DEPARTMENT OF CORRECTIONS

Policy Number: 105.177
Title: Employee Mandatory Testing for COVID-19
Effective Date: 6/2/20

PURPOSE: The COVID-19 pandemic presents an unprecedented challenge to our state. The virus is highly contagious, including among asymptomatic people, and potentially deadly. The threat to health and safety from the spread of COVID-19 is perhaps most acute in congregate settings, because social distancing and other infection prevention strategies often are not possible or fully effective in those settings. As congregate living facilities, prisons provide an environment that can lead to rapid and widespread transmission of COVID-19. The state has a special responsibility to ensure that the vulnerable persons entrusted to the state's custody in these congregate facilities are, to the extent reasonably possible, protected from the spread of COVID-19. Employees who work in these settings pose a risk of COVID-19 exposure to these vulnerable persons. The workers themselves also are at increased risk of exposure because of their work in close physical proximity to the vulnerable individuals in their custody. Additionally, ongoing community transmission of COVID-19 in Minnesota and the movement of employees in and out of prison facilities present a continuous risk of introduction. Especially because the virus can be transmitted by asymptomatic individuals, testing of employees working in prisons is a critical tool for quickly identifying new introductions of COVID-19 and enabling an early response to prevent further transmission of the virus. To protect, to the extent reasonably possible, the health and safety of the people who are incarcerated and our employees from the direct threat resulting from the spread of COVID-19, the Minnesota Department of Corrections (DOC) is requiring mandatory employee testing for COVID-19.

APPLICABILITY: All employees whose job responsibilities involve direct contact with individuals who are incarcerated.

DEFINITIONS:
Minnesota Department of Health (MDH) – Minnesota state agency responsible for protecting, maintaining, and improving the health of all Minnesotans

Medical consultant – a qualified medical practitioner, contracted through the occupational health clinic, who reviews the employee's test results from the laboratory and communicates positive COVID-19 test results to employees.

Occupational health clinic – a department-contracted occupational health clinic.

Test – a medical test to determine if someone has an active COVID-19 infection and can give the virus to others.

PROCEDURES:
A. COVID-19 Testing Procedure
The COVID-19 test and results must be conducted and handled in compliance with all applicable rules and laws, including the Minnesota Government Data Practices Act (Minn. Stat., Ch. 13), the Minnesota Human Rights Act (Minn. Stat., Ch. 363A), Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), and the Health Insurance Portability and Accountability Act (HIPAA), to the extent these laws are applicable. The testing is job related and consistent with business necessity.
1. Management determines the employees and the work location(s) to be tested.

2. Management or designees notify employees to take the test at the date, time, and location identified by management. Employees' time to be administered the test will be considered paid work time and the test will be provided at no cost to the identified employees.

3. Prior to testing, employees receive the COVID-19 Testing Consent form. Employees have the right to refuse to take a COVID-19 test. Signed COVID-19 Testing Consent Forms must be maintained in human resources (HR).
   a) Employees who consent to testing and sign the form proceed with the test.

   b) Employees who refuse to sign the form or refuse to submit to a test will be informed they will be excluded from correctional facility grounds and may be subject to disciplinary action, up to and including discharge.
      (1) These employees will be placed in no-pay status (ETL) until they have been tested for COVID-19 or their job responsibilities no longer require testing.
      (2) Prior to being placed in no-pay status, the employee will be offered a *Loudermill* meeting. The employee may have union representation at the *Loudermill* meeting.
      (3) Employees placed in no-pay status who later determine they wish to be tested may obtain a COVID-19 test on their own time at their own expense and have the results reported to DOC, or may be tested at a DOC facility with DOC approval.

4. Employees undergo the test.

5. Employees are provided the "MDH Instructions Following COVID-19 Testing for Corrections Staff" (link attached).

6. Test specimens are submitted to the laboratory for testing.

7. The laboratory makes test results available to human resources (HR) and the occupational health clinic.

8. Test results are communicated to employees as follows:
   a) Employees who receive a negative result are notified by HR of the results in writing.

   b) Employees who receive a positive result will be contacted by the medical consultant via phone to inform them of the positive test result.

9. Employees with positive test results must not report to correctional facility grounds and must self-isolate.
   a) The medical consultant reports work restrictions to HR, and HR staff notify facility leadership.

   b) The employee must contact their supervisor or watch commander and local HR unit to inform them that they will not be able to report to the facility for at least 10 days.

   c) The employee must either work from home if possible or take Paid COVID-19 Leave (if available), accrued sick leave (if available), or unpaid medical leave, for the longer of 10 days from the onset of symptoms or 3 days with no fever without

fever reducing medication (or as directed using current Minnesota Department of Health (MDH) Guidelines for healthcare professionals).

B. COVID-19 testing results

1. The DOC must maintain the confidentiality of employees' test results as provided by law.

2. If a COVID-19 test result is positive, the testing laboratory will share the result with MDH. State and federal laws may authorize or require MDH to share an employee's health information with others without the employee's consent.

3. A positive test for COVID-19 will not be used as the basis for discipline or discharge.

4. Test results must be retained by HR according to the applicable retention schedule and in a secure file separate from the employee's personnel file.

INTERNAL CONTROLS:

A. Test results are retained by HR in a secure file separate from employees' personnel files.

B. Signed COVID-19 Testing Consent Forms are maintained in HR.

REFERENCES: Minn. Stat., Ch. 13 (Minnesota Government Data Practices Act); and Minn. Stat., Ch. 363A (Minnesota Human Rights Act)
Title VII of the Civil Rights Act
Americans with Disabilities Act (ADA)
Genetic Information Nondiscrimination Act (GINA)
Health Insurance Portability and Accountability Act (HIPAA)
Health and Human Services, Health Information Privacy
Minnesota Department of Health Coronavirus Information
Policy 106.230, "Data Protection for Human Resource Systems and Personnel Files"

REPLACES: All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: MDH Instructions Following COVID-19 Testing for Corrections Staff (on HR iShare site)
COVID-19 Testing Consent Form (on HR iShare site)

APPROVALS:

Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Operations Support
Assistant Commissioner, Criminal Justice Policy, Research, and Performance