

Arkansas Drug Free Workplace: How to Eliminate Drug & Alcohol Abuse

UALR Arkansas Small Business Development Center
Arkansas Workman's Compensation Commission

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Module 1

Drug Free Workplace Programs

MODULE 1

Objectives:

- 📄 Name five components of a drug free workplace program.
- 📄 State four types of businesses required to comply with the federal Drug Free Workplace Act of 1988.
- 📄 Name three components of the Arkansas Certified Drug Free Workplace program.
- 📄 State five requirements for notifying employees and job applicants.
- 📄 State eight of ten required items in a notice to job applicants or employees.
- 📄 Describe the Arkansas Certified Drug Free Workplace approval and appeals processes.

Drug Free Workplace Programs

Why have a drug free workplace?

decreases in absenteeism, accidents, downtime, turnover, and theft; increases in productivity; and overall improved morale.

better health status among many employees and family members and decreased use of medical benefits.

decreased premium costs for certain kinds of insurance, such as Workers' Compensation.

An effective program can **keep you from being the employer of choice** for users, abusers, and addicts.

Components

There are five standard components to a drug free workplace program:

1. A written substance abuse policy.
2. Supervisor training.
3. Employee education.
4. Employee assistance.
5. Drug and alcohol testing.

The Drug Free Workplace Act of 1988

Who's Required?

Do you have a Federal grant?

Do you have a Federal contract valued at \$25,000 or more?

Do you have any subcontracts that include a drug-free workplace requirement?

Are you subject to any Federal agency regulations?

What's Required

- The employer must have a written policy that explains what is prohibited and the consequences of violating the policy.
- Employees must read and consent to the policy as a condition of employment on the project.
- The employer must have an awareness program to educate employees about alcohol and other drug abuse and addiction, the employer's policy, and available help, counseling, and assistance.
- Employees must disclose any conviction for a drug-related offense in the workplace to the employer within 5 days after such conviction.
- Employers must disclose any conviction for a drug-related offense in the workplace to the Federal agency with which the employer has a grant or contract within 10 days after receiving notice from the employee or others.
- Employers must make an ongoing effort to maintain a workplace free of drugs.

What's NOT Required

- Establish an employee assistance program (EAP)
- Implement a drug testing program.

The Arkansas Certified Drug Free Workplace

Purposes

To promote voluntary drug-free workplaces

To discourage drug and alcohol abuse.

Requirements

- Written notice,
- Education, and
- Procedures for testing for drugs and alcohol.

Why certify?

Ratings Plan

Employers who adopt a drug-free workplace program as prescribed herein, and are annually accepted by the Division as having such a program, shall qualify for a workers' compensation premium credit

Reduced Costs

Lower absenteeism and tardiness.
Fewer health benefits claims
Fewer workers compensation claims
Less theft
Fewer accidents

Improved workplace

Increased productivity
Improved morale

Types of Drug Free Workplace Programs

Basic Program

Components:

- Written substance abuse policy
- Supervisor training
- Employee education

Documentation:

- Written substance abuse policy

Basic Program plus Employee Assistance

Components:

- Written substance abuse policy
- Supervisor training
- Employee education
- Employee assistance

Documentation:

- Written substance abuse policy
- Employee assistance policy

Basic Program plus Drug Testing

Components:

- Written substance abuse policy
- Supervisor training
- Employee education
- Drug testing

Documentation:

- Substance abuse policy notice
- Drug Testing policy
- Drug Testing Consent and Release Form
-

Certified Drug Free Workplace Program

Components:

- Written substance abuse policy
- Supervisor training
- Employee education
- Drug/alcohol testing
- Employee Assistance

Documentation:

- Substance abuse policy notice
- Drug Testing policy
- Drug Testing Consent and Release Form
- Employee assistance policy
- WCC Form – Certified Drug Free Workplace

Needs Assessment Survey

Tangible Costs

Check your company records for the past 2 years and figure out the incidence and prevalence of some or all of the following factors, which can be indicators of problems with alcohol or other drug abuse:

	# of Incidents	Estimated Cost
Absenteeism		
Tardiness		
Health care benefit utilization		
Workers' Compensation claims		
Theft		
Accidents		
Turnover		

Total Cost: \$ _____

Intangible Costs

Talk to employees at all levels of the organization to assess the current overall morale of the staff.

	Great	Good	Fair	Poor
Staff				
Managers				
Workers				
Totals				

Notifying Employees and Job Applicants

Requirements

Employer must give a one-time **written policy statement** to all employees and job applicants.

At least **60 days must elapse** between one-time notice to all employees that a DFWP is being implemented and the effective date of the program

Vacancy announcements must include notice of drug and/or alcohol testing for positions requiring testing.

Notice of the employer's drug and alcohol **testing policy must be posted** in an appropriate and conspicuous location.

Copies of the **policy must be made available** for inspection by applicants and employees during regular business hours.

Notice to Job Applicants and Employees

Must contain:

- ___ A general statement of the employers policy on employee drug and alcohol abuse, which must identify:
 - ___ It is a condition of employment for an employee to refrain from reporting for work with the presence of drugs or alcohol in the employee's body;
 - ___ The type of drug or alcohol testing that an employee or applicant may be required to submit to; and
 - ___ The actions that an employer may take on the basis of a positive, confirmed, verified drug or alcohol test result;
- ___ A statement advising the employee or applicant of the existence of the rule;
- ___ A statement explaining the protections available to employees under the rule;
- ___ A general statement concerning confidentiality;
- ___ The consequences of refusing to submit to a drug or alcohol test;
- ___ A list of employee assistance programs or drug/alcohol rehabilitation programs;
- ___ A statement informing the employee or applicant of responsibility for informing testing laboratory of any administrative or civil action brought;
- ___ A list of all classes of drugs for which the employer may test;
- ___ A statement regarding any collective bargaining agreement or contract and the right to appeal to the applicable court.
- ___ A statement that the notice complies with the requirements for notice.

A model notice and policy may be obtained from the Worker Compensation Commission

Drug Free Program Approval Process

Approval Process

Employer annually completes and submits an accurate application

Commission notifies employer of acceptance or any deficiencies.

Employers requesting premium credits provide the Commission acceptance form to their insurer.

Insurers may obtain a review of the Commission's findings.

Employers qualifying for and receiving premium credits are reported annually by insurer to the Commission.

Appeal Process

Employer or insurer files written request for review, setting out the grounds for review, with the Clerk of the Commission **within 15 days of decision**.

Commission makes a record of all submissions by employer and the Commission.

The Commission will decide the issues within 15 days of receipt of request for review, based on the written record.

Employer may obtain a review by the Director of the Division of the Commission's findings.

Employer or insurer may request a review by the Chief Executive Officer (CEO) of the Commission.

Employer or insurer may request a review by the Full Commission of the findings by the CEO.

Failure to Maintain a DFWP

Failure to maintain a DFWP renders the covered employer ineligible for premium credits.

Module 2

Drug and Alcohol Testing

MODULE 2

Objectives:

- 📄 Name five types of required drug and alcohol tests.
- 📄 State six key points to be followed when conducting drug or alcohol testing.
- 📄 Describe general requirements for certified laboratories.
- 📄 State six requirements for employee protection.
- 📄 State six key employer protections.

Required Drug and Alcohol Testing

Job Applicant Testing

- Must require applicants submit to a drug test
- May refuse to hire based on refusal or positive result
- May conduct limited testing
- May test for alcohol
- May test for any drug
- Shall limit testing for public employees

Reasonable Suspicion Testing

- Must require employees to submit to reasonable suspicion testing
- Must test **within 8 hours for alcohol** related incident
- Must test **within 32 hours for drug** related incident
- Must make a **within 24 hours or before results** are released, whichever is earlier
- Must provide written documentation to employee on request
- Must keep original documentation confidential and **retain for 1 year**.

Routine Fitness-for-duty Testing

- Must require if part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely for all members of a group.
- Does **NOT apply to** volunteer employee health screenings, employee wellness programs, and programs mandated by government agencies.

Follow-up Testing

- Must require for non-voluntary entry into an employee assistance or rehabilitation program
- Must be conducted **once a year for 2 years**.
- Must **not give advance notice** of follow-up testing date.

Post-accident Testing

- Must require after an accident, which results in an injury.
- Must collect specimen **within 8 hours for alcohol**
- Must collect specimen **within 32 hours for drugs**

Testing Procedures

Key Points

- ✓ Use approved drug-testing form
- ✓ Use a clean, single-use specimen bottle that is securely wrapped until used
- ✓ Use a tamperproof sealing system to ensure against undetected opening.
- ✓ Identify bottle with a unique identifying number, no additional personal information.
- ✓ Use a shipping container, which can be sealed and initialed to prevent undetected tampering.
- ✓ Collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.
 - Collection site person is of the same gender as the donor.
 - Direct supervisor of an employee shall not serve as the collection site person

Substances

	Cutoffs (49 CFR Part 40)
Amphetamines	50 ng/ml
Marijuana (cannabinoids)	300 ng/ml
Cocaine (benzoyllecgonine)	2000 ng/ml
Opiates (codeine, morphine, heroin)	25 ng/ml
PCP (phencyclidine)	1000 ng/ml
Alcohol	

Laboratory Requirements

Certification for initial specimens

- 👍 Licensed and approved by the Arkansas Department of Health
- 👍 Certified by U.S. Department of Health and Human Services
- 👍 Certified by the College of American Pathologists

Must use procedures established by U.S. Department of Transportation

Certification for confirmation tests

- 👍 Certified by one of the initial test authorities, and
- 👍 Certified by Substance Abuse and Mental Health Services Administration or
- 👍 Certified by the College of American Pathologists forensic urine testing programs

Costs

Employer shall pay the cost of all required drug and alcohol tests.

Employee or applicant shall pay the cost of all non-required tests.

Employee Protection

Employer shall provide **procedures to confidentially report use** of prescription or nonprescription medications.

- After testing
- Only if a positive result for presence of drugs or alcohol

Employee or applicant may **contest or explain the result within 5 days** after receiving written notification.

- If explanation or challenge is unsatisfactory, positive result shall be reported to employer.

Employee or applicant must be **given a reasonable opportunity to consult** with testing review officer for information regarding medications.

Employee **may not discharged, disciplined, refused to hire, discriminated** solely upon the employee's voluntary seeking treatment, if the employee has not:

- Previously tested positive for drug or alcohol use,
- Entered an employee assistance program (EAP) for drug or alcohol problems, or
- Entered a drug or alcohol rehabilitation program

Employee **may contest the test results** before the Arkansas Department of Labor by filling written notice within 30 days of termination.

Drug or alcohol testing must be specified in a collective bargaining agreement before testing is implemented.

Employer Protection

A confirmed positive drug or alcohol test shall not be deemed a “handicap” or “disability” as defined by federal, state, or local discrimination laws.

Discharges, disciplinary actions, or refusals to hire in compliance with Rule 36 are considered to be “for cause.”

- Rule 36 does not amend or affect the employment-at-will doctrine

Solely the establishment, implementation, or administration of a drug or alcohol testing program creates no physician-patient relationship.

- Persons performing the tests are not relieved from responsibilities for negligence in performing the tests.

Employer may establish reasonable work rules related to employee possession, use, sale or solicitation of drugs or alcohol.

Employer is not barred from discharging, disciplining, or refusing to hire upon refusal to submit to drug or alcohol testing.

Employer is not prohibited from conducting medical screening or other tests required for the purpose of monitoring exposure to toxic or unhealthy substances.

- Testing is limited to the specific substance unless prior written consent of the employee is obtained.

Screening or testing for hazardous substances need not comply with Rule 36

Rule 36 does not operate retroactively.

Module 3

DFWP Education and Assistance

MODULE 3

Objectives:

- ✎ State nine required elements of employee substance abuse education materials.
- ✎ State four elements of supervisor substance abuse education.
- ✎ Name five types of employee assistance programs (EAPs).
- ✎ State five ways to locate an EAP provider.
- ✎ Describe the services of three Arkansas DFWP resources.

Substance Abuse Education

Certification Requirements

Provide all employees educational materials, which explain employer's policies and procedures.

- Distribute to each employee prior to start of DFWP program
- Distribute to each employee hired or transferred into DFWP locations
- Provide written notice to employee organizations of material availability

Required Contents

- Identity of person designated to answer all employee questions
- What period of the workday the employee is required to be in compliance with rule.
- Employee conduct prohibited
- Circumstances for testing employees for alcohol and/or drugs
- Detailed procedures for conduct of tests, employee protections, test integrity and safeguarding and privacy of testing results.
- Requirement for employees to submit to alcohol and drug tests.
- Explanation of what constitutes a refusal to submit to testing and consequences.
- Consequences for violations of DFWP program, including removal from safety-sensitive functions.
- Information on the effects of alcohol and drug use on health, work, and personal life; signs and symptoms of an alcohol or drug problem; and methods of intervening.

Certificate of Receipt

- Each employee is required to sign a statement certifying receipt of the above materials
- Each employer maintains an original of the signed certificate.
- May provide a copy of the receipt to the employee.

Training Supervisors

What supervisors need to know

Know the organization's program and policy

Be able to explain the program to employees

Know where to refer employees for help and information

Understand and accept the importance of supervision as a tool for implementing the policy

Supervisors are not expected to provide substance abuse counseling.

- Should not attempt to diagnose drug or alcohol problems
- Should refer for professional evaluation and assistance.

How to train them

Train the supervisors yourself

- Use materials available from state and federal agencies
- Purchase posters, booklets from commercial sources

Hire a consultant from a local community agency or EAP to conduct the training

Employee Assistance Programs (EAP)

Types of EAPs

- Internal / In-house
- Fixed-Fee Contracts
- Fee-for-Service Contracts
- Consortia
- Peer-Based Programs

Benefits of EAPs

Can assist with policy development, employee education, and supervisor training.

Offer an alternative to firing, thereby saving the costs of recruiting, rehiring, and retraining.

Offer access to treatment for employees with problems that affect their job performance.

Can assist employers in complying with drug-free workplace laws.

How to Locate

Join with other employers and contract with an EAP provider.

Call local hospitals and ask about available EAP services.

Contact a local mental health or substance abuse professional in private practice and negotiate a contract for EAP services.

Inquire if insurance carriers cover EAP services or can help to identify local or regional EAP providers.

Talk with other employers who have successful EAPs.

Arkansas DFWP Resources

Arkansas Bureau of Alcohol and Drug Abuse Prevention

Bureau of Alcohol and Drug Abuse Prevention
Freeway Medical Center
5800 West 10th Street, Suite 907
Little Rock, AR 72204

Tel: 501/ 280-4500
Fax: 501/ 280-4532

Information and assistance regarding writing a substance abuse workplace policy, training supervisors, employee education, Employee Assistance Programs (EAPs), and drug testing.

Clearinghouse of alcohol and other drug abuse brochures, posters, and video materials; and international electronic information network through Regional Alcohol and Drug Awareness Resource (RADAR) Centers and ADAP On-Line Bulletin Board System.

Arkansas Workers' Compensation Commission

AWCC
Drug Free Workplace Program
P.O. Box 950
Little Rock, AR
72203-0950

Telephone 1-501-682-3930 / 1-800-622-4472
Legal Advisor Direct 1-800-250-2511
Arkansas Relay System TDD 1-800-285-1131

Information on Rule 36 (Voluntary Drug Free Workplace Rule) and applications for Voluntary Drug Free Workplace.

National DFWP Resources

American Council for Drug Education (ACDE)

<http://www.acde.org>

164 West 74th Street
New York, NY 10023
1-800-488-DRUG

ACDE's mission is to "fight drug abuse with facts." ACDE offers information about alcohol and other drug abuse prevention to employers and employees as well as parents, children, educators, students, policy makers, and constituents.

Drugs Don't Work Partnership /Community Anti-Drug Coalitions of America (CADCA)

<http://www.cadca.org>

901 North Pitt Street, Suite 300
Alexandria, VA 22314
(703) 706-0560

This private-public sector coalition, including representatives of business, labor, chambers of commerce, Partnership for a Drug-Free America, and many state and local prevention groups, works with businesses to implement locally run "Drugs Don't Work" programs.

Employee Assistance Professionals Association, Inc. (EAPA)

101 Wilson Boulevard, Suite 500
Arlington, VA 22201
(703) 522-6272

EAPA provides contact information for those who wish to get in touch with local employee assistance professionals. The Association also publishes an extensive selection of brochures, books, and research publications on substance abuse prevention, treatment, and education.

National Clearinghouse for Alcohol and Drug Information (NCADI)

<http://www.health.org>

P.O. Box 2345
Rockville, MD 20847-2345
1-800-729-6686

NCADI, operated by the Center for Substance Abuse Prevention (CSAP), is a national substance abuse information resource. The Clearinghouse offers research results, videos, prevention curricula, print materials, program descriptions, and state-level contacts.

Partnership for a Drug-Free America (PDFA)

<http://www.drugfreeamerica.org>

405 Lexington Avenue, 16th floor
New York, NY 10174
(212) 922-1560

PDFA produces anti-drug public service announcements using volunteers from the advertising, public relations, research, production, and media industries. Employers can obtain prevention-oriented ads, posters, tapes, and other materials designed to educate employees and supervisors about the cost of workplace drug abuse.

Regional Alcohol and Drug Awareness Resource (RADAR) Network

1-800-729-6686

The RADAR Network works in partnership with the National Clearinghouse for Alcohol and Drug Information and includes state clearinghouses, specialized organizational information centers, the U.S. Department of Education Regional Training Centers, an on-line network, and other information sources.

Workplace Helpline

<http://www.health.org/pubs/workcap.htm>

1-800-WORKPLACE

The Workplace Helpline, operated by the Center for Substance Abuse Prevention, provides individualized technical assistance to businesses, industries, and unions in the development and implementation of comprehensive workplace substance abuse programs. Corporate executive officers, union representatives, and managers responsible for company policy can get help in assessing their programmatic needs and in preparing their organizations to address current or potential problems caused by alcohol and other drugs in the workplace.