

# Drug-Free Safety Program Self-Implementation Workbook

A guidebook for employers



**Bureau of Workers'  
Compensation**

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## Requirements of BWC’s Drug-Free Safety Program

Employers participating in BWC’s Drug-Free Safety Program (DFSP) must take these steps:

- Incorporate safety processes;
- Develop a written DFSP policy;
- Provide employee education;
- Offer supervisor training;
- Conduct alcohol and other drug testing;
- Offer employee assistance.

Resources available to help employers meet requirements

Ohio Department of Alcohol and Drug Addiction Services (ODADAS) Web address: [www.odadas.state.oh.us/dfsp/dfsp.asp](http://www.odadas.state.oh.us/dfsp/dfsp.asp)

Department of Labor policy development tool Web address: [www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp](http://www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp)

Other DFSP publications are available on BWC’s Web site at [bwc.ohio.com](http://bwc.ohio.com). Select:

- Ohio employers;
- Programs;
- DFSP.

You may also contact your BWC employer account representative shown on your approval letter.

### Requirements

- Incorporate safety processes.
- Develop a written DFSP policy.
- Provide employee education.
- Offer supervisor training.
- Conduct alcohol and other drug testing.
- Offer employee assistance.



## Getting started with your Drug-Free Safety Program

To put an effective DFSP into place, you need to plan carefully. This workbook offers you guidance on how to develop a drug-free program that is firmly tied to your company's approach to improved workplace safety at all levels within your company. The planning process includes the order that you should tackle each task of program implementation and planning to support effective operations. Check lists help you consider everything of significance for each program element of your DFSP.

Your program will assist you in deterring and detecting alcohol and other drug use, as well as help you take appropriate corrective action to address substance problems that negatively affect workplace safety and productivity. These problems also negatively affect your company's credibility in the community in terms of products and services. As needed, BWC will offer you support and answer your questions about program requirements as you establish your DFSP, but much of the help you need will come from drug-free service vendors.

### Getting started

Your DFSP starts and ends with safety. But what does this mean for you and your understanding of how to get started? Although the first step in putting a DFSP in place is developing a functional written policy, you need to think things through in terms of how your DFSP fits into your company's workplace safety approach. One thing is clear. If you have improperly guarded machinery, a lack of support for safety processes from the top and supervisors who lack proper training in enforcing safety work rules, your risk will remain substantial even if you have a well-crafted drug-free program. So, let's start with a focus on safety.

DFSP is a safety program that focuses on alcohol and other drug use that can compromise workplace safety. However, do not forget that an effective DFSP must take a broader view of safety management. You must develop safety and health processes customized for your unique operations. Safety needs to be a part of all aspects of your business operations, including production, quality and service delivery.

As a company core value, top management must show a commitment to safety, and employees must be actively involved in the safety process and take personal responsibility for their own safety as well as the safety of their

co-workers. Regardless of the nature of your business, an investment in safety is an investment in caring for the people who work for your company. Whether ergonomics, industrial hygiene, accident analysis or some other facet of safety is your issue, looking at the big picture is essential for the success of your risk-management process.

When an accident occurs, line supervision should identify and analyze the accident's root causes. Then they must make the necessary changes that will systematically eliminate the potential for a recurrence. Consider an incident as an opportunity to make changes in safety training or work rules, or to otherwise identify how to prevent a recurrence with a possible injury or damage to property or vehicles. Regulatory compliance is important, but compliance alone is not sufficient to ensure a safe, healthy and injury-free work environment.

A comprehensive approach to safety management includes but is not limited to:

Analyzing and minimizing risk factors within the workplace;

- Making sure all equipment is safe to operate and operated safely;
- Training employees to perform their jobs safely;
- Developing and enforcing work rules that support safety;
- Focusing on accountability for supervisors to address safety issues;
- Analyzing accidents and incidents to determine what safety processes need improvement;
- Encouraging and rewarding employees for bringing forward safety issues;
- Supporting safety from top management;
- Reviewing safety completely to identify gaps in safety systems and determine appropriate steps to improve safety.

Share this with your employees to help them understand how important workplace safety is and that your company considers safety to be everyone's responsibility. This includes not coming to work with alcohol or other drugs in their systems. Focusing on adhering to your policy prohibitions on alcohol and drugs in the workplace is one way to move toward a safe work environment. Everyone shares responsibility for the adage that the best accident is the one that never happened because the company took preventative action.

**After reflecting on workplace safety, turn to the steps required to put in place a Basic-level DFSP. Take the actions listed below.**

1. Decide how much help you want from drug-free service vendors in meeting the program's requirements. This workbook offers guidance for selecting vendors with a proven track record of competence.
2. Compose a written DFSP policy and develop operational procedures. Use the written DFSP policy outline under written policy below as a guide. Have your legal counsel review your policy and operational procedures.
3. Prepare to fill out the BWC safety review on BWC's Web site within the first 30 days of the program year that you are participating. Plan to report accidents online as they occur but no later than 30 days of when you become aware of them. Include accident-analysis training for supervisors in your training plan. Make sure it calls for them to receive this training within the first 30 days of the program year and within 60 days of an employee becoming a supervisor.
4. Decide whether to conduct supervisor training before or after employee education. Contract with a drug-free vendor for these services based on which option works best for your company.
5. Determine how many drugs you want to test for in your employees. We require you test for at least six specified drugs. Determine whether there are other drugs of abuse in your community that you wish to include. Review any decision to include additional drugs with qualified professionals, especially legal counsel with an employment law practice.
6. Identify a collection site for alcohol and other drug testing. Inform the collection site that the testing procedures you want them to use should match federal testing protocols. Finally, with legal guidance choose a cut-off level for a positive test for alcohol.
7. Decide when to announce your program and the program's effective date. We recommend you do this during your first employee-education session where you share your written policy.
8. Maintain a list of local community resources that employees can use to seek help with a substance problem. Determine any additional employee assistance you will offer.

**In addition, if you are starting an Advanced level DFSP, you must:**

9. Increase your safety efforts by developing a Safety Action Plan that builds on the results of your safety review. Complete this action plan within 60 days from the start of your program year— 30 days after your safety review.
10. Arrange random drug testing of, at minimum, 15 percent of your average annual work force through a vendor that uses neutral-selection software applied to the total work force. This applies if you are a private employer or for your safety-sensitive employees if you are a public employer;
11. Pre-arrange a working relationship with an employee-assistance professional to facilitate making a referral for a substance assessment for employees that test positive rather than terminating an employee on a first positive test.

## Developing a written DFSP policy

### Requirements

- You must have a written DFSP policy in place by the end of the first quarter of the initial program year.
- First-year participants must provide a copy of the DFSP policy to BWC with the DFSP Annual Report that is due by the last business day in September (for the January program year) or by the last business day in March (for the July program year).

Written DFSP policy as a full and fair disclosure to employees. For fairness and effectiveness, tell your employees why you are putting a DFSP in place. Inform them how the program works, what they need to know to be in compliance and the consequences for violating the policy.

Give this policy to all employees in your initial employee-education session where they will learn about the program. Let them ask questions.

### Getting started

1. Choose a process for developing your DFSP policy. To get started you may use the outline/questions on page 26. See if this approach suits your company. These questions can provide guidance even if you choose to use the policy-builder approach mentioned below.
2. Use the questions asked and your answers as guidance to tailor your DFSP policy to fit your industry and business operation. Then, use the additional guidance offered by BWC to add missing pieces and your legal counsel reviews your DFSP policy.
3. Beware of any approach that simply hands you a policy. Failing to tailor a policy is a sure path to liability.
4. Make sure you have operational procedures to guide your supervisors, especially in terms of how testing occurs and their responsibilities for consistency and fairness.
5. Consider having legal counsel draft or at least review your operational procedures.
6. Enforce your policy and procedures fairly and consistently.
7. Ensure compliance with any current union agreements. While meeting DFSP requirements, employers with unions must submit substance testing through the collective bargaining process and must operate in compliance with their contracts.
8. Make sure your policy says it applies to all employees at all levels, including top management.

## Key policy-development resources

In the interest of buffering legal liabilities, ensuring you involve legal counsel with an employment law practice may be the best way to craft and subject your policy to legal review. If not, you may use the outline/questions provided in this workbook. The U.S. Department of Labor (DOL) offers a no-cost drug-free policy builder that also contains other useful information. The Web site is: [www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp](http://www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp).

This Web site includes information on the Drug-Free Workplace Act, U.S. Department of Transportation (DOT) requirements and other pertinent laws that may affect your policy design. The key is to use this as a starting point and not expect software to make your decisions.

There are limitations in using this tool to develop a policy. There is no mention of safety processes in the policy builder, and that is a cornerstone of the DFSP. Since DFSP is first and foremost a safety program, you need to tie your focus on alcohol and other drugs within the context of your overall workplace safety efforts.

To make sure abuse isn't occurring, address how you will deal with prescription drugs and over-the-counter medications. Some care is needed and legal guidance is essential to avoid intruding inappropriately into the realm of privacy rights and, especially, medical conditions that are protected by the Americans with Disabilities Act.

## Crafting a written DFSP policy

Employers need to understand that asking the right questions cannot be delegated to an outside party since the liability belongs to the employer.

Your company can choose to use the policy-builder tool to ask some of these right questions, but no policy builder can totally craft a policy that matches your company's business operations.

Regardless of how you approach policy development, (on your own, with the assistance of a policy development vendor or by having legal counsel develop the policy), be aware that careful review is very important. Ensure you don't miss something important when you craft a policy. Make sure the policy is fair to your employees and buffers your legal liability.

Our assumption is you will not simply take the policy that comes from using the DOL e-laws process and think you have a policy that is sufficient. Rather you should make appropriate adjustments to ensure your DFSP policy does not miss anything significant. Nothing replaces your own knowledge of how well the policy fits your company's actual business operations. Develop operational procedures that are driven by your DFSP policy and provide sufficient guidance for your supervisors to allow them to effectively support and enforce your policy.

### Presenting the program and the policy

1. Mention your responsibility as an employer for establishing and maintaining a safe work environment.
2. Focus on the responsibilities of all employees for safety and complying with the policy.
3. Focus on the help available for employees who come forward voluntarily with substance problems. In addition, spotlight the consequences for any employees who test positive.
4. Ensure your employees understand your written operational procedures.
5. Inform your employees about circumstances that may occur with testing.
6. Make sure employees understand testing records are confidential.



## Employee education

### Requirements

- Make sure you conduct an initial one-hour educational session on substance issues for all employees, including supervisors. All employees should receive substance education no later than four months from the start of the initial program year.
- One hour of refresher education is required for all employees/supervisors for each subsequent program participation year and needs to be no later than the due date for the DFSP Annual Report submission.
- Make certain a qualified substance professional conducts educational sessions or is involved in designing required content as well as remaining in the loop to answer questions the presenter cannot answer.
- Submit a sign-in sheet from an employee-education session held during the program year and one invoice from an education service vendor with your DFSP Annual Report each year.

Your DFSP should focus on preventing workplace accidents and injuries caused by substance use within the context of your company's overall safety efforts. To get employees to play a constructive role in your program's success, you must make them aware of the dangers of alcohol and other drug use, and the special safety concerns and risks within your operations.

Initial and annual employee education offered by or through the services of a qualified substance professional can help create awareness of how alcohol and other drugs can compromise safety at your company. At the initial education session, announce your program and share your written DFSP policy and how to comply with it. Then ensure your employees receive quality information about alcohol and other drugs as they relate to health and workplace safety.

Select the right person to conduct educational sessions  
Typically employers choose drug-free service vendors to present substance-education sessions. However, you may also select a manager with good presentation skills to present your DFSP program and policies.

In addition, you can opt to:

- Pick a qualified vendor to develop educational materials, and select a supervisor or manager to present this information, with the vendor in the loop to answer employee questions the manager cannot answer;
- Send a manager with good presentation skills to a train-the-trainer class offered by a qualified substance professional, and then have him or her conduct the educational sessions with the limitation that this manager cannot develop new materials for subsequent refresher education sessions. The class does not make the manager a substance professional;
- Select a vendor who offers sessions live, including through a Webinar approach where the qualified professional's presentation is transmitted to multiple locations;
- Select a vendor who offers sessions online and makes sure that passing a quiz is part of the online process.



## Qualified education service vendors

Qualified education vendors have a credential and/or experience in presenting substance issues and helping others understand the effect of substance use on workplace safety. Employers may use the services of drug-free education vendors who may hold any number of substance credentials. The credentials below are typical, but other credentials may also be acceptable.

- Substance Abuse Professional (SAP)
- Certified Employee Assistance Professional (CEAP)
- Ohio Certified Prevention Specialist (OCPS I and II)
- Licensed Chemical Dependency Counselor (LCDS, LCDC II)
- Licensed Independent Chemical Dependency Counselor (LICDC)
- Licensed Professional Counselor (LPC, LISW, etc.)
- Licensed Practical Nurse (LPN), Bachelors of Science in Nursing (BSN), Masters of Science in Nursing (MSN) or other nursing credentials with a specialization in substance abuse
- Certified MRO
- Substance Abuse Professional Administrator Association (SAPAA) certified
- DARE Officer
- Any other credential determined to be equivalent to any of the above credentials
- At least three years of experience during the past five years providing substance education

BWC solely determines the acceptability of other credentials and experience.

To obtain a list of vendors who have an interest in offering employee-education services, log on to [www.odadas.state.oh.us/dfsp/dfsp.asp](http://www.odadas.state.oh.us/dfsp/dfsp.asp). You may also link to this list through BWC's program pages on [ohiobwc.com](http://ohiobwc.com).

### Getting started

1. Determine what type of vendor services you want and contract for them. At a minimum, make sure a substance professional develops the educational materials and ensures the required content is included.
2. Plan a start date for your DFSP, then hold an

educational session to announce the start of your program for your employees.

3. Make sure all employees receive a copy of your written DFSP policy, a form to sign acknowledging receipt and they have the opportunity to ask questions.
4. Hold an initial educational session on substance issues affecting the workplace. You may choose to do this when you announce your program and share the policy.
5. Make sure a qualified person is in the loop to answer employee questions.

At the first educational session, stress your company's commitment to a safe workplace. Try to make sure that employees understand your expectations, including:

1. Your DFSP applies to all employees;
2. The consequences for violating the DFSP policy;
3. Circumstances under which testing will occur;
4. Protections built into your program to ensure fairness;
5. How a DFSP helps create a safer workplace;
6. Who to contact for further information;
7. Where to go to get help with a substance problem.

### Helpful hint

Employees need to hear this program applies to everyone, and they need their questions answered. Listening and responding to their concerns may help employees perceive the program as a benefit. Try to respond to their questions in a timely manner.

### Minimum annual employee education

- One hour annually for all employees, including supervisors
- Employee education must include sessions covering basic information about alcohol and other drugs. Required content includes sharing:
- The major problem represented by substance use in the workplace and how it affects safety, employees' jobs, families and their lives;
- What constitutes substance use and misuse that is defined in your written DFSP policy;
- The disease model for alcohol and other drugs;

- Substance-use signs and symptoms;
- Effects of commonly used drugs in the workplace;
- What assistance your employees can receive if they or their family members have a substance problem;
- A shared list of helping resources in your community that employees can turn to for themselves or their families.

Within eight weeks of starting work, provide new employees with DFSP information. Be sure you give employees a copy of your policy and substance educational materials.

Use the check list below to see that your employee education meets BWC's requirements and buffers your legal liability.

### Check list for your employee education

- Our company selected our DFSP implementation date.
- We made a preliminary announcement to our employees.
- We identified and contracted with a qualified educator to create a curriculum and materials or arranged for a staff member to receive training from a train-the-trainer program or chose another acceptable method of educating our employees. This could be a Webinar conducted by a qualified professional or an online course with a quiz developed by a qualified professional.
- Our company planned the timing of employee education.
- We established a plan on how to educate new employees within an acceptable time frame.
- Our company has a policy-receipt acknowledgement document for employees to sign that we will keep in each employee's file. We will keep testing records separate from personnel records.
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- In addition, our company sees that education:
- Is at minimum the required length of time of one hour;
- Includes an explanation of our written DFSP policy and the consequences associated with violating the policy, such as by an employee testing positive for alcohol or any of the tested drugs;
- Contains basic information about alcohol and

other drugs, signs and symptoms of substance use, dangers of recreational drug use and its connection to addiction/dependency and the dangers of commonly used drugs in the workplace;

- Includes an explanation of when and how testing will occur;
- Provides an explanation of what substances will be tested and cut-off levels reportable to the employer as a positive result for at minimum, six drugs: amphetamines, cocaine, ecstasy, marijuana, opiates and PCP/angel dust as well as alcohol;
- Identifies any additional drugs of abuse in the community that will be included in testing (e.g., commonly abused prescription medications like oxycodone);
- Includes at minimum, sharing available assistance resources for employees who come forward voluntarily to request help, those referred by a manager/supervisor and those who test positive, even if the positive test results in terminating employment;
- Includes at minimum, sharing available assistance resources for employees who have a substance- abuse problem.



## Supervisor training

### Requirements

- Hold an initial skill-building training session for all supervisors and an annual refresher, conducted by a qualified substance professional.
- Have two hours of training initially for each supervisor with, at minimum, a one-hour annual refresher.
- Make sure all supervisors receive accident-analysis training in addition to the substance skill-building training.
- See that the content of supervisor training includes, at minimum, behavioral observation, documentation and problem confrontation in a professional manner. Determine reasonable suspicion, how to make a referral for testing and how to make a referral for assistance.
- Submit a sign-in sheet from a supervisor-training session held during the program year and one invoice from a training service vendor with your DFSP Annual Report each year.

You must train your supervisors to identify problems, intervene without creating liability and properly support your program. You have more liability at stake when training your supervisors to deal with these issues. Therefore, it's very important to select the right service vendor to help your supervisors develop the skills they need to support your program.

### Going over operational procedures

In addition, you need to share your operational procedures with your supervisors since procedures offer guidance on how to handle various situations. Share with your supervisors how you expect them to support your DFSP. Review your procedures with qualified legal counsel.

### Program effectiveness

For your program to be effective, your supervisors must know how to recognize, document and confront possible substance problems. They need to know how to:

- Initiate reasonable-suspicion testing and how to refer an employee to available resources;
- How to follow up with employees re-entering the work setting after a positive test;
- How to handle program responsibilities consistent with any active collective-bargaining agreements;
- How to refer for testing, including transportation.

Supervisors are the link to your work force and the key to successful program implementation. Poor training or lack of training decreases the chances of a successful DFSP for your company.

### Avoiding liability

Supervisors face a challenging role as the eyes, voice and arm of management. Trainers can help supervisors become comfortable with a safety on-the-job focus for your program. A skilled trainer can help supervisors overcome their discomfort, especially regarding alcohol enforcement at the workplace. Untrained or under-trained supervisors can jeopardize your legal protections. In Ohio, not just your company is at risk for the actions of your supervisors, but your supervisors are also at risk for their actions.

### Getting started

1. Choose a professional trainer. Review your vendor's experience in providing supervisor training on the required topics including role-play and a contract for these services. At a minimum, your selected training vendor will develop supervisor skill-building materials. Given the need for effective training to buffer liability, consider live training for the initial two-hour supervisor training.
2. Before you begin your program, decide whether you want to hold supervisor training before or after employee education.
3. Arrange your first supervisor training session. Decide when to address your company's written operational procedures and substance policy with your supervisors.
4. Have a trainer conduct your initial supervisor skill-building training session.
5. Make sure supervisors receive accident-analysis training within 30 days of the start of the program year or within 60 days of the employee becoming a supervisor. This one-time requirement is in addition to the drug-free supervisor training. The training should take 45 minutes to an hour. This training is available on BWC's Web site free of charge or a vendor may present BWC-required class topics.

At the first training session, stress the supervisors' important role in program effectiveness. Share with them your company's expectations that supervisors:

1. Support the program by applying the rules consistently;
2. Understand liability issues, and how observed behavior must be documented clearly;
3. Know the consequences of employees violating the company's drug-free policy;
4. Know how to conduct accident and incident investigations;
5. Comprehend how to get another trained supervisor involved if necessary to observe behavior that might suggest a need for intervention;
6. Realize they must deal with performance issues regardless of whether there is possible substance use in violation of the company's policy.

## Helpful hint

Supervisors promoted from line-staff positions who manage employees with whom they have gone drinking with often feel discomfort when faced with alcohol misuse by these same employees. They must deal with this discomfort. It typically takes several role-play situations to start to make headway. If supervisors will not take needed action in support of the employer's DFSP, you may have a program on paper only with no support/enforcement.

## Minimum supervisor training

- Supervisors must receive two hours of initial skill-building training and, in subsequent years, at least one hour of refresher training.
- This training is in addition to accident-analysis training that is required the first year.
- Prior to making a referral for substance testing, new supervisors should receive training.
- Supervisors receive this training in addition to attending the one hour of an employee-education refresher yearly.
- If you use the train-the-trainer option for supervisor training, your liability can increase. At minimum, we recommend using a highly qualified, skilled substance trainer to lead your initial supervisor training session.
- Sessions can include time spent with supervisors on operational procedures and expectations for supporting the program.

## Qualified supervisor training vendors

Qualified supervisor training vendors have a credential and/or experience in providing substance skill-building training to supervisors. In addition, they need experience in small-group process and facilitating role playing.

The credentials below are typical, but other credentials that are of the same nature may be acceptable to BWC. If you have questions, BWC will review them. Contact BWC via e-mail at [dfsp@ohiobwc.com](mailto:dfsp@ohiobwc.com).

- SAP
- CEAP
- OCPS II
- LCDS, LCDC II
- LICDC
- LPC, LISW, etc.
- LPN, BSN, MSN or other nursing credentials with a specialization in substance abuse
- Certified MRO
- SAPAA certified
- Any other credential determined by BWC to be equivalent to any of the above credentials
- At least three years experience in the last five years providing supervisor-substance training as determined by BWC

To obtain a list of vendors with an interest in offering supervisor-training sessions, log on to [www.odadas.state.oh.us/dfsp/dfsp.asp](http://www.odadas.state.oh.us/dfsp/dfsp.asp). You may also link to this list through BWC's program pages on [ohiobwc.com](http://ohiobwc.com).

To make sure your supervisor training meets BWC's requirements and buffers your legal liability, use the check list below:

## Check list for supervisor training

- We decided to do supervisor training prior to the program announcement in the event employees ask their supervisors questions.
- We identified and contracted with a qualified substance trainer to design a curriculum and materials or chose another training option acceptable to BWC.
- Our company planned the timing of supervisor training.
- Our company developed a plan on how to train new supervisors.

- We planned an annual refresher training for supervisors who received the initial training.
- 
- And, our company made sure supervisor training is:
- In addition to employee education and accident-analysis training;
- At least the required length of time;
- Teaching supervisors their specific roles for implementing the program and policy;
- Identifying who may need to be tested under various circumstances;
- Building supervisors' skill levels for behavioral observation and recognizing a possible violation of the DFSP policy, documentation, confrontation, determination of reasonable suspicion, referral for testing and referral for assistance;
- Includes role play of supervisor/employee interactions.
- 
- Our company worked with a qualified vendor to see that supervisors are trained on how to:
- Recognize a possible alcohol or other drug problem;
- Document behaviors that demonstrate a possible alcohol/drug problem in violation of the DFSP policy using check lists of behaviors;
- Confront employees professionally with the problem identified from observed behaviors;
- Initiate reasonable suspicion and post-accident testing;
- Handle the random-testing procedures (Note: Advanced level should include this);
- Make an appropriate referral for assessment or other assistance;
- Follow up with employees returning to work after a positive test;
- Handle responsibilities consistently with the applicable sections of any current collective-bargaining agreements;
- Do accident analysis.



## Alcohol and other drug testing

### Requirements

- Conduct pre-employment and/or new hire drug testing.
- Complete reasonable suspicion alcohol and/or other drug testing.
- Do post-accident alcohol and/or other drug testing.
- Perform return-to-duty alcohol and/or other drug testing.
- Conduct follow-up (after return-to-duty) alcohol and/or other drug testing.
- Complete random drug testing (Advanced level, minimum 15 percent).
- Use a certified laboratory, collection site and a certified MRO.
- Report testing information annually as requested (on the DFSP Annual Report) and provide a copy of an invoice from your collection site for testing services with the annual report.

Effective drug-free programs use alcohol and other drug testing that produces reliable, accurate results. Based on your written DFSP policy, testing detects and deters substance use that affects the workplace, and it holds employees accountable through specified corrective action.

BWC requires employers to arrange specimen collection and analysis that basically follows the federal testing model. Professionals have accepted this model for decades, based on systems presence testing as the fairest way to ensure accuracy and reliability with built-in substantive protections for employee rights. This model is the gold standard in testing. An alcohol or drug test cannot be considered positive without a second (confirmatory) test. It is measured against scientifically-established cut-off levels where a chemical metabolite is established to be within the employee's system at a level likely to affect safety and performance. Furthermore, an MRO, who works for a collection site rather than being an employee of the laboratory that did the urine analysis, must review the testing results and process.

The federal testing model relies upon guidelines set by the U.S. Department of Health and Human Services (HHS)

through its operational arm, the Substance Abuse and Mental Health Services Administration (SAMHSA). This organization oversees the certification of drug-testing laboratories. Testing that follows the federal model has built-in protections for employees and employers alike and is defensible in court.

We urge you to consult with legal counsel to make sure the development of well-written operational procedures support a fair testing process. For purposes of consistency and to reduce discomfort for employers who have employees that fall under federal testing mandates, BWC chooses to follow the testing protocols adopted by the U.S. Department of Transportation (DOT). Typically, HHS standards and DOT regulations match each other. However, at times, it is possible for HHS to make changes that DOT considers and adopts at a later date. When this occurs, BWC does not have an issue with employers following DOT regulations for employees (holders of a commercial driver's license) for whom testing must follow DOT requirements.

We strongly urge employers to consult with qualified legal counsel in determining a cut-off level for a positive alcohol test. At a minimum, DFSP requires the drug screen established by HHS and adopted by DOT as well as alcohol testing. Testing occurs under specified circumstances, identified on the following pages. In consultation with legal counsel, employers may choose to arrange for testing for additional drugs. Legal counsel with a background in employment law and drug-free case law are usually in the best position to help make testing decisions that best buffers your liability while also being fair and effective.

### Who does testing?

To obtain collection and laboratory analysis services, you contract with testing professionals. You typically start with finding a local collection site for drug and alcohol testing. You may ask around in your industry to find resources used by other employers. During any period that testing protocols are in flux, a professional collection site and SAMHSA-certified laboratories will know which system is in place. It is not logical that testing professionals will have dual systems in place at the same time.

offering substance-testing services, log on to [www.odadas.state.oh.us/dfsp/dfsp.asp](http://www.odadas.state.oh.us/dfsp/dfsp.asp). You may also link to this list through BWC's program pages on our Web site.

Make sure you inform the collection site what services you are requesting (such as non-federal testing that follows the federal testing model). The chain-of-custody form used by the collection site will specify federal or non-federal. The collection site will make sure urine analysis services comply with BWC's program requirements and are provided by a SAMHSA-certified laboratory. The employer is responsible for securing the services of a certified MRO who has no association with the testing laboratory. Employers may check with their collection site to facilitate MRO services.

### Required testing

#### Alcohol testing

Alcohol testing uses breath/saliva specimens for a preliminary test. A preliminary positive test leads to confirmation through an Evidentiary Breath Test (EBT). This is the form of systems presence testing used for alcohol. When federally approved breath-testing equipment is not readily available, a blood test is permissible. Since blood testing is more invasive, we prefer a breath test, but we consider blood testing for alcohol equally reliable to an EBT.

The collection site that you contract with must follow the federal-testing model. BWC recommends you consider an alcohol test confirming at .04 percent blood alcohol content (BAC) as a positive test in your drug-free policy. This cut-off level is consistent with established practices of the DOT. However, you may choose a different cut-off level based on the nature of your business. Do this in consultation with legal counsel.

#### Drug testing

We require you to make sure that drug testing uses urine-lab analysis, including the capacity for a re-test for all forms of testing other than pre-employment. We also require that you ensure the collection site follows the federal testing model, which details specimen collection, chain of custody and other protections.

#### Random drug testing

Basic-level employers do not have a random drug testing requirement unless specified by another authority, such as state construction or federal mandates. Advanced-level employers must ensure random drug testing of 15 percent of the employer's total (average annual) work force during the program year. This is true except for public employers who apply the 15-percent random drug testing solely to employees with safety-sensitive positions or functions.

We mandate the ability for a possible re-test except for pre-employment drug testing. Ohio law does not permit an employer to charge an applicant for employment for the cost of a medical examination. Ohio law views a drug test as a medical examination. Therefore, applicants have no inherent right to a re-test since the employer would have to pay for it.

You pay for the cost of testing except when an employee requests a re-test on an initial positive test, and the re-test does not overturn the initial positive test result. In addition, you must pay for follow-up testing if a second-chance agreement requires it. Otherwise, the employer's DFSP policy should specify who pays for return-to-duty and follow-up testing in conjunction with a second-chance agreement since an employee testing positive necessitated this additional testing.

#### Required drugs for testing

We require testing for – at minimum – the same drugs required by DOT, which we specify below. Employers are free to test for additional drugs. The drugs for which testing will occur changes from time to time. Employers will make sure testing includes alcohol when there is a reason to suspect alcohol use and for, at minimum, the following drugs:

1. Amphetamines;
2. Cocaine;
3. Ecstasy (MDMA)\*;
4. Marijuana;
5. Opiates;
6. Phencyclidine (PCP/angel dust);

\* Ecstasy is scheduled to become part of DOT testing on Oct. 1, 2010.

<p><b>Test type required</b></p> <p>Pre-employment New-hire</p>	<p>All new employees are subject to pre-employment testing (pre-hire). You may also use new-hire testing within the employee’s probationary period or a combination of the two types of testing applied to 100 percent of applicants/new hires for private employers and 100 percent of safety-sensitive and special needs positions for public employers.</p> <p>Pre-employment (<b>drug test only</b>) or new-hire (<b>drug test only</b>)</p>
<p><b>Explanation</b></p> <p>Pre-employment New-hire</p>	<p>Pre-employment testing is required within a time frame defined by you (so many hours after a conditional offer of employment and before the employee begins any work activity with the employer). You may do new-hire testing in addition to, in lieu of or in combination with pre-employment testing, as an unannounced test that occurs at any time during an employee’s designated probationary period.</p>
<p><b>Test type required</b></p> <p>Reasonable suspicion</p>	<p><b>Reasonable suspicion</b> (may be an alcohol test, drug test or both)</p> <p>Whenever possible, base reasonable-suspicion testing on documentation and concurrence among the trained observing supervisor and a second trained supervisor.</p>
<p><b>Explanation</b></p> <p>Reasonable suspicion</p>	<p>Reasonable-suspicion testing is required when there is evidence that an employee is using drugs or alcohol in violation of the company’s DFSP policy. In light of experience and training, you should draw the evidence from specific, objective facts and reasonable inferences. You may base such facts and inferences on, but are not limited to, any of the following:</p> <ul style="list-style-type: none"> <li>o Observable behavior such as direct observation of drug or alcohol use, possession or distribution, or the physical symptoms of being under the influence of drugs or alcohol such as, but not limited to, slurred speech, dilated pupils, odor of alcohol or marijuana, dynamic mood swings, etc.;</li> <li>o A pattern of abnormal conduct, erratic behavior or deteriorating work performance (e.g., frequent absenteeism, excessive tardiness, recurrent accidents), which appears to be related to substance use or misuse and does not appear to be attributable to other factors;</li> <li>o The identification of an employee as the focus of a criminal investigation into unauthorized drug possession, use or trafficking;</li> <li>o A report of alcohol or other drug use provided by a reliable and credible source;</li> <li>o Repeated or flagrant violations of the company’s safety or work rules that pose a substantial risk of physical injury or property damage and that appear to be related to substance use or misuse that may violate your DFSP policy, and do not appear attributable to other factors. Employers with employees subject to federal testing mandates, such as those of the U.S. Department of Transportation (DOT)/Federal Motor Carrier Safety Administration, may use the federal guidelines for reasonable-suspicion testing that focus on behavior documented just before, during or just after a safety-sensitive function.</li> </ul>
<p><b>Test type required</b></p> <p>Post-accident</p>	<p><b>Post-accident</b> (may be an alcohol test, drug test or both)</p> <p>All employees who may have caused or contributed to an on-the-job accident as defined below will submit to a drug or alcohol test unless the accident investigation documents all of the exceptions identified below.</p> <p>Administer this test as soon as possible after the employee receives necessary medical attention, or within eight hours for alcohol and within 32 hours for other drugs.</p>
<p><b>Explanation</b></p>	<p>Post-accident testing is required immediately following an on-the-job accident, as defined on the following page.</p>



<p><b>Explanation con't.</b> Post-accident</p>	<p>Accident means an unplanned, unexpected or unintended event that occurs on the employer's property during the course of the employer's business, or during working hours, or that involves employer-supplied motor vehicles or motor vehicles used in conducting the employer's business, or within the scope of employment, and results in any of the following:</p> <ul style="list-style-type: none"> <li>○ A fatality of anyone involved in the accident;</li> <li>○ Bodily injury requiring off-site medical attention;</li> <li>○ Vehicular damage in apparent excess of a dollar amount stipulated in the employer's DFSP policy;</li> <li>○ Non-vehicular damage in apparent excess of a dollar amount stipulated in the employer's DFSP policy.</li> </ul> <p>As used in this rule, accident does not have the same meaning as provided in Division (C) of section 4123.01 of the Ohio Revised Code. The definition of this rule is not intended to modify the definition of a compensable injury under workers' compensation law. Also, this definition of accident does not match the definition used by the DOT.</p> <p>BWC provides what we consider to be an "intelligent-testing design." As such, even after conducting an accident investigation and determining who may have caused or contributed to a work-related injury, we do not require employers to order a post-accident test if all the following apply:</p> <ul style="list-style-type: none"> <li>○ The injury was not serious even though off-site medical attention was required;</li> <li>○ The nature of the injury is common to the employee's job function;</li> <li>○ There was no violation of work rules;</li> <li>○ There was no reasonable suspicion indicated by the accident investigation.</li> </ul>
<p><b>Test type required</b> Random</p>	<p><b>Random</b> (drug test only) Advanced level requires 15 percent of the total work force (only safety-sensitive positions for public</p>
<p><b>Explanation</b> Random</p>	<p>Random testing (an Advanced level requirement) involves an unannounced test that occurs at a pre-determined frequency among randomly selected employees. There must be equal probability of selection each time testing occurs. Random testing uses an objective and non-discretionary computer program operated and maintained by an outside contractor.</p>
<p><b>Test type required</b> Return-to-duty and follow-up</p>	<p><b>Return-to-duty</b> and follow-up (may be alcohol test, drug test or both) You are to test all employees returning to duty after a positive test or after a time period specified in your policy. The employee must test negative on the return-to-duty test before you allow him/her back on the job. Follow-up testing is determined by the employer with input from an employee assistance professional who performed the assessment. The return-to-duty test is typically the first in a series of follow-up tests with a minimum (no set maximum) of four tests in the first year from the date of return to duty.</p>
<p><b>Explanation</b> Return-to-duty and follow-up</p>	<p>Unannounced follow-up testing for employees who have been referred for assessment and return to duty is random in terms of when testing will occur but not who will be tested. The first follow-up test will serve as a return-to-duty test and must be negative. It occurs before the employee resumes work activities and following a leave associated with a policy violation. For additional detailed information related to alcohol and other drug testing, please go to the following Web page: <a href="http://www.ohiobwc.com/employer/programs/dfspinfo/dfspdescription.asp">www.ohiobwc.com/employer/programs/dfspinfo/dfspdescription.asp</a>.</p>

## Check list for our testing program

Our policy includes a clear statement of when an alcohol or other drug test will occur.

- Pre-employment and/or new-hire test (drug only)
- Reasonable-suspicion test (alcohol and/or drug)
- Post-accident test (alcohol and/or drug)
- Return-to-duty test (alcohol and/or drug)
- Follow-up test (alcohol and/or drug)
- For Advanced level, random test (drug only) applies to 15 percent of the total work force annually for private employers or to safety- sensitive positions/ functions for public employers

Our policy describes what substances we will test for (at minimum, those listed below), either the current five-panel drug test, or a six-panel drug screen when approved by DOT with conforming products and services from collection sites and SAMHSA-certified laboratories.

- Alcohol
- Amphetamines
- Cocaine
- Ecstasy/MDMA
- Marijuana
- Opiates
- PCP/angel dust

## Our testing program includes the following actions:

- Identifying what constitutes an accident (where any employee who may have caused or contributed to the accident is subject to testing);
- Using mandatory collection sites that comply with federal requirements for urine specimen collection (drug testing) and breath/saliva/blood (alcohol testing);
- Re-testing capability except for pre-employment;

- All urine specimens sent to a SAMHSA-certified laboratory by the collection site and subject to preliminary immunoassay (EMIT Screen) and confirmatory Gas Chromatography/ Mass Spectrometry (GC/MS) testing using cut-off levels established for DOT testing;
- Making sure that MRO services are contracted;
- Having a clear statement of what cut-off levels for drugs mean and the established cut-off level for a positive alcohol test;
- Building employee protections into the testing system;
- Identifying consequences for refusal to test, adulteration, attempted adulteration or specimen substitution;
- Understanding that in the event of a positive, substituted or adulterated result, the employee who is the donor of a urine specimen shall have the option of having a portion of the original sample retested at another SAMHSA-certified laboratory. (The donor does not have the choice of which laboratory.)



## Employee assistance

### Requirements

- At both the Basic and Advanced levels of DFSP, employers must provide a list of local employee assistance resources to give to employees who come forward asking for help and for those who may have a problem, including employees who test positive for alcohol or drugs.
- For the Advanced level, employers are required to have a relationship with a local employee assistance professional. This is for a possible referral for employees who have a first positive test.

### Employee assistance plan

Employee assistance is an important part of any drug-free program. When you help your employees, you show them they are a valued company resource.

When you help employees resolve problems before they impact job performance – including problems related to substance use – you save money, build loyalty and prevent problems that can affect workplace safety. Employees who believe their employer cares about them are typically more productive and supportive of a drug-free program.

The starting place for getting help is a professional assessment aimed at determining the nature of an employee's substance problem. A qualified professional should evaluate your employee's problem. He or she can determine the extent of the problem and the assistance needed for a successful intervention. An assessment determines what happens next in an intervention and how to support the employee making changes.

Upon an employee's first positive drug or alcohol test, in addition to any corrective action you take, you should explain to the employee what a substance assessment involves. Clearly convey your belief in the assessment's value to the employee. Remember, this may be the time to make a difference in getting the employee to acknowledge and deal with his or her substance problem. The employment relationship may create leverage to get the employee to accept help. Use this same process with employees that management refers for possible substance use in violation of the policy and those who come forward voluntarily and ask for help.

Your written policy provides the framework for consequences. Even if deciding to terminate employment, you should handle the termination process in a way that encourages the employee to seek help. Do this through a private meeting where you emphasize the importance of the employee getting a substance assessment by a professional that addresses the problem that resulted in the loss of employment. It's obvious there is a problem because it is costing the employee his or her job.

### Basic level

At the Basic level, it is the employer's choice whether to terminate employment for an employee testing positive or refusing a test. This should conform to the employer's written DFSP policy. As noted above, employers need to decide whether to terminate employment for an employee attempting to manipulate the testing process. Regardless, your DFSP policy should frame how you will deal with these situations and they should be consistent with any collective bargaining agreements.

### Advanced level

At the Advanced level of DFSP, plan to arrange a working relationship with an employee assistance professional who can conduct a substance assessment of an employee testing positive and who is being given a second chance. The pre-arrangement allows a timely referral for an assessment at an established rate without having to begin the search process when an employee tests positive. The normal process includes three-way communication between the employee assistance professional, employee and the employer. This helps make sure there is cooperation with the second-chance agreement. This process allows appropriate information to convey when the employee is ready to return to duty and when the employee could pass a return-to-duty test assuming there is no further substance use.

If you participate in DFSP at the Advanced level, BWC expects you to give an employee who tests positive a second chance. Use a second-chance agreement in

conjunction with a referral for an assessment. Bring the employee back to work after the assessment and following a negative test.

Termination for a first positive test cannot typically be a company policy at the Advanced level when we expect a referral for a substance assessment and a second-chance is given. Exceptions to non-termination on a first positive test include, but are not limited to, such considerations as the nature of your business or having a multi-state corporate policy that dictates termination. We review these situations on a case-by-case basis.

We require you to have an employee assistance plan that addresses what help you will offer to employees with a substance problem. However, you are not required to put in place an Employee Assistance Program at either the Basic or Advanced level.

- At minimum, you should be prepared to share a list of local community resources with employees who may need a professional substance assessment and possible help.
- You share resources with employees who seek help on their own, those whom management refers for a possible alcohol/drug problem and those who have a positive test.
- Your employee assistance plan addresses how you will respond to employees who need help with a substance problem. This includes whether to seek termination of employment, and when you might consider giving an employee a second chance. We encourage you to offer employees the highest level of assistance possible, including giving employees a second chance after a first positive test.
- In general, employers at the Basic level may choose to terminate on a first positive test if this is:
  - tated clearly in the employer's written DFSP policy;
  - Done in concert with a collective-bargaining agreement;
  - Done in a manner that is consistent, non-discriminatory and documented properly.

Otherwise, we may determine that the employer violated DFSP requirements.



- In general, Advanced-level employers may not terminate an employee based solely on a first positive test result. There are exceptions to this rule. The process is based on an employer requesting us to consider the employer's reasons to determine whether there is justifiable cause. We will review each request on a case-by-case basis as illustrated on the next page.
- We have no say in the employment action employers may choose or whether the action is taken with or without legal consultation. However, we do reserve the right to determine whether such action is compliant or non-compliant with DFSP requirements. In addition, we may determine whether to take back any rebates given for DFSP, subject to appeal through our complaint process.
- Under appropriate, justifiable circumstances and, as indicated in your DFSP policy, you may be considered compliant when terminating employment for a first positive test if other performance-related issues are involved. In any case, you should seek guidance from legal counsel when considering whether to

- terminate an employee. This helps decisions being based on implications for future action and promotes consistency to buffer legal liability.
- What circumstances could justify an Advanced-level employer terminating based on a first positive test and still be considered compliant with DFSP requirements?
- Philosophically, we expect Advanced-level employers to support the concept of employees receiving a second chance after testing positive for the first time. The process of employers terminating on a first positive is not something that we designed for the Advanced level of DFSP.
- However, upon request, we will review circumstances specific to the nature of an employer's business and specific business operations when determining whether the employer is considered compliant with DFSP assistance requirements. Our determination regarding granting an exception should be sought before an Advanced-level employer faces a situation involving termination on a first positive test or offering a second chance with a referral for a substance assessment.

### Who pays for the cost of employee assistance?

Employers participating in DFSP's Basic level are not required to pay for an assessment or any assistance services following an assessment, including treatment, unless they are specified in the employer's policy or a collective-bargaining agreement.

Advanced-level employer participants are required to pay for an employee's assessment after a first positive substance test.

Regardless, identify in your policy what you will pay for and whether you expect employees to make a co-payment for an assessment. Assistance professionals state that co-pays have the potential of having employees take some responsibility for their condition(s). This is more conducive to effectively addressing a substance problem.

Becoming familiar with assistance service options We urge you to become aware of free and low-cost employee assistance services. These services are subsidized by public tax dollars and can benefit your employees. Everyone – regardless of their ability to pay – should have access to these services.

To learn more about the local community network of service vendors, contact your Alcohol, Drug Addiction and Mental Health Board or the Alcohol and Drug Addiction Service Board. One of these boards serves each Ohio county. The Ohio Department of Alcohol and Drug Addiction Services (ODADAS) is another resource. For assistance, call ODADAS at 614-466-2596.

If you cannot find the number for your local board, call the Ohio Prevention and Education Resource Center (OPERC) toll free at 800-788-7254. OPERC can send you written information and other resources on dealing with substance use.

### Should an employer consider an EAP?

An EAP is the highest level of assistance. As a drug-free employer, you are not required to have an EAP at the Basic or Advanced level. However, we encourage you to offer the highest level of assistance possible. An EAP offers broad-ranging services. Therefore, it differs in scope from an employee assistance plan.

An EAP can be a cost-effective, comprehensive option to help employees deal with problems affecting job performance. The return on investment from an EAP is significant. By applying short-term counseling, referral and follow-up services, an EAP can identify and help resolve problems. It also provides management training and consultation, prevention and education, crisis intervention, benefits analysis and organizational development. Certified employee assistance professionals offer these services.

### Key issues to think through in advance

The consequences of a positive test

Your substance policy should spell out the consequences for testing positive, refusal to test, adulteration, attempted adulteration and specimen substitution. Employers treat attempts to undercut the testing system seriously, as severe as – if not more severe than – when an employee tests positive or refuses to submit to testing.

After a first positive test, you can refer the employee for an assessment, allow the employee to return-to-duty only after a negative test and offer a second chance. You do this through a signed agreement that specifies the consequences for a subsequent positive test or refusal to test.

### Termination of employment

Employers choose whether or not to terminate employment based on what they include in their written policies. Termination may be subject to a collective-bargaining agreement. As noted above, we do not become involved in employers' termination decisions. We are involved only to determine whether the employer's actions are in conflict with DFSP program-level requirements.

### Employee assistance check list

- Our written policy describes the type of employee assistance services we offer. Based on the DFSP participation level, these range from a list of local community resources to turn to for help with a substance problem to referring an employee to an employee assistance professional.
- If you do retain an employee rather than terminate employment on a first positive test, you must have the following procedures in place:
- A plan on how to refer an employee to professional substance services for an assessment;
- How you will handle re-entry and re-integration of employees returning to duty after an assessment and/or any other services you allow;
- A plan for protecting the confidentiality associated

with employees who voluntarily seek help or are referred for assessment or further help, including testing information within employee records;

- Guidelines regarding compensation or employment status for an employee's time away from work for assessment and/or treatment, as specified in your personnel policies;
- Documenting how re-testing will occur, and how second- or last-chance agreements will work with referral for assessment, return-to-duty testing, and unannounced follow-up testing.



## Selecting drug-free service vendors

### Helpful hints

- Shop around. You are their customer.
- There is more than one vendor for a specific service.
- Make sure the vendor's services can meet BWC's requirements.

### DFSP vendor directory

The ODADAS Web address, [www.odadas.state.oh.us/dfsp/dfsp.asp](http://www.odadas.state.oh.us/dfsp/dfsp.asp), contains a directory of companies and individuals who assist employers in developing and implementing a drug-free program.

ODADAS and BWC make no representations about the quality of service provided and expressly advise those who use these services to choose them with care. When BWC requires credentials, ODADAS makes sure each vendor holds an appropriate credential.

You may choose any qualified service vendor. This is true whether or not the directory lists the vendor. However, you must rely upon your own judgment and take full responsibility for vendor selection.

### Evaluating drug-free service vendors

In establishing a drug-free workplace, you may work with organizational consultants, attorneys and drug/alcohol collection/laboratory services. You may also work with education/training professionals and employee assistance professionals.

It is important to assess accurately these companies' expertise. One option is to seek help from a competent professional broadly knowledgeable in drug-free programs. Choosing a company that offers a range of drug-free services can result in lower costs for packaged services based on the volume of business. Shop around.

## Items to consider when choosing a vendor

### Program development and consultation

- Experience in offering program development as a core business

- Up-to-date knowledge of drug-free legislation and case law
- Experience in tailoring a written policy
- Experience in developing operational procedures
- Access to consortium services for lower costs
- References

### Attorney services for legal review of written policy

- Attorney is experienced in employment/labor law
- Attorney is experienced in drug-free workplace policy and program development
- Attorney is up-to-date on drug-free workplace legislation and case law

### Employee education vendor services

- Obtaining names from the prospective vendor directory or from recommendations from other employers
- Asking the vendor to provide names of satisfied clients
- Doing reference checks and identifying no major concerns
- Finding acceptable rates for contracted services through comparison shopping
- Ensuring the vendor is professionally qualified and knowledgeable
- Making sure the vendor fully understands the required content
- Considering a train-the-trainer option

### Supervisor training vendor services (in addition to the above considerations for education)

- Verifying vendor expertise as a skills trainer involves substance issues
- Making sure the vendor is experienced and skilled in working with supervisors in a small group setting
- Asking the vendor to verify skills in facilitating role-play situations
- Discussing the vendor learning company's drug-free policy and program procedures as they relate to supervisors' roles

### Drug and alcohol testing

- Negotiating prices through a consortium or by shopping around
- Making sure collection site is an established medical/collection facility that does specimen collection as

- a business and follows federal-testing processes for collection
- Discussing indemnification for false positive test results
- Designing a system to handle testing information received from labs/collection/MROs with separate and secure lockup
- Ensuring collection site offers random selection services
- Note: This is for employers doing random testing.
- Establishing post-accident arrangements

you requested be included

- Making sure alcohol testing is by saliva, breath and/or blood

### Checklist for employee assistance

- Reviewing employee assistance options and determining services to offer
- Reviewing whether to obtain assistance services through a consortium

### Type of testing conducted by vendor and costs

- Confirming drug screen matches HHS/DOT requirements and possibly testing for additional drugs plus discussing bundled versus split fees
- Verifying testing includes GC/MS confirmation, EBT confirmation, and discussing bundled versus split fees
- Awareness of cut-off levels for additional drug(s) that





## Reporting and documentation requirements

### Requirements

- Keep documentation to submit with report.
- Timely submit the DFSP Annual Report each program year (last business day of March for the July year; last business day of September for the January year).
- Cooperate when requested if a program audit is conducted.

Report the progress you make in implementing and operating your program to us on an DFSP Annual Report. The management representative designated by the employer must complete and sign the DFSP Annual Report by the last business day of September if you participate in the January program year. If you participate in the July program year, the report is due to us by the last business day of March.

We can remove you from the DFSP if you fail to timely submit the DFSP Annual Report or fail to cooperate with an audit request. This includes state construction contractors and all tiers of subcontractors operating a comparable program (described below).

**Along with the DFSP Annual Report, we require documentation that you implement these program components:**

- A written substance policy;
- Employee education and supervisor training;
- Compliant alcohol and other drug testing;
- The minimum employee assistance for your DFSP level.

### Changing program levels

To start a DFSP, you choose either the Basic or Advanced level of participation. But, if you are a construction employer, you have the option to apply to operate a comparable program. Each time you submit your DFSP Annual Report, you may keep or change your level of participation for the next program year. We do not lock you into a program level. When you submit your DFSP Annual Report, you can change levels as frequently as every program year.

The DFSP runs for an unlimited number of years and allows in-and-out participation privileges. However, the credibility and effectiveness of your program are very important. Not operating a DFSP for a rebate in a subsequent year is an employer's choice. But if you turn your program on and off, it will not have the desired effect on improved safety. In addition, telling your work force you're drug-free again will have no credibility.

### Comparable program for employers bidding/working state-construction projects

Employers in the construction industry that are interested in bidding on or working as contractors or subcontractors on a State of Ohio public improvement/construction project must have a drug-free program that meets requirements specified in Ohio law (Sec. 153.03 of the Ohio Revised Code). State construction contractors and all tiers of subcontractors must have a compliant drug-free program in place no later than the time when they provide labor or supervise labor on a state job. All construction employers, including those who subcontract labor, must be in an approved status in the state construction database. Many smaller state construction employers, including sole proprietors (zero employees), choose a comparable program because there are fewer requirements. Since they are not eligible for the DFSP, self-insuring construction contractors need to choose a comparable program.

We maintain a listing/data base of all state construction contractors enrolled in DFSP as well as those that choose a comparable drug-free program. This data base must list contractors that bid on state construction projects as approved before state contracting agencies normally accept their bids or allow anyone to work on a state project.

## Building a written DFSP policy

### How to craft a written policy that reflects DFSP requirements

The following process of creating a DFSP written policy comes with an important caution to you. We can tell you the types of information to include in your policy but cannot possibly take into account the range of regulatory authorities whose requirements you must also meet. For example, employers with union contracts are not free to implement a policy that requires testing for alcohol and other drugs without good faith collective bargaining. Another example is an employer governed by regulations issued by the U.S. Department of Transportation/Federal Motor Carrier Safety Administration.

The first approach is to start with the outline below that asks you questions. The answers you provide help flesh out your initial written DFSP policy that a qualified legal counsel can then review. A second approach is to use a series of questions from DOL to drive your policy creation. Choose the approach that makes the most sense to you and that reflects DFSP requirements.

### Outline for a written DFSP policy

The outline below provides for all elements of a DFSP that addresses workplace alcohol and other drug use within the context of a company's safety commitment. You should include those elements that are appropriate to your company's Basic or Advanced-level DFSP.

### Statement of commitment

Show your commitment to providing a safe workplace for your employees. The policy should reflect clearly that alcohol and other drugs in an employee's system while on the job negatively affects the productivity, safety and stability of the workplace, and that you will not tolerate this behavior.

### Statement of policy

State clearly your company's attitudes toward alcohol and other drug use. The policy will state the organization's zero tolerance toward:

- Employees working while having alcohol or other drugs in their systems at a level that compromises safety and affects productivity;
- On-the-job possession or use by employees;
- Selling of illegal substances (trafficking).

### Make drug-free a part of your safety culture

What distinguishes DFSP from the previous BWC drug-free programs are the vital safety processes at each program level (Basic and Advanced). The DFSP's safety elements are essential for an effective safety culture. The safety review helps identify gaps in your safety culture and identifies opportunities for improvement. The action plan describes in detail what improvements you will make, how you will make them and who is responsible for completing each action item. To prevent future accidents, the accident-analysis training and accident reporting help identify accidents' root causes and appropriate corrective actions. You must document clearly each of these safety elements in your DFSP policy, communicate them to your work force and incorporate them into your business operations. Focusing on these elements will help your organization develop a strong and effective safety culture.

### Policy violation

State clearly the consequences of violating the above policies by listing the types and sequence of disciplinary action you will take (up to and including termination).

### Employee awareness

Your policy should state how you will arrange to share alcohol and other drug educational information with employees. The types of information presented should include:

- The dangers of alcohol and other drug use in relationship to the workplace;
- Your DFSP policy and consequences for violating it;
- Availability of employee assistance at or above what is required for your program level.

### Policy implementation

Your policy should clearly state:

- How the policy and related operational procedures will be communicated to employees;
- Who will be responsible for implementing the policy and procedures;
- Each employee's responsibilities under the policy and procedures.
- How employees can obtain assistance and access to referral services.

## Employee assistance

Communicate to employees how employee assistance serves employees by laying out the procedures to:

- Train supervisors and educate employees;
- Identify substance users;
- Assess the nature and extent of the personal problem leading to a substance problem;
- Recommend an available course of intervention;
- Follow the employee's progress to maximize outcomes for the employee in dealing with the problem to avoid further consequences;
- Develop a supportive environment for a healthy lifestyle (wellness).

## Alcohol and other drug testing

Communicate clearly all aspects of the testing process to employees.

### Types of testing

- Pre-employment/new hire
- Reasonable suspicion (provide examples)
- Post accident
- Return to duty
- Follow up
- Random (Advanced level)

### State clearly how your company will conduct the testing by identifying:

- Procedures for initial and follow-up testing after receiving positive results;
- Consequences of positive test results;
- Confidentiality of test results.

State what will happen if an employee refuses testing, adulterates, attempts to adulterate, substitutes or dilutes a specimen.

Compliance with the Federal Drug-Free Workplace Act  
The Federal Drug-Free Workplace Act requires five essential components for any state or local agency (or other employer) receiving at least \$25,000 through a federal grant or contract. They are:

- The drug-free workplace policy statement is publicized;
- A copy of the policy is given to each employee;
- An employee-awareness program is established;
- Employee criminal convictions are reported;
- Procedures related to disciplinary consequences for policy violations are established.

## Provision for assistance

State the benefits provided by the company when an employee seeks and obtains assistance services. These include provisions for:

- Time off work for an assessment for employees allowed to retain their jobs based on meeting specified criteria related to cooperating with the assessment professional and signing a second-chance agreement;
- Time for inpatient and/or outpatient treatment;
- Follow-up support after completing treatment;
- Support in case of a relapse.

## Definitions

Specifically define any terms that may be ambiguous or stated in technical terms not previously defined in the policy. Make a special effort to define words or phrases that might have a significant impact on policy interpretation. These terms that you need to clearly define include reasonable suspicion, controlled substances, prescription drugs, etc.

## Statement of confidentiality/privacy

Make it clear to employees that all aspects of any employee assistance or testing procedures are private. Let employees know their records are confidential, and you will share them only with individuals with a right to know. You should state who will have access to such information.

## Participation agreement

Provide an opportunity for the employee to certify that he or she:

- Has a written copy of the policy;
- Understands all policy implications;
- Agrees to abide by the policy's conditions;
- Will not use alcohol or illegal drugs in the workplace or come to work with alcohol or illegal drugs in his or her system.

Because there are other regulatory authorities whose guidance employers must follow, BWC strongly urges that employers design a policy that complies with



DFSP requirements. Qualified legal counsel needs to write or review the policy. Licensed attorneys with an employment law practice and who are up-to-date on the most current developments in drug-free case law are the best qualified lawyers to help employers with their DFSP policies. Attorneys with these specializations can make sure the policy buffers employers' legal liabilities and is fair to employees. For example, they can help an employer determine whether it makes sense to test for more drugs than the DFSP requires based on the drugs of abuse in the community where the employer's business is located. Attorneys who are current on Equal Employment Opportunity Commission interpretations of the Americans with Disabilities Act can add knowledge that an employer is not likely to secure on its own.

### Another approach to policy development: Drug-free workplace policy builder

You may start the process of asking the right questions by pasting this link into your Web browser: [www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp](http://www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp). The following information will help you understand the policy-development process.

### Drug-free workplace policy builder menu

This section of the drug-free workplace advisor helps you develop a customized drug-free policy statement for your organization. To do this, it will guide you through the different elements of a policy. Along the way it will ask you to choose among various options that are appropriate for your workplace. It will then generate a statement integrating your selections with standard recommended language for all organizations. Once it is complete, you can review and modify the statement as needed and add your

organization's name and logo where it is appropriate. A drug-free workplace policy forms the foundation for a drug-free workplace program, and is one of five program components. In addition to a policy, a comprehensive drug-free workplace program includes supervisor training, employee education, employee assistance and drug testing. Although programs can be effective without all five of these components, we recommend you explore all of them when you develop a program. Effective program planning with a philosophy is critical to your company's success. Employers and employees need to work together to examine each component and design a balanced, fair program suited to the unique needs and challenges of their workplaces. To help you, this section provides links to extensive information about each component on the Working Partners Web site at [www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp](http://www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp).

### What would you like to do?

- Build a drug-free workplace policy
- Learn about the other components of a drug-free workplace program
  - Supervisor training
  - Employee education
  - Employee assistance
  - Drug testing

### Crisis situations

Having a drug-free workplace program in place is a workplace's best line of defense against alcohol and drug problems. However, careful planning and consideration are required. You cannot put a program in place overnight. In the meantime, use extreme caution in addressing existing problems. For guidance on addressing immediate problems without a drug-free workplace program, please read the Working Partners Web site's section on crisis management at [www.dol.gov/asp/programs/drugs/workingpartners/dfworkplace/cm.asp](http://www.dol.gov/asp/programs/drugs/workingpartners/dfworkplace/cm.asp).

### Drug-free workplace policy builder developing a policy statement

The policy builder has 13 sections, each addressing one of the questions listed below.

1. What is the purpose/goal of your policy?
2. Who will be covered by your policy?
3. When is your policy effective?
4. What behavior is prohibited?
5. Will employees be required to notify you of drug-

6. Will your policy include searches?
7. Will your program include drug testing?
8. What will the consequences be if your policy is violated?
9. Will there be return-to-work agreements?
10. What type of assistance will be available?
11. How will your company protect employee confidentiality?
12. Who will be responsible for enforcing your policy?
13. How will your company communicate your policy to employees?

For best results build your policy in one session. Make sure you do not save or store in any way information you provide while you are using the system.

Prior to policy distribution and implementation, please note that DOL strongly recommends you have your policy reviewed by a legal consultant, such as a labor/employment attorney.

BWC wants to precaution you that beyond this DOL advice, using the policy-builder approach alone is insufficient. This is because BWC's DFSP has some key aspects not reflected in DOL's policy focus. The most important one ties to our program integrating an employer's drug-free efforts into a broad-spectrum approach to improving workplace safety.

**Therefore, an employer choosing the DOL policy-builder approach should also make sure all of the following occur:**

1. Add safety as your first element, your first focus. If you fail to do so, your program will not be effective, regardless of how well you implement the other program elements;
2. Address prescription medications and over-the-counter medications in your policy. In terms of testing for additional drugs that are basically prescription medications but are subject to abuse, it is important to make sure your employees understand your concern in protecting the work force from abuse situations. This includes using drugs without a valid prescription written for the employee. You are not trying to interfere or learn more about their prescriptions or their conditions. You are only interested in workplace safety. The MRO's role is key to protecting employee rights and private/confidential information. The MRO does not share this information inappropriately with the employer. The testing system incorporates it;
3. Social-host liability exists when employers host company functions that include the serving of alcohol. There is a potential for substantial liability. We advise employers to think about how they will manage their risk when hosting these functions. Address this policy concern with your legal counsel;
4. Your legal counsel must examine carefully physical/plant searches.

### **Drug-Free Safety Program Annual Report— Basic and Advanced Levels**

A properly completed sample report is available on the following pages. The DFSP Annual Report demonstrates compliance with program requirements.

### **Thank you for your interest**

Our goal for this workbook is to provide a reference guide for employers developing a DFSP. The workbook offers a detailed explanation of how to implement the program on a step-by-step basis. It's especially helpful if an employer receives no other assistance.

If you are a DFSP participant, your account representative's name and contact information are available on your approval letter. For more information, please call 1-800-644-6292 and follow the prompts. BWC's Customer Contact Center staff members will answer your questions or refer you to an expert who can do so if your questions are more complex.

Access to the DFSP Guide, other publications and program-related information is available on the DFSP Web page at <http://www.ohiobwc.com/employer/programs/dfspinfo/dfspdescription.asp>. We wish you and your employees success in your program development. Be safe and drug free.



# Bureau of Workers' Compensation

# Drug-Free Safety Program (DFSP) Annual Report – Basic and Advanced Levels

Please complete this form and return it with requested information, including required attachments as directed by BWC.

Employer information			
Name of employer and DBA		Federal Tax ID number	BWC policy number
Address	City	State	ZIP code
Telephone number		Fax number	
Email address			
Contact information			
Contact name			
Contact title		Contact email	
Contact telephone number		Contact fax number	
Program information			
Current program level: _____			
<p>This form is the annual report of progress due by the last business day of September for the January program year and by the last business day of March for the July program year. The intent of this report is for the employer to provide sufficient documentation of compliance with all program requirements. Please fill in the requested information below with the understanding you must submit all required attachments and answer all required questions to document compliance and receive/retain a DFSP discount. If you check the No box in response to any of the Yes/No questions, you must provide an explanation since each of these questions involves a requirement to remain in the DFSP at the approved program level. Attach explanations and any other pertinent information on additional sheets as appropriate.</p> <p><b>Select the program/level you wish to participate in for the next program year (check one only).</b></p> <p><input type="checkbox"/> Advanced</p> <p><input type="checkbox"/> Basic</p> <p><input type="checkbox"/> Comparable (state construction only)</p> <p><input type="checkbox"/> I do not wish to participate next program year. I understand that future participation will require timely submission of a new application (U-140).</p> <p>Answer each statement on this report by checking the appropriate Yes/No box and/or by providing requested information. All No answers require an explanation.</p> <p><b>1. General information</b></p> <p>Total number of employees reported under this policy: _____</p> <p>Number of new hires during this program year: _____</p> <p><b>2. Safety requirements</b></p> <p>a. Our company has completed the required online safety review during this program year. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>b. Our company has completed the required accident-analysis training for all supervisors and other appropriate personnel. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>c. If yes, was training completed <input type="checkbox"/> Online - BWC Learning Center <input type="checkbox"/> Other</p> <p>d. If you answered Other: Our company will submit documentation (e.g., sign-in sheet) for accident-analysis training. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>e. Our company submitted an accident report for each allowed workers' compensation claim that occurred during the program year. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>f. <b>(Advanced level only)</b> Provide an update on your safety action plan. Describe the accomplishments and/or progress you have made or are making with the specific activities identified in your action plan.</p> <p>_____</p> <p>_____</p>			

**Program information**

**3. Written DFSP policy**

- a. Our company has developed (or maintained) a written policy that complies with the requirements of the DFSP level that we are participating in for this program year. Yes  No
- b. I have previously submitted a copy of my written DFSP policy. Yes  No

**4. Employee education**

- a. Our company has initiated and is maintaining employee education that complies with the requirements of our DFSP level for this program year, using services from a qualified substance professional. Yes  No
- b. Indicate below the name(s) of the qualified substance professional(s) who provided drug-free substance education sessions to your employees and supervisors for this program year, their credentials, the name of their company(ies) and the dates (month/day/year) on which these sessions occurred.

Name(s)/credentials of vendors who provided employee education sessions this program year: Month/Day/Year held

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**5. Supervisor training**

- a. Our company has initiated and is maintaining supervisor training that complies with our DFSP level requirements, including covering all required substance abuse topics and offered through a qualified substance professional. Yes  No
- b. Indicate below the name(s) of the qualified substance professional(s) who provided supervisor skill-building training to your supervisors for this program year, their credentials, the names of their company(ies) and the dates (month/day/year) on which these sessions occurred.

Name(s)/credentials of vendors who provided supervisor training sessions this program year: Month/Day/Year held

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**6. Alcohol and other drug testing**

- a. Our company has initiated and is maintaining the full range of substance testing in compliance with the requirements of our program level. Yes  No
- b. Below, record the total number of alcohol or drug tests by type of test (pre-employment, etc.). Then, for each substance (alcohol and each listed drug), record number of positives under each type of test.
- c. If your company had any positive test results, please indicate below by gender and age range the number of tests for each category.

Number of positive tests by age ranges and gender

	Male	Female	Total
i. Under 21	_____	_____	_____
ii. 22-30	_____	_____	_____
iii. 31-40	_____	_____	_____
iv. 41 and over	_____	_____	_____

**Number of positive tests by type of substance found**

	Total number of tests	Alcohol	Amphetamines	Cocaine	Ecstasy	Marijuana	Opiates	PCP/Angel Dust	Barbiturates	Benzodiazepines	Methadone	Oxycodone	Propoxyphene	Other
Pre-employment/new hire														
Reasonable suspicion														
Post accident														
Return to duty														
Follow-up														
Random														

**Program information**

- d. Our company has contracted to use services of a collection site, which follows the specimen collection and testing protocols that meet federal testing requirements, including analysis of urine specimens by a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA). We will submit a copy of a collection/testing invoice each year. Yes  No
- e. Complete the information below. (Please do not leave any of these blank.)
  - i. Name of collection site or consortium: \_\_\_\_\_
  - ii. Name of contact person at collection site or consortium: \_\_\_\_\_
  - iii. Phone number of collection site or consortium: \_\_\_\_\_
  - iv. Name of certified medical review officer used: \_\_\_\_\_
  - v. SAMHSA-certified laboratory used for urine analysis: \_\_\_\_\_
- f. **(Advanced level only)** Our company is complying with the 15-percent random drug testing requirement through employees being in a company-only random drug testing pool. Yes  No
- g. **(Advanced level only)** Our company is complying with the 15-percent random drug testing requirement through a consortium. Yes  No   
If you answered "Yes," The name of the consortium is \_\_\_\_\_, the contact person is \_\_\_\_\_ and the contact person's phone number is \_\_\_\_\_.

**7. Employee assistance**

- a. Our company has a list of local assistance resources to refer an employee who tests positive for alcohol or other drugs or who comes forward voluntarily to request help. Yes  No
- b. List one company or individual that offers employee assistance services from the list your company has compiled.
  - i. \_\_\_\_\_
- c. Fill in the information below to describe the results of positive tests at your company this program year.
  - i. Number of employees who tested positive and were terminated for positive test: \_\_\_\_\_
  - ii. Of those who tested positive and were given a second chance:
    - 1. Number who failed a substance test after being given a second chance: \_\_\_\_\_
    - 2. Number who passed a substance test after being given second chance: \_\_\_\_\_
  - iii. **(Advanced level only)** Of those who tested positive but were not given a second chance:
    - 1. Number terminated due to specimen adulteration/substitution: \_\_\_\_\_
    - 2. Number terminated due to refusal to test: \_\_\_\_\_
    - 3. Number terminated based on position/job function being safety sensitive: \_\_\_\_\_
    - 4. Number terminated due to a reason not specified in 1, 2 or 3: \_\_\_\_\_
      - a. Describe reason for termination: \_\_\_\_\_

**(Advanced level only)**

- d. Our company has established and pays for substance assessments offered through an employee assistance professional. Yes  No
- e. List the name of the company or individual that offers substance assessment services to whom you refer employees who test positive or request help with a substance abuse problem.
  - i. \_\_\_\_\_



## Program information

### Certification Statement

Your signature below, as the designated representative for this employer, signifies you have submitted a complete and accurate report. If your company fails to submit a fully completed Annual Report and required attachments by the required deadline or has failed to meet all program requirements, BWC will remove your company from its DFSP.

In addition, if you are a state construction contractor, BWC will remove you from the state construction database, and you will no longer be eligible to bid or work on state construction projects. BWC may conduct an audit of any participating employer's program. Your signature constitutes acknowledgment of the possibility of BWC auditing you and your willingness to cooperate with such an audit as a condition of program participation.

I hereby certify my organization has implemented all components of DFSP in accordance with, at minimum, the requirements specified for our approved program level. I understand that my signature constitutes my company's certification of compliance with BWC's program requirements and – if this Annual Report and/or any attachments are not accurate – may be considered a fraudulent representation on the part of the employer and may subject me to civil and criminal penalties. It may also result in the taking back of bonus and removal from current and/or future program participation.

\_\_\_\_\_  
Printed name of designated employer representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of designated employer representative

\_\_\_\_\_  
Date of submission

### Check list of required documents for submission to BWC in addition to this report

- Documentation (for example, sign-in sheet) for accident analysis training UNLESS training was completed online through BWC Learning Center
- Copy of written DFSP policy if not previously submitted
- Invoice for employee education
- Sign-in sheet for employee education
- Invoice for supervisor training
- Sign-in sheet for supervisor training
- Invoice for collection/testing
- (Advanced level only)** invoice from a consortium (if one was used) and letter on consortium letterhead that states employer is member of a consortium and that employees are in a pool that draws at 15 percent or higher IF consortium is used to meet random drug-testing requirement
- Explanation for any "No" responses in completing the Annual Report