

Addendum A

Ohio Bureau of Workers' Compensation Drug-Free Safety Program

Effective July 1, 2010 the Ohio Bureau of Workers' Compensation will be replacing their Drug-Free Workplace Program (DFWP) and 10-Step Business Plan with the Drug-Free Safety Program (DFSP). The DFSP has two levels – Basic and Advanced. The DFSP runs for an unlimited number of years.

Program Requirements

Minimum Requirements for Basic and Advanced:

- A. **Written DFSP Policy:** A written DFSP must be in place by the end of the first quarter of the initial program year. First year participants must provide a copy of their DFSP policy to the BWC with the DFSP Annual Report.
- B. **DFSP Annual Report:** Complete and sign the DFSP Annual Report by the last business day of September if participating in the January program year or the last business day of March if participating in the July program year. You may keep or change your level of participation each time you submit your Annual Report.
- C. **Annual Online Safety Review:** A self administered questionnaire that examines key aspects of your safety process to assess strengths/weaknesses with in your safety culture and identify processes you would like to improve. Due within 30 days of the start of each program year.
- D. **Accident Analysis Training:** Accident Analysis gathers/analyzes information to determine root causes of workplace accidents and helps supervisors identify corrective actions for prevent future incidents. Supervisors and other personnel involved in the accident analysis process must be trained within the first 30 days of the program year or within 60 days of being assigned a supervisory position. Training should be 45 minutes to one (1) hour.
- E. **Accident Reports:** Employers will use the skills developed during accident analysis training to complete a report for each workers' compensation claim. Reports are to be submitted online within 30 days of the date of the injury or becoming aware that the employee has filed a workers' compensation claim.
- F. **Employee Education:** To receive a discount for DFSP Basic or Advanced Levels you must meet the following employee education requirements.
 - a. Provide at least one (1) hour of alcohol and other drug education for all employees, including supervisors, each program year no later than the due date for the DFSP Annual Report submission.
 - b. All employees should receive training no later than four months from the start of the initial program year.
 - c. Make certain a qualified substance abuse professional conducts educational sessions, or is involved in designing required content as well as remaining involved to answer questions the presenter cannot answer. A manager with good presentation skills may also present your employee education session if properly trained. This manager cannot develop new materials, only present.
 - d. Discuss your written DFSP policy with all employees prior to starting the program. Obtain a signed acknowledgement of receipt of the policy, and provide the opportunity for all employees to ask questions.
 - e. Educate new employees about the content of your DFSP within their first eight weeks of employment, ensuring they receive a copy of your DFSP policy and have the opportunity to ask questions.
 - f. 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.
- G. **Supervisor Training:** To receive a discount for DFSP Basic or Advanced Levels you must meet the following supervisor education requirements.
 - a. In your first year in DFSP, include at least two (2) hours of initial information and skill-building sessions for all supervisors in addition to the hour of employee education and accident-analysis training.
 - b. After the first year in the DFSP, supervisors who received the initial training must receive, at minimum, a one (1) hour refresher course in addition to the hour of employee education.
 - c. Supervisor training must be conducted by a qualified substance professional.
 - d. Within eight (8) weeks of becoming a supervisor, new supervisors should receive at least one (1) hour of training. They should not be involved in testing responsibilities, such as determining reasonable suspicion, until properly trained.
 - e. 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.
- H. **Alcohol and Drug Testing:** You must arrange for the following types of Drug Testing*:
 - Pre-Employment and/or New Hire:
 - Reasonable Suspicion
 - Post-Accident
 - Return to Duty
 - Follow up
 - **Advanced Level** participants must include random drug testing of 15% of your average annual work force.

**Refer to your policy for details on the types of testing.*

Alcohol and Drug Testing (continued)

- a. Drug testing must use urine lab analysis, including the capacity for a re-test for all forms of testing other than Pre-Employment. Collection must follow the federal testing model.
- b. Required Drugs for testing: The minimum requirements are the same drugs and cut-off limits required by DOT.
 - Amphetamines (including Phencyclidine/PCP)
 - Cocaine
 - Ecstasy
 - Marijuana
 - OpiatesEmployers are free to test for additional drugs. Refer to your policy for details on the drugs and their cut off limits.
- c. Attempting to manipulate the testing system: For both levels of the DFSP, an employer may treat a refusal to submit to a test, adulteration, attempted adulteration, dilution, specimen substitution and other attempts to undercut the testing process differently than testing positive. DFSP does not preclude termination in such situation if the employer's policy clearly states this consequence. Employers must document such situations. They must also produce this documentation if when requested.
- d. Alcohol testing is not a requirement of DFSP but it is suggested for reasonable suspicion, post-accident and return to duty testing. Alcohol testing must use breath/saliva specimens for a preliminary test. A positive preliminary test leads to confirmation through an Evidentiary Breath Test (EBT). When federally approved breath testing equipment is not readily available a blood test is permissible. Testing must follow the federal testing model.
- e. 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.

- I. **Employee Assistance:** Employers must provide a list of local employee assistance resources to give to employees who come forward asking for help, employees referred by management for a possible substance abuse problem and employees who test positive. Employees who test positive must receive an explanation of the importance of having a substance assessment. Regardless of whether the employer opts to terminate employees on a first positive test, or chooses to retain the employee with a second-chance agreement, the supervisor or designated manager who counsels the employee should provide a list of qualified substance assessment resources in the community. The DFSP does not prohibit termination of employment based on a first positive drug test. Encourage the employee to get help even if the result of the positive test is termination of employment.

To terminate an employee on a first positive test and still be considered compliant you must present a compelling reason for the employment termination. Examples accepted in the past, on a case-by-case basis, include the nature of the employer's business (safety sensitive or special needs services). When a union contract prevents termination on a first positive test an employer should consult qualified legal counsel since contract terms and conditions may dictate disciplinary actions.

Advanced Level: You are expected to increase the employee assistance you offer by giving an employee who tests positive a second chance and pre-establishing a relationship with employee assistance professional. The most effective process is for the employee to sign a second-chance agreement. This agreement has a release of information that documents the employee is cooperating with the employee assistance professional. You must pay for the cost of these assessments. A second positive test may result in termination.

When requesting an exception, employers wanting to terminate an employee on a first positive test and have BWC consider them compliant with the DFSP advanced level requirements must document the reason why the need to terminate the employee. The decision to terminate belongs to the employer. Rather the issue turns on whether the employer is compliant with the DFSP advanced level requirements. This occurs through dialogue and a on a case-by-case basis.

- J. **Safety Action Plan: Advanced Level** participants must address identified safety gaps by listing planned safety process improvements. Due within 60 days of the start of the program year.