employment alcohol testing under this policy. If the Borough of Englewood Cliffs chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

- (1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
- (2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).
- (3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
- (4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of Federal regulation.
- (5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

POST-ACCIDENT 382.303

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the Borough of Englewood Cliffs shall test for alcohol for each of its surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the Borough of Englewood Cliffs shall test for controlled substances for each of its surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2),

(b)(1), and (b)(2) of this section:

<u>Type of accident involved</u>	<u>Citation issued to the CMV driver</u>	<u>Test must be performed by the Borough</u>
<u>Human fatality</u>	<u>YES</u>	<u>YES</u>
	<u>NO</u>	<u>YES</u>
<u>Bodily injury with immediate medical treatment away from the scene</u>	<u>YES</u>	<u>YES</u>
	<u>NO</u>	<u>NO</u>
<u>Disabling damage to any motor vehicle requiring tow away</u>	<u>YES</u>	<u>YES</u>
	<u>NO</u>	<u>NO</u>

(d) (1) Alcohol tests. If a test required by this section is not administered within two hours following the accident, the Borough shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the Borough shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the Borough shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the Borough to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) The Borough of Englewood Cliffs shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(g) (1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the Borough.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the Borough.

(h) Exception. This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 571.3) by the Borough unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 177.823.

RANDOM 382.305

- (a) The Borough of Englewood Cliffs shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.
- (b) (1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.
(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 25 percent of the average number of driver positions.
- (c) (1) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.
(2) Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.
(3) Each driver selected for testing shall be tested during the selection period.
- (d) (1) To calculate the total number of covered drivers eligible for random testing throughout the year, the Borough of Englewood Cliffs must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in the Borough's random testing pool, and all covered drivers must be in the random pool. If the Borough conducts random testing more often than once per month (e.g., daily, weekly, bi-weekly) the Borough does not need to compute this total number of covered drivers rate more than on a once per month basis.
(2) the Borough may use a service agent (e.g., a C/TPA) to perform random selections and covered drivers may be part of a larger random testing pool of covered employees. However, the Borough must ensure that the service agent is testing at the appropriate percentage established for FMCSA and that only covered employees are in the random testing pool
- (e) (1) The Borough shall ensure that random alcohol and controlled substances tests conducted under this policy are unannounced.
(2) The Borough shall ensure that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.
- (f) The Borough shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the Borough shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.
- (g) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.
- (h) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the Borough, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.
- (i) If the Borough is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the Borough may--
(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or
(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the Borough is subject.

REASONABLE SUSPICION 382.307

- (a) The Borough of Englewood Cliffs shall require a driver to submit to an alcohol test when the Borough has reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning alcohol. The Borough's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior,

speech or body odors of the driver.

(b) The Borough shall require a driver to submit to a controlled substances test when there is reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning controlled substances. The Borough's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or an official of the Borough who is trained in accordance with 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by DOT/FMCSA regulations only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with the Federal regulation. A driver may be directed by the Borough to only undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e) (1) If an alcohol test required by DOT/FMCSA regulations is not administered within two (2) hours following the determination under paragraph (a) of this section, the Borough shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by DOT/FMCSA regulations is not administered within eight (8) hours following the determination under paragraph (a) of this section, the Borough shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under DOT/FMCSA regulations, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the Borough permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four (24) hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this policy concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, the Borough shall take no action under this policy against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit the Borough with independent authority of DOT/FMCSA regulations from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or an official of the Borough who made the observations, with 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

RETURN-TO-DUTY 382.309

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O, including that such tests will be collected under direct observation.

FOLLOW-UP 382.311

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, Subpart O, including that such tests will be collected under direct observation.

SECTION D - HANDLING OF TEST RESULTS, RECORD RETENTION AND CONFIDENTIALITY

RETENTION OF RECORDS 382.401

(a) General requirement. The Borough of Englewood Cliffs shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) Period of retention. The Borough of Englewood Cliffs shall maintain the records in accordance with the following schedule:

(1) Five years. The following records shall be maintained for a minimum of five years:

- (i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater.
- (ii) Records of driver verified positive controlled substances test results.
- (iii) Documentation of refusals to take required alcohol and/or controlled substances tests.
- (iv) Driver evaluation and referrals.
- (v) Calibration documentation.
- (vi) Records related to the administration of the alcohol and controlled substances testing programs.
- (vii) Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations, and
- (viii) A copy of each annual calendar year summary required by 382.403.

(2) Two years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) One year. Records of negative and canceled controlled substances test results (as defined in part 40 of Federal regulations) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) Indefinite period. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the Borough while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) Types of records. The following specific records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of Federal regulations and this policy. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

- (i) Collection logbooks, if used.
- (ii) Documents relating to the random selection process.
- (iii) Calibration documentation for evidential breath testing devices.
- (iv) Documentation of breath alcohol technician training.
- (v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests.
- (vi) Documents generated in connection with decisions on post-accident tests.
- (vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing and
- (viii) A copy of each annual calendar year summary as required by 382.403.

(2) Records related to a driver's test results:

- (i) The Borough of Englewood Cliffs copy of the alcohol test form, including the results of the test.
- (ii) The Borough of Englewood Cliffs copy of the controlled substances test chain of custody and control form.
- (iii) Documents sent by the MRO to the Borough of Englewood Cliffs, including those required by part 40, Subpart G.
- (iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this policy and
- (v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this policy.

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the Borough:

(A) Must obtain in connection with the exception contained in 382.301 of this policy, and

(B) Must obtain as required by 382.413.

(3) Records related to other violations of this policy.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substances use awareness, including a copy of the Borough's policy on alcohol misuse and controlled substances use,

(ii) Documentation of compliance with requirements of 382.601, including the driver's signed receipt of education materials,

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by 40.213(a), and

(v) Certification that any training conducted under these Federal Regulations complies with requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, and consortia and/or with a C/TPA,

(ii) Names and positions of officials and their role in the Borough's alcohol and controlled substances testing program(s),

(iii) Semi-annual laboratory statistical summaries of urinalysis required by 40.111 (a) of Federal regulations and

(iv) The Borough's alcohol and controlled substances testing policy and procedures.

(d) Location of records. All records required by this policy shall be maintained as required by 390.31 and shall be made available for inspection at the Borough's principal place of business within two business days after a request has been made by an authorized representative of the FMCSA.

REPORTING OF RESULTS IN A MANAGEMENT INFORMATION SYSTEM 382.403

(a) The Borough shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough or any of its drivers.

(b) If the Borough is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the Borough's annual calendar year summary information, the Borough shall prepare and submit the report to the FMCSA by March 15 of that year. The Borough shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. ***Entity Name*** must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at Sec. 40.26 and appendix H to part 40). The Borough may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see:

<http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm>.

You must use the form at appendix H to this part. You may also view and download the updated (1.01.2018) instructions at the DOT's website: (<https://www.transportation.gov/odapc>). You must submit the MIS report in accordance with rule requirements (e.g., dates for submission, selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. ***Entity Name*** shall ensure the accuracy and timeliness of each report submitted by the Borough or a consortium.

(d) If the Borough has a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the Borough), then that employee shall be counted only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. The Borough may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., Consortia/Third party administrator as defined in 49 CFR 382.107) may prepare the MIS report on behalf of the Borough. However, a Borough official (e.g., Designated employer representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

ACCESS TO FACILITIES AND RECORDS 382.405

(a) Except as required by law or expressly authorized or required, the Borough of Englewood Cliffs shall not release driver information that is contained in records required to be maintained under 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests. The Borough will promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) The Borough shall permit access to all facilities utilized in complying with the requirements of this policy to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough or any of its drivers.

(d) The Borough and each service agent who maintains records for an employer, must make available copies of all results for DOT alcohol and/or controlled substances testing conducted by the Borough and any other information pertaining to the Borough's alcohol misuse and/or controlled substances use prevention program when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough or any of its drivers.

(e) When requested by the National Transportation Safety Board as a part of a crash investigation:

(i) The Borough of Englewood Cliffs must disclose information related to the Borough's administration of a post-accident alcohol and/or a controlled substances test administered following the crash under investigation; and

(ii) FMCSA will provide access to information in the Clearinghouse (once established) concerning drivers who are involved with the crash under investigation.

(f) When requested by the National Transportation Safety Board as part of an accident investigation, the Borough shall disclose information related to the Borough's administration of a post-accident alcohol and/or controlled substances test administered following the accident under investigation.

(g) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(h) The Borough may disclose information required to be maintained under this policy pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought).

(i) The Borough shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in 49 CFR part 40.321(b).

MEDICAL REVIEW OFFICER NOTIFICATIONS TO THE BOROUGH 382.407

The medical review officer shall report the results of controlled substances tests to the Borough in accordance with the requirements of 49 CFR part 40, Subpart G.

MEDICAL REVIEW OFFICER RECORD RETENTION FOR CONTROLLED SUBSTANCES 382.409

(a) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of five (5) years for verified positive controlled substances test results.

(b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of one (1) year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer (MRO as defined in § 40.3) or a consortium/third party administrator (C/TPA as defined in 382.107), and no MRO or C/TPA may release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a MRO or a C/TPA from releasing to the employer, the Clearinghouse (once established), or to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances and alcohol testing program under this part, the information delineated in part 40, subpart G.

EMPLOYER NOTIFICATIONS 382.411

(a) The Borough of Englewood Cliffs shall notify a driver of the results of a pre-employment controlled substances test conducted under this policy, if the driver applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The Borough shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this policy if the test results are verified positive. The Borough of Englewood Cliffs shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated employer representative (DER) shall make reasonable efforts to contact and request each driver who submitted a specimen under this policy, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated employer representative (DER) shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

INQUIRIES FOR ALCOHOL AND CONTROLLED SUBSTANCES INFORMATION FROM PREVIOUS EMPLOYERS 382.413

(a) The Borough of Englewood Cliffs must request alcohol and controlled substances information from previous employers in accordance with the requirements of § 40.25, except that the Borough must request information from all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with § 382.701(a) to comply with the requirements of § 40.25 of this title with respect to FMCSA-regulated employers. **Exception:** When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the previous employer's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5).

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the Borough must request the alcohol and controlled substances information required under this section and § 40.25 directly from those employers regulated by a DOT Agency other than FMCSA.

NOTIFICATION TO EMPLOYERS OF A CONTROLLED SUBSTANCES OR ALCOHOL TESTING PROGRAM VIOLATION 382.415

Each person holding a commercial driver's license and subject to the DOT controlled substances and alcohol testing requirements under § 382 who has violated the alcohol and controlled substances prohibitions under part 40 or under § 382 without complying with the requirements of part 40, subpart O, must notify in writing all current employers of such violation(s). The driver is not required to provide notification to the employer that administered the test or documented the circumstances that gave rise to the violation. The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.

SECTION E - CONSEQUENCES FOR DRIVERS ENGAGING IN SUBSTANCE USE-RELATED CONDUCT

REMOVAL FROM SAFETY-SENSITIVE FUNCTION 382.501

(a) Except as provided in Section F of this policy, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by Section B of this policy or an alcohol or controlled substances rule of another DOT agency.

(b) The Borough of Englewood Cliffs shall not permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the Borough has determined that the driver has violated this policy.

(c) For the purposes of DOT/FMCSA regulations, commercial motor vehicle means a commercial motor vehicle in commerce as defined in 382.107 and a commercial motor vehicle in interstate commerce as defined in part 390.

REQUIRED EVALUATION AND TESTING 382.503

No driver who has engaged in conduct prohibited by Section B of this policy shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O. The Borough shall not permit a driver who has engaged in conduct prohibited by Section B of this policy to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O.

OTHER ALCOHOL-RELATED CONDUCT 382.505

(a) No driver tested under the provisions of Section C of this policy who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for the Borough, including driving a commercial motor vehicle, nor shall the Borough permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, the Borough shall not take any action under this policy against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit the Borough with authority independent of this policy from taking any action otherwise consistent with law.

The use or possession of alcoholic beverages while on the Borough of Englewood Cliffs property, or in any of the Borough's vehicle, or on Borough time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited. Employees who are not at work, but who could be called out are expected to be fit for duty upon reporting for work. If an employee is under the influence of alcohol, the employee must notify the Borough's personnel when contacted. Failure to advise the Borough of alcohol consumption may result in disciplinary action. If a covered employee is perceived to be under the influence of alcohol when reporting to work after being called in, the employee's supervisor must be notified.

The supervisor must objectively observe the employee's behavior and if possible, substantiate the behavior with a second supervisor. Supervisors must have received training in alcohol and/or substance abuse detection. The supervisor must follow procedures outlined in the policy. If a determination to test for reasonable suspicion is made, the employee is immediately removed from safety-sensitive duties and the DER is contacted.

PENALTIES 382.507

The Borough of Englewood Cliffs and/or driver who violates the FMCSA requirements of § 382 and/or 49 CFR part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. Section 521(b).

SECTION F – ALCOHOL MISUSE AND CONTROLLED SUBSTANCES USE INFORMATION, TRAINING, AND REFERRAL

BOROUGH OF ENGLEWOOD CLIFFS OBLIGATION TO PROMULGATE A POLICY ON THE MISUSE OF ALCOHOL AND USE OF CONTROLLED SUBSTANCES. 382.601

(a) General requirements. The Borough shall provide educational materials that explain the requirements of this policy and the Borough's policies and procedures with respect to meeting the FMCSA alcohol and drug testing requirements.

(1) The Borough of Englewood Cliffs shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) The Borough of Englewood Cliffs shall provide written notice to representatives of employee organizations of the availability of this information.

(b) Required content. The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the Borough to answer driver questions about the materials;

(COVERED EMPLOYEE CERTIFICATE OF RECEIPT)

(2) The categories of drivers who are subject to the provisions of this policy; *(APPLICABILITY)*

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with the policy; *(PERIOD OF THE WORK DAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE)*

(4) Specific information concerning driver conduct that is prohibited by this policy; *(SECTION B - PROHIBITIONS)*

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this policy including post-accident testing under 382.303(d); *(SECTION C - TESTS REQUIRED)*

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by 382.303(d); *(49 CFR part 40)*

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this policy; *(REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST)*

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences; *(DEFINITIONS)*

(9) The consequences for drivers found to have violated Section B of this policy, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under 49 CFR part 40, Subpart O; *(CERTIFICATE OF RECEIPT, CONSEQUENCES OF PROHIBITED CONDUCT, and CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B, and SECTION E)*

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04; *(OTHER ALCOHOL-RELATED CONDUCT 382.505)*

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management;

(c) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse (once established):

(1) A verified positive, adulterated, or substituted drug test result;

(2) An alcohol confirmation test with a concentration of 0.04 or higher;

(3) A refusal to submit to any test required by subpart C;

- (4) An employer's report of actual knowledge, as defined at § 382.107;
- (5) On-duty alcohol use pursuant to § 382.205;
- (6) Pre-duty alcohol use pursuant to § 382.207;
- (7) Alcohol use following an accident pursuant to § 382.209; and
- (8) Controlled substance use pursuant to § 382.213;
- (9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (10) A negative return-to-duty test; and
- (11) An employer's report of completion of follow-up testing.

(d) *Optional provision.* The materials supplied to drivers may also include information on the Borough's additional policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the Borough's authority independent of Federal regulation. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(e) *Certificate of receipt.* The Borough shall ensure that each driver is required to sign a statement certifying that he/she has received a copy of these materials described in this section. The Borough shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

TRAINING FOR SUPERVISORS 382.603

The Borough shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

REFERRAL, EVALUATION, AND TREATMENT 382.605

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

SECTION G – REQUIREMENTS AND PROCEDURES FOR IMPLEMENTATION OF THE COMMERCIAL DRIVER’S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE

The purpose of the Borough of Englewood Cliffs’ Policy update in advance of the Compliance Date of January 6, 2020 as mandated by § 382.601: 1) is part of the Borough’s efforts to meet its *Employer Obligation to Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substance*; 2) to publish educational materials to drivers about the Clearinghouse and other regulatory changes contained in the Final Rule issued December 5, 2016; and 3) to notify drivers that drug and alcohol test information will be reported to the Clearinghouse beginning January 6, 2020 so as to encourage drivers to seek substance abuse treatment if they currently have a problem with the misuse of alcohol and/or use of controlled substance(s).

DRUG AND ALCOHOL CLEARINGHOUSE 382.701

(a) Pre-employment query required.

(1) Employers must not employ a driver subject to controlled substances and alcohol testing to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213.

(2) the Borough must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

(b) Annual query required.

(1) The Borough must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 382, to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of 382.701, the Borough may obtain the individual driver’s consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the Borough whether there is information about the individual driver in the Clearinghouse, but will not release that information to the Borough. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of 382.701, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver’s Clearinghouse record contains no prohibitions as defined in paragraph (d) of 382.701.

(c) *Employer notification.* If any information described in paragraph (a) of 382.701 is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver’s records, FMCSA will notify the employer.

(d) *Prohibition.* No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation

of § 382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with § 40.307 and specified in the SAP report required by § 40.311, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(c) *Recordkeeping required.* Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

DRIVER CONSENT TO PERMIT ACCESS TO INFORMATION IN THE CLEARINGHOUSE 382.703

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before the Borough may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:

(1) A verified positive, adulterated, or substituted controlled substances test result;

(2) An alcohol confirmation test with a concentration of 0.04 or higher;

(3) A refusal to submit to a test in violation of § 382.211;

(4) An employer's report of actual knowledge, as defined at § 382.107, of:

(i) On duty alcohol use pursuant to § 382.205;

(ii) Pre-duty alcohol use pursuant to § 382.207;

(iii) Alcohol use following an accident pursuant to § 382.209; and

(iv) Controlled substance use pursuant to § 382.213;

(5) A SAP report of the successful completion of the return-to-duty process;

(6) A negative return-to-duty test; and

(7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of 382.703.

(d) A driver granting consent under 382.703 must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with § 382.701(a)(2) or (b)(3).

(e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with § 382.701(c).

REPORTING TO THE CLEARINGHOUSE 382.705

(a) *MROs.*

(1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:

(i) Verified positive, adulterated, or substituted controlled substances test results;

(ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).

(2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:

(i) Reason for the test;

(ii) Federal Drug Testing Custody and Control Form specimen ID number;

(iii) Driver's name, date of birth, and CDL number and State of issuance;

(iv) Employer's name, address, and USDOT number, if applicable;

(v) Date of the test;

(vi) Date of the verified result; and

(vii) Test result. The test result must be one of the following:

(A) Positive (including the controlled substance(s) identified);

(B) Refusal to test: adulterated;

(C) Refusal to test: substituted; or

(D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with § 40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

(b) Employers.

(1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

(i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;

(ii) A negative return-to-duty test result;

(iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;

(iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and

(v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:

(i) Reason for the test;

(ii) Driver's name, date of birth, and CDL number and State of issuance;

(iii) Employer name, address, and USDOT number;

(iv) Date of the test;

(v) Date the result was reported; and

(vi) Test result. The test result must be one of the following:

(A) Negative (only required for return-to-duty tests administered in accordance with § 382.309);

(B) Positive; or

(C) Refusal to take a test.

(3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:

(i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;

(ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);

(iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and

(iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.

(4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at § 382.107, of:

(i) On-duty alcohol use pursuant to § 382.205;

(ii) Pre-duty alcohol use pursuant to § 382.207;

(iii) Alcohol use following an accident pursuant to § 382.209; and

(iv) Controlled substance use pursuant to § 382.213.

(5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:

(i) Driver's name, date of birth, CDL number and State of issuance;

(ii) Employer name, address, and USDOT number, if applicable;

(iii) Date the employer obtained actual knowledge of the violation;

(iv) Witnesses to the violation, if any, including contact information;

(v) Description of the violation;

(vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and

(vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

(6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.

(c) C/TPAs. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: an employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of 382.705.

(d) SAPs.

(1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:

(i) SAPs name, address, and telephone number;

(ii) Driver's name, date of birth, and CDL number and State of issuance;

(iii) Date of the initial substance-abuse-professional assessment; and

(iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under 382.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of 382.703 by the close of the business day following the determination that the driver has completed the return-to-duty process.

(e) Reporting truthfully and accurately. Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

Reporting Entities and Circumstances	
Reporting Entity	When Information Will Be Reported to Clearinghouse
Prospective/Current Employer of CDL Driver	<ul style="list-style-type: none"> — An alcohol confirmation test with a concentration of 0.04 or higher — Refusal to test (alcohol) as specified in 49 CFR 40.261 — Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 — Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. — Negative return-to-duty test results (drug and alcohol testing, as applicable) — Completion of follow-up testing
Service Agent acting on behalf of Current Employer of CDL Driver	<ul style="list-style-type: none"> — An alcohol confirmation test with a concentration of 0.04 or higher — Refusal to test (alcohol) as specified in 49 CFR 40.261 — Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 — Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. — Negative return-to-duty test results (drug and alcohol testing, as applicable) — Completion of follow-up testing
MRO	<ul style="list-style-type: none"> — Verified positive, adulterated, or substituted drug test result — Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191
SAP	<ul style="list-style-type: none"> — Identification of driver and date the initial assessment was initiated — Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing

NOTICE TO DRIVERS OF ENTRY, REVISION, REMOVAL, OR RELEASE OF INFORMATION
382.707

(a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.

(b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.

(c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

DRIVERS' ACCESS TO INFORMATION IN THE CLEARINGHOUSE 382.709

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

CLEARINGHOUSE REGISTRATION 382.711

(a) *Clearinghouse registration required.* Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.

(b) *Employers.*

(1) Employer Clearinghouse registration must include:

(i) Name, address, and telephone number;

(ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and

(iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.

(2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.

(3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse.

Employers must update any changes to this information within 10 days.

(c) *MROs and SAPs.* Each MRO or SAP must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;

(2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and

(3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) *C/TPAs and other service agents.* Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and

(2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.

(3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of 382.711 annually.

DURATION, CANCELLATION, AND REVOCATION OF ACCESS 382.713

(a) *Term.* Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) *Cancellation.* FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.

(c) *Revocation.* FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

AUTHORIZATION TO ENTER INFORMATION INTO THE CLEARINGHOUSE 382.717

(a) *C/TPAs.* No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.

(b) *SAPs.* A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

PROCEDURES FOR CORRECTING INFORMATION IN THE DATABASE 382.17

(a) Petitions limited to inaccurately reported information.

(1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.

(2) Exceptions.

(i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in § 382.705(b)(5).

(iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in § 382.705(b)(3).

(b) Petition. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

(1) The petitioner's name, address, telephone number, and CDL number and State of issuance;

(2) Detailed description of the basis for the allegation that the information is not accurate; and

(3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) Submission of petition. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE, Washington, D.C. 20590.

(d) Notice of decision. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) Request for expedited treatment.

(1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

(f) Administrative review.

(1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.

(2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

(3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(g) Subsequent notification to employers. When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

AVAILABILITY AND REMOVAL OF INFORMATION 382.719

(a) Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:

- (1) The SAP reports to the Clearinghouse the information required in § 382.705(d);
- (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;
- (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and
- (4) Five years have passed since the date of the violation determination.

(b) Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) Exceptions.

- (1) Within 2 business days of granting a request for removal pursuant to § 382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.
- (2) Information about a particular driver's drug or alcohol violation may be removed in accordance with § 382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) Driver information remains available. Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

FEES 382.721

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. *Exception:* No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

UNAUTHORIZED ACCESS OR USE PROHIBITED 382.723

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at § 382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

ACCESS BY STATE LICENSING AUTHORITIES 382.725

(a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

PENALTIES 382.727

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

INVESTIGATION AND INQUIRIES 391.23

(e) (4) As of January 6, 2023, employers subject to § 382.701(a) of § 382 must use the Drug and Alcohol Clearinghouse to comply with the requirements of this section with respect to FMCSA-regulated employers.

(i) *Exceptions.*

(A) If an applicant who is subject to follow-up testing has not successfully completed all follow-up tests, the employer must request the applicant's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5) of Part 40.

(B) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT mode other than FMCSA, the employer must request alcohol and controlled substances information required under this section directly from those employers regulated by a DOT mode other than FMCSA.

(ii) *[Reserved]*

(f) (1) A prospective motor carrier employer must provide to the previous employer the driver's consent meeting the requirements of § 40.321(b) of Part 40 for the release of the information in paragraph (e) of 391.23. If the driver refuses to provide this consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(2) If a driver refuses to grant consent for the prospective motor carrier employer to query the Drug and Alcohol Clearinghouse in accordance with paragraph (e)(4) of 391.23, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.

Attachment A

BOROUGH OF ENGLEWOOD CLIFFS

Commercial Motor Vehicle Driver's

Certificate of Compliance with DOT Cell-Phone/Texting Bans

MOTOR CARRIERS: The restrictions in 49 CFR Part 392 on using a mobile telephone or texting while driving apply to every operator of a "commercial motor vehicle" as defined in Section 390.5, including interstate vehicles weighing or rated at 10,001 pounds or more, vehicles placarded for hazardous materials, and certain vehicles designed or used for more than 8 passengers (including the driver). In-state operations of vehicles placarded for hazardous materials are also subject to the restrictions. Other in-state-only operations may also be subject, depending on state rules.

DRIVERS: Part 392 of the Federal Motor Carrier Safety Regulations contains restrictions on texting and the use of hand-held mobile telephones while driving a commercial motor vehicle (CMV), including the following:

- **Texting ban (392.80):** You may not manually enter text into or read text from an electronic device while driving a CMV. This includes e-mailing, text messaging, using the internet, pressing more than one button to start or end a phone call, or any other form of text retrieval or entry for communication purposes.
- **Hand-held cell-phone ban (392.82):** You are prohibited from using a hand-held cell phone while driving a CMV. This includes talking on a phone while holding it in your hand (including push-to-talk), pressing more than a single button to dial or answer a cell phone, or leaving your normal, seated driving position to reach for a cell phone.

Except as prohibited under the Borough's policy, you are allowed to use a hands-free phone, a CB radio, a navigation system, a two-way radio, a music player, or a fleet management system for purposes other than texting. Texting and hand-held cell-phone use are **only** allowed if you need to contact emergency services or if you have stopped in a safe location off the road.

Penalties (383.51, 391.15, 49 CFR 386): CDL and non-CDL drivers can be disqualified for 60 up to 120 days and/or face fines of up to \$2,750 for each violation. The Borough can be fined up to \$11,000 for each violation.

It is understood that the above information is being provided to the employee in an effort by the Borough to show good faith efforts to achieve compliance with the above-cited regulations. (49 CFR § 386.81)

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