

37 Delaware Department of Transportation and subsequent amendments thereto or in
38 accordance with any other standards and policies established by ordinance by majority
39 vote of the Commissioners of the Town of Dewey Beach. Part-time officers shall not be
40 privileged to the voluntary rehabilitation sections of the regulations.

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42 § 29-2 **Testing schedule for drugs and alcohol substances.**

43 Drug and alcohol testing for candidates for employment and full- and part-time
44 employees in the lifeguard and police departments of the Town of Dewey Beach shall be
45 conducted at six stages of employment, as follows:

46 A. Pre-employment. Conducted prior to a final employment offer for
47 positions covered by this policy; required for all police and lifeguard applicants. Any
48 candidate who refuses to perform such test and any candidate who fails such tests shall
49 be rejected.

50 B. Post-accident. Conducted after any accident resulting in a fatality, injury
51 resulting in the hospitalization of an injured person, and after any accident that results
52 in damage to any motor vehicle or to any equipment of the Town of Dewey Beach.

53 C. Reasonable suspicion. Conducted when a trained supervisor observes
54 behavior or appearance that is abnormal or erratic and characteristic of alcohol or drug
55 use, when observation is made of alcohol or drug use or possession of alcohol or drugs
56 or drug paraphernalia, when a medical incident or accident appears to be alcohol or
57 drug related, or whenever credible incidents give a reasonable observer reasonable
58 suspicion of alcohol and/or drug use by the subject employee.

59 D. Random. Conducted on a random unannounced basis just before, during,
60 or just after work performance.

61 E. Return-to-duty. Conducted before an individual who has violated the
62 prohibited alcohol or drug conduct standards may return to work.

63 F. Follow-up. Tests are unannounced and up to six tests may be conducted in
64 the first 12 months after an employee returns to duty.

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66 § 29-3 **Notice of testing.**

67 This policy serves as notice for alcohol and drug testing by means of breath, blood and/or
68 urine testing. Each candidate and employee subject to this policy will receive a copy of
69 this policy.

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71 § 29-4 **Prohibited activities.**

72 All subject employees are prohibited from engaging in the following activities:

73 A. The possession or consumption of any illegal nonprescription drug as
74 defined in Schedules I through IV of Title 16, Chapter 47 of the Delaware Code, as
75 amended, or any alcoholic beverage while on duty.

76 B. Reporting to work while under the influence of illegal nonprescription
77 drugs defined hereinabove in Subsection A.

78 C. Reporting to work with a blood alcohol concentration of 0.03 or greater,
79 meaning an amount of alcohol in a sample of a person's blood equivalent to 0.03 or
80 more grams of alcohol per 100 milliliters of blood, or an amount of alcohol in a sample
81 of a person's breath equivalent to 0.03 or more grams of alcohol per 210 liters of breath.

82 D. Refusal to submit to an alcohol or drug substance test conducted pursuant
83 to the provisions of this article.

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85 **§ 29-5 Substances tested.**

86 All specimens shall be analyzed for the following drugs: amphetamine, marijuana (THC
87 metabolite), cocaine, opiates (including heroin), phencyclidine (PCP) and all substances
88 described in Schedules I through V as set forth in Title 16, Chapter 47 of the Delaware
89 Code, and as amended.

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91 **§ 29-6 Testing methods.**

92 Substance testing may be accomplished by using evidential breath testing devices, urine
93 and/or blood testing.

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95 **§ 29-7 Refusal to submit to a test.**

96 A subject employee who refuses to submit to alcohol and/or controlled substance testing
97 is subject to termination of employment. Refusal shall include the following:

98 A. Failure to provide an adequate breath, blood or urine sample for testing
99 without a valid medical excuse immediately after the candidate for employment or the
100 subject employee has received notice of the requirement of a test.

101 B. Obstruction of the testing process by the candidate for employment or the
102 subject employee.

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104 **§ 29-8 Positive tests for controlled illegal nonprescription substances.**

105 A. Full-time subject employees.

106 (1) Each full-time lifeguard and non-sworn police employee whose
107 substance test is positive which indicates the use of a controlled illegal
108 nonprescription substance as defined in Schedules I through IV of Title 16,
109 Chapter 47 of the Delaware Code, as amended, shall immediately be suspended
110 from work without pay for a period of two weeks and shall complete a course of
111 rehabilitation as directed by the town manager within six months after the
112 positive test result.

113 (2) Each sworn police officer whose substance test is positive which
114 indicates the use of a controlled illegal nonprescription substance as defined in
115 Schedules I through IV of Title 16, Chapter 47 of the Delaware Code, as amended,

116 shall immediately be suspended from work without pay and noticed for
117 termination pursuant to the Delaware Law Enforcement Officers Bill of Rights
118 Title 11, Chapter 92 of the Delaware Code, as amended.

119 (3) Each full-time employee whose return to work, follow-up, or
120 subsequent random test within two years from the date of the original failed
121 substance test indicates the use of a controlled illegal nonprescription substance
122 as defined in Schedules I through IV of Title 16, Chapter 47 of the Delaware Code,
123 as amended, shall immediately be terminated from employment.

124 B. Part-time subject employees. Each part-time employee whose substance
125 test indicates the use of a controlled illegal nonprescription substance as defined in
126 Schedules I through IV of Title 16, Chapter 47 of the Delaware Code, as amended, shall
127 immediately be terminated from employment.

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129 **§ 29-9 Positive tests for alcohol.**

130 A. Each employee whose test indicates an alcohol concentration of 0.03 or
131 greater and not more than 0.05 shall be sanctioned as follows:

132 (1) For the first occurrence, a suspension without pay of eight hours;

133 (2) For the second occurrence which occurs within two years of the first
134 occurrence, a suspension without pay of 40 hours;

135 (3) For the third occurrence which occurs within two years of the first
136 occurrence, termination of employment.

137 B. Each employee whose test indicates an alcohol concentration of greater
138 than 0.05 shall be sanctioned as follows:

139 (1) For the first occurrence, a suspension without pay of 40 hours;

140 (2) For the second occurrence which occurs within two years of the first
141 occurrence, a suspension without pay of 80 hours;

142 (3) For the third occurrence which occurs within two years of the first
143 occurrence, termination of employment.

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145 **§ 29-10 Payment of costs.**

146 The Town shall pay the costs of alcohol and controlled substance testing except as herein
147 provided.

148 A. The employee shall pay the cost of any tests requested by the employee to
149 confirm the use of alcohol or a controlled substance if the results of the confirmation
150 test are positive.

151 B. The Town shall not be required to pay the costs of evaluating, counseling
152 or rehabilitation which may be required by the Workplace Drug and Alcohol Testing
153 Program and any other standards and policies established by ordinance by majority vote
154 of the Commissioners of the Town of Dewey Beach. The Town shall encourage those

155 who violate the provisions of this article to seek help in overcoming their problems and
156 to return to work as drug-free and alcohol-free employees in accordance with the
157 requirements of this Chapter.”

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SYNOPSIS

161 This Act brings into compliance the Town’s drug and alcohol personnel policies
162 applicable to police and lifeguards with the Law Enforcement Officers Bill of Rights
163 Chapter 92 of Title 11 of the Delaware Code and removes DELDOT references found in
164 an earlier version of this Ordinance.

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