

603 Drug and Alcohol Use

(LIBC Drug and Alcohol Free Workplace Policy Resolution 2000-088)

Effective Date: May 5, 2009

Lummi Indian Business Council Drug-Free Workplace Policy

1. Purpose

The Lummi Indian Business Council (LIBC) provides a variety of governmental and community services. The employees of the LIBC are its most valuable resource, since it is through their work that services are provided. When delivering services, the health and safety of the community and the health and safety of employees are of paramount importance.

The illegal use of drugs and the misuse of alcohol are problems of serious concern to the LIBC and affect all segments of the Lummi community, including the workplace. A recent health survey shows that our youth, the same youth who are starting in the workplace, are three times more likely to drink to excess and to use illegal drugs than the general population. Our adult population is 2.5 times more likely to drink to excess. Approximately 10 percent of the adults surveyed stated that they drove after drinking too much at least once in the past month. Such behavior poses risks to members of the public and to LIBC employees. Employees have the right to work in an alcohol and drug-free environment. Members of the community have the right to be free from the harmful effects of alcohol and drug abuse in the provision of public services.

The Lummi Nation General Council had a series of meetings in 1999 on drugs and alcohol in the community. One of the actions recommended from these meetings was that the LIBC test all employees for use of drugs and alcohol. This policy is, in part, a response to that request.

The Lummi Nation values its employees and the contributions they make to the community. It recognizes, however, that employees can fall victim to drug and alcohol abuse. This policy is an attempt to achieve a drug and alcohol free workplace through drug testing. It also, however, attempts to recognize the need to salvage valuable employees and allow for second chances through "Last Chance Agreements."

1.1 The LIBC strives to maintain a safe and efficient workplace free of drugs and alcohol.

- 1.2 LIBC desires to help employees be free from abuse of, and addiction to, alcohol and drugs. In this spirit, the LIBC will offer rehabilitation and treatment options to employees through referral sources.
- 1.3 The federal Drug-Free Workplace Act holds employers receiving federal grants or contracts of \$25,000 or more, responsible for certifying that they maintain a drug-free workplace. This policy is intended to comply with the requirements of the law.

2. Scope

This policy applies to all full and part time LIBC employees and volunteers. This policy also applies to all individuals selected for hire by the LIBC or by a tribally owned enterprise unless the enterprises have adopted their own personnel policies.

2.1 Employee work areas and LIBC-issued equipment, containers and vehicles under employee's control are subject to search and surveillance at all times while on the Lummi Reservation or while conducting LIBC business off-reservation. Private vehicles used for LIBC business shall only be subject to search and surveillance while being used for such business.

3. Prohibited Behaviors

The violation of any of the following polices may lead to disciplinary action up to, and including termination.

- 3.1 The use of, or being under the influence of alcohol during working hours is prohibited.
- 3.2 The use, purchase, possession or transfer of illegal drugs, or having illegal drugs on the LIBC premises, work sites or vehicles is prohibited.
- 3.3 The manufacture or sale of illegal drugs. If it is discovered that an employee covered by this policy is in possession of illegal drugs or is involved in the manufacture of sale of illegal drugs, appropriate law enforcement authorities will be notified.
- 3.4 While representing the Lummi Nation, employees under the influence drugs or alcohol who engage in behavior reflecting poorly on the LIBC may be subject to disciplinary action. (This section is not to be interpreted as in any manner allowing the use of illegal drugs. The use of illegal drugs is, regardless of whether it leads to behavior reflecting poorly on the LIBC, a violation of these policies that shall be grounds for disciplinary action.)

3.5 The off-work hour use of alcohol is prohibited when such activities adversely affect job performance or job safety.

Taking or using lawful prescriptions consistent with standard dosage recommendations is not prohibited behavior, but employees taking prescribed drugs which can cause drowsiness or have other behavioral side effects must inform their supervisor when they begin and when they stop taking such medication. Violations may lead to disciplinary action.

3.6 Employees Arrested for Drug Related Offenses

Regular Employees who are arrested for drug related offenses shall be subject to the following policies and conditions of employment.

3.61 Employees who are arrested for drug related offenses shall submit to a for cause drug test administered under the procedures contained within this policy.

3.62 Employees who are arrested for drug related offenses and who are in background check category 3, 4, 5 or 6 (Public Trust, High Public Trust, Working with Indian Children, Law Enforcement) shall, at the discretion of the supervisor, either be placed on administrative leave or reassigned to a position with "non-sensitive" duties at the same rate of pay. If the employee is placed on administrative leave, the determination of whether the leave is with or without pay will be made on a case by case basis depending on the circumstances surrounding the arrest. The administrative leave or reassignment shall continue until a judicial resolution of the drug charges is reached.

3.63 Employees who are charged with a drug related offense and do not work in "sensitive areas" shall be allowed to continue in their positions while their criminal matter is pending if they submit to a drug test and enter into a Last Chance Agreement. If an employee refuses to enter into a Last Chance Agreement they will be placed on administrative leave without pay. A final determination regarding the employee's status will be made based on the outcome of criminal charges.

4. Drug and Alcohol Testing

Drug/alcohol testing will be conducted with accuracy and reliability. The LIBC upholds a high regard for privacy and dignity in specimen collection, testing and the notification process.

4.1 Employees found with the presence of a covered substance in the body, alcohol at a detectable level of 0.02 BAC or greater or a confirmed positive drug urine test,

without adequate medical explanation, will be regarded to have violated the provisions of this policy.

4.2 For the purposes of this policy, an employee who tests positive for illegal drugs shall be considered under the influence. An employee who tests 0.02 – 0.039 BAC for alcohol is not fit for duty and should be transported safely home and placed on leave without pay. An employee test of 0.04 BAC or greater for alcohol is considered a “positive” test and considered under the influence. The disciplinary consequences of being “unfit for duty” shall be determined on a case by case basis and may be as serious as immediate termination.

4.3 Job applicants must successfully pass an initial employment drug screen and will be so notified. Testing will be requested for the final applicants considered for the job offer during the last stage of the application process. Applicants who fail the drug screen can, at their own expense, complete a confirmation drug test at an approved testing facility. All confirmation tests must be performed with a sample taken contemporaneously with the original test sample. Additionally, if an applicant fails a drug test, and they are not applying for a “safety sensitive” position, they will be eligible for hire if they provide proof that they are participating in a drug and/or alcohol recovery program and have been in compliance with the program for a minimum of 12 weeks. Failure to take or to pass the test means withdrawal from the employment application process. Job applicants who fail a pre-employment drug test will not be eligible for hire nor will they be eligible for a Last Chance Agreement. Job applicants not be hired due to a positive drug test may not reapply for employment for three (3) months, and only after the applicant has completed a drug and alcohol assessment.

4.4 All employees covered by this policy shall submit to a drug and/or alcohol test following any on-the-job injury requiring an injury report or following an on-the-job vehicle accident when the supervisor or the law enforcement on the scene of the accident reasonably believes the employee caused or contributed to the injury or accident.

4.5 Whenever a supervisor reasonably believes an employee shows obvious signs of being unfit for duty (for cause) or has documented patterns of unusual or unsafe work behavior (reasonable suspicion), the supervisor(s) shall consult with an LIBC Human Resources Representative to determine whether the employee should be referred for alcohol and drug evaluation and/or tested for drugs and alcohol.

4.6 All employees are subject to random drug and/or alcohol testing. Unannounced testing is required at least annually for bus drivers, employees of the Tribal Gaming Agency, CHR drivers, youth transporters, police officers, heavy equipment operators, staff working with children or elders, chemical dependency counselors, those working with cash (or cash equivalents, those who require bonding and those having direct access to drugs or pharmaceuticals in their workplace..

4.7 As soon as practicable after receipt of a verified positive test result from the testing laboratory, a Human Resources Representative will attempt to inform the employee of the positive test results, the consequences of the test results, and the options available to the employee. A copy of the test result will be furnished to the employee upon request. The employee's supervisor will also be notified of the result.

4.8 Employees who have a positive drug test will be immediately placed on administrative leave without pay if they are eligible for a "Last Chance Agreement." If they are not eligible for a "last chance agreement," they will be immediately terminated. Employees may use annual or sick leave in place of leave without pay.

4.9 Refusal to submit to a drug and/or alcohol test required under this policy will result in immediate termination.

4.10 The drug and alcohol test under this policy is a urinalysis, an oral strip test, or a breathalyzer test or any other medically accepted test for detecting drugs and/or alcohol administered under approved conditions and procedures for the sole purpose of detecting drugs and alcohol. The test will be conducted by trained LIBC personnel or a certified facility, approved by and paid for by LIBC.

At a minimum, the Lummi Nation drug tests shall test for the following substances:

- Amphetamines (meth, speed, crank, ecstasy)
- THC (cannabinoids, marijuana, hash)
- Cocaine (coke, crack)
- Opiates (heroin, opium, codeine, morphine)
- Phencyclidine (PCP, angel dust)
- Barbiturates (phenobarbital, butalbital, secobarbital, downers)
- Benzodiazepines (tranquilizers like Valium, Librium, Xanax)
- Methaqualone (Quaaludes)
- Methadone (often used to treat heroin addiction)
- Propoxyphene (Darvon compounds)

5. Testing Procedures/Administration

5.1 Designation of Testing Facilities. A Human Resources Representative shall designate certified testing facilities, collection sites, and laboratories to be used by the LIBC in administering all testing for LIBC employees. The Human Resources Representative shall work with these facilities to develop a testing protocol and to ensure that all testing procedures comply with the requirements of this policy.

5.2 Alcohol/Drug Officers. LIBC Directors and Human Resources staff will be designated alcohol/drug officer(s) (ADOs). ADOs shall be fully trained in the detection of alcohol/drug use and the LIBC Drug Policy. ADOs will preside over, and manage to completion, any situation where testing may be required. All employees who have witnessed an on-the-job injury or situation in which they believe alcohol or drugs may be involved shall report that situation to the ADO with in their department or to Human Resources.

5.3 Alcohol/Drug Officers Responsibility. It is the responsibility of LIBC Human Resources Department to provide notice of procedures and possible consequences to employee(s), obtain employee consent to testing, arrange for testing and transportation to the collection site or testing facility, give notice of right to further testing at employee expense, give notice of any pending disciplinary action, and document any refusals to test. Throughout the process, the Human Resources Department must ensure that employee confidentiality is maintained.

5.4 Employee Consent. No alcohol test may be administered, urine sample collected, nor any drug test administered without first giving notification of the right to refuse such testing, the consequences of a refusal, the consequences of a positive result, and then obtaining the written consent of the person being tested. It is the ADO's or Human Resource staff's responsibility to ensure the notice is provided and the employee's consent is obtained prior to testing.

5.5 Cost and Availability of Initial and Subsequent Testing. The LIBC is responsible for funding the testing policy and shall assume the costs for initial employee testing. All samples that initially test positive for the presence of alcohol or drugs, except job applicants, will be automatically subject to confirmation testing procedures. The LIBC shall pay for the costs for employee confirmation testing. Job applicants, at their own expense, can have confirmation testing completed at an approved laboratory.

5.6 At the time of testing, an employee may have a contemporaneous sample drawn and have it independently tested at a facility of the employee's choosing. This testing shall be at the employees cost. However, the facility must be a certified facility approved by the LIBC. The Human Resources Representative shall establish a list of such approved facilities and shall make that list available at the time of testing.

5.7 Testing Procedures.

a. New Hires: All job applicants subject to this policy shall be given full notice of testing requirements and procedures and the consequences of refusal or a positive result. Those persons shall then be given a place, date and time at which to appear, by the use of their own transportation, for the purposes of sample collection. All persons shall be required to present photo identification before a sample can be taken. In cases when an applicant for employment does not reside within Whatcom County, another

certified test collection site, convenient to the applicant, shall be located by Human Resources and used at no cost to the applicant.

b. Job Injury/Reasonable Cause: Where it is determined that testing must be conducted; the employee to be tested shall be informed by the ADO or Human Resources of the reason for testing and the consequences of refusal or a positive result. Once consent has been obtained in accordance with section 5.4, the employee shall be transported, at LIBC expense, to the testing facility. Under no circumstances shall an employee be permitted to transport him/herself to the testing facility. If an employee refuses to accept transportation such refusal will be construed as refusal to take the test.

(1) Reasonable Cause. Reasonable cause for drug and alcohol testing mean facts, circumstances, physical evidence, physical signs and symptoms or a pattern of performance and/or behavior that would cause a supervisor to reasonably conclude an employee may have engaged in on the job drug or alcohol use, or may be under the influence of some drug/substance including alcohol.

(2) Examples of reasonable cause include but are not limited to:

(a) Unsatisfactory work performance, including accidents and incidents, adequately documented, and where some drug related documentation indicates a linkage or a change in an employee's prior patterns of work performance and where some drug or alcohol performance related documentation indicates a linkage.

(b) Physical symptoms consistent with drug or alcohol use.

(c) Evidence of illegal substance use, possession, sale or delivery.

(d) Fights (to mean physical contact) and assaults, erratic or violent behavior, or severe mood swings resulting in angry outbursts.

c. Random Testing: On a periodic basis, a Human Resources Representative– will randomly select employees for testing. All selected employees will be informed by Human Resources that they will be required to take a random drug test. The department ADOs will be notified of the names of employees in their area that are required to submit to random testing. Employees on personal time off or travel are excused, but will be included in the next random test cycle. Employees are required to sign a consent form for the test. If they refuse to sign the consent form or to complete the test, they will be referred to the Human Resources Representative to provide the employee their rights and consequences of a refusal.

5.8 Pre-Collection Interviews. Having arrived at the testing collection site and prior to the administration of an alcohol and drug test, an employee is to be interviewed by the testing facility's staff to determine whether he/she has taken any form of medication that may result in a positive test result.

5.9 Sample Collection. The testing/collection facility's staff shall conduct all sample collection. Such personnel shall be trained and shall perform all test/collections in accordance with standard clinical/medical procedures.

5.10 The testing/collection facility shall take all steps necessary to ensure employee privacy and confidentiality. After collection, the sample is to be properly sealed and labeled to reflect the employee's identity as well as the time/date of collection. The sample must be stored in a secure/locked place until it can be transported to the testing laboratory. The time between collection and transportation should be minimized, and the storage area must be climate controlled in order to insure that the sample does not degrade. In the event that it is necessary to handle or take possession of the sample between collection and transportation, a record must be kept of each instance (including the identity of the person who takes such action, the date, time, place, and purpose of such action) in order to insure that the proper chain of custody is maintained. An appropriate carrier to the testing laboratory must then transport the sample. Records must be kept by the testing facilities at all stages of the process.

5.11 All drug testing records held by the LIBC shall be treated as medical information and maintained separately from standard personnel files.

Where, upon first analysis, a sample is determined to be positive for the presence of alcohol or drugs, the laboratory shall automatically subject that sample to confirmation testing. The testing laboratory shall retain all samples confirmed positively for alcohol or drug for at least one year.

5.12 Medical Review Officer. The Medical Review Officer (MRO) is a physician knowledgeable about drugs and alcohol. The MRO will be the sole recipient of positive testing laboratory results. The MRO will verify that the results are reasonable. That review may include:

- a. Review of the information provided by the employee at the collection interview.
- b. Affording the individual employee an opportunity to discuss the test results with the MRO.
- c. Requesting, as needed and after patient authorization, medical records to verify information obtained.
- d. Determining whether there is a legitimate medical explanation for the results, including legally prescribed medication.

5.13 Notification.

- a. The MRO will report each test result (after review) exclusively to a Human Resources Representative. The names of LIBC contacts will be on file with the MRO.
- b. The MRO may release the results to a party other than the LIBC Human Resources Representative only when the employee tested signs an authorization for the release to an identified person.
- c. A Human Resources Representative shall notify all employees with positive test results of their rights and responsibilities immediately upon their availability of the test.

6. Last Chance Agreement

6.0 Regular Employees with a positive verified drug and/or alcohol test will not be dismissed solely because they have had a positive test. However, a positive test, in combination with other circumstances, may lead to discipline, including termination.

6.1 Ordinarily, an employee with a positive test will be allowed to retain employment by signing a "Last Chance Agreement" and being referred to a drug and alcohol program. The "Last Chance Agreement" is attached. By signing this Agreement, the employee agrees to all of its requirements. Failure to sign or to adhere to the requirements of the Agreement will result in immediate termination.

6.2 Certain safety- and security-sensitive positions are not eligible for "Last Chance Agreements." These positions include police officers, bus drivers, CHR drivers, youth transporters, heavy equipment operators, child care staff, elder care workers, chemical dependency counselors, construction workers, those who handle money or requiring bonding, and those having direct access to drugs or pharmaceuticals in their workplace and the requirement to dismiss is addressed in the job description.

6.3 Law enforcement officers, bus drivers, any employee who is required to have a Commercial Drivers License, who works with children, seniors or vulnerable adults, and those employees having director access to prescription drugs in their workplace are not eligible for a "Last Chance Agreement." If they violate this policy, they may be terminated or demoted/placed in a light duty position if one is available.

6.4 The Last Chance Agreement requires:

- (1) the employee to obtain an appointment for a chemical dependency assessment and appropriate treatment plan within 24 hours of receiving their positive drug test result.;

- (2) the employee to sign a release of information to the employer regarding the recommendations for treatment and the "fitness for duty" of the employee;
- (3) the employee to start a treatment plan immediately upon its formation;
- (4) the employee to comply with all of the recommendations for treatment and the treatment plan;
- (5) the employee to agree to periodic random testing by the LIBC (in addition to regular random employee testing) for two years following treatment.

6.5 Individuals will be responsible for paying for the assessment and treatment, not withstanding health insurance, Medicaid, or Lummi CHS for those eligible. LIBC is only responsible for the cost of two year random testing.

6.6 Employees must use their annual leave, sick leave, or leave without pay to attend required treatment. All leave shall be taken in accordance with the LIBC Personnel Policies.

6.7 Employees who enter into a Last Chance Agreement shall be not be allowed to return to work until they have started the treatment program recommended by their assessment.

6.8 A second verified positive drug or alcohol test or any violation pertaining to the LIBC drugs and alcohol policy will result in immediate termination. During treatment, the two year random testing or at any time during employment. An exception shall be made in cases of positive tests for marijuana. If an individual in a Last Chance Agreement tests positive for marijuana, they will only be terminated if the levels of marijuana remain unchanged or increase when compared to their most recent previous test.

7. Confidentiality

7.1 All drug and alcohol testing, information regarding a specific individual, interviews, reports, statements, memoranda, and test results, written or otherwise, will remain strictly confidential. Release shall be only in accordance with federal confidentiality statutes and in accordance with this policy.

7.2 Any communications between LIBC Human Resources and the drug and alcohol testing program(s) regarding specific employees will be kept confidential and will be restricted to issues of compliance.

7.3 All test results will be regarded as medical data and will not be filed in an employee's personnel file. The status of an employee's drug test will be communicated within the LIBC on a strict need-to-know basis.

8. Employee & Supervisor Substance Abuse Training & Education

8.1 Every employee will be required to read this policy and sign a statement to that effect. The employer will conduct an orientation to the policy for all new hires, will include this policy in the LIBC Personnel Policy Manual, and will continue to publicize the program throughout the organization.

8.2 The LIBC shall annually provide supervisory training through the HR Department. This training shall include: the connection between job performance deficiencies and impairment through drug and alcohol abuse; the importance of documentation of work performance deficiencies and impairment; how to refer impaired employees to evaluation and treatment; circumstances and procedures for post-injury testing or incident; supervisor responsibilities in a last chance agreement, and employee confidentiality.

8.3 The LIBC shall annually provide education to all employees regarding substance abuse and its effects on the workplace through the Human Resources Department.

CONSENT FORM FOR ALCOHOL AND DRUG TESTING

I, _____, hereby consent to the Lummi Indian Business Council's administration of an alcohol and/or drug test by collecting blood, urine, saliva or breath samples from me and conducting the necessary medical test to determine the presence or use of alcohol or controlled substances. I further consent to the release of all test results to authorized Tribal personnel with the understanding that this is confidential information that shall only be released in accordance with the policy set forth in Section 5 of the LIBC Alcohol and Drug Free Workplace Policy. I also understand that if I refuse to test, I will be subject to disciplinary action, including termination of employment, in accordance with the policy set forth in Section 4 of the LIBC Alcohol and Drug Free Workplace Policy.

I, _____, hereby consent to the alcohol and/or drug testing this _____ day of _____, 20____.

Signature of Employee

Signature of Witness

I, _____, hereby refuse to the alcohol and/or drug testing this _____ day of _____, 20____, and give the following reason for refusal:

Signature of Employee

Signature of Witness

Lummi Indian Business Council Drug-Free Workplace Policy

Last Chance Agreement

Name of _____
Employee _____ Date _____

I understand that I have been offered the opportunity of this "Last Chance Agreement" per the LIBC Drug-Free Workplace Policy as a result of:

- A verified positive drug and alcohol test result; or
- Evidence obtained from an arrest or criminal conviction for a drug or alcohol incident during working hours or during official business.

I understand, as a condition of retaining employment that I will be required to:

- a. agree to this "Last Chance Agreement;"
- b. remain drug or alcohol free prior to and during the chemical dependency assessment through the treatment plan;
- c. obtain a chemical dependency assessment and appropriate treatment plan within 3 days of this agreement;
- d. start the treatment plan immediately upon completion of the treatment plan, and willingly participate in such treatment;
- e. comply with all of the recommendations for treatment; and
- f. sign a release of information to the employer regarding the recommendations for treatment and the "fitness for duty" of the employee;
- g. agree to periodic random testing for two years following treatment.

By signing this agreement, I agree to all of its requirements. I understand that failure to sign or to adhere to the requirements of the agreement will result in immediate termination.

I understand that I am responsible for paying for the drug and alcohol assessment and treatment, to the extent such service are not covered by health insurance, Medicaid, or Lummi Contract Health Service for those eligible. I understand that I must use annual leave, sick leave, or leave without pay to attend required treatment.

Last Chance Agreement

I further understand that a second verified positive drug or alcohol test during the period of this "Last Chance Agreement" will result in immediate termination.

Print

Employee (print)

Director, Human Resources

Signature

Employee (signature)

Director, Human Resources