



BEST PRACTICE Drug-Free Workplace (DFWP) Programs

Millions of Americans are affected each day by alcohol and other drugs. Substance abuse can ruin an individual's health, break-up families, damage careers, and lead to jail time or even death. It is widely recognized that this problem, wide-spread in our community and society, also impacts our workplaces.

The dangerous behaviors of a substance abuser do not stop when that individual enters the workplace. These employees jeopardize the safety and health of themselves, their co-workers and the public. Statistically they have more absenteeism, use more medical benefits, have more accidents and workers' compensation claims, have greater involvement in pilferage, and are less productive than non-abusing employees. They are serious threats to the solvency of their workplaces:

- 47% of serious workplace accidents and 40% of workplace accidents resulting in fatalities have drug and/or alcohol involvement (Occupational Medicine)
- 38% to 50% of all workers' compensation claims are related to the abuse of alcohol or other drugs in the workplace (National Council on Compensation Insurance)
- 75.4% of binge drinkers, 74.7% of heavy drinkers and 67.9% of illicit drug users are employed (2012 National Survey of Drug Use and Health)
- 15-17% of employees in an average U.S. company are substance abusers (Bureau of Labor Statistics)
- On average, each substance abusing employee costs his or her employer \$7,000 per year (Small Business Administration)
- Courts and the public are holding employers responsible for the behavior of their substance abusing employees (e.g., Valdeez: \$16B, Carroll Heating & Air: \$850,000.)

In today's American workplace, employers are compelled to deal with the impact of alcohol and other drugs.

The goal of a drug-free workplace program is to make the workplace as drug free as is humanly possible. An effective program works to deter substance use, detect its use and/or possible problems, and institutes procedures to intervene if there is a workplace-related problem involving substance abuse.

A well thought-out, quality drug-free workplace program is valued by both the employees and the employer. It is a balance between program requirements and workers' perceptions. Employees with a problem are encouraged, or forced, to get help. Employees without a problem are protected from accidents and performance issues of those who do have a problem.

A comprehensive drug-free workplace program can also set the stage for an employer to document and establish "proximate cause" that alcohol or another drug was the cause of a workplace accident resulting in physical injury. In such cases, the employer may have grounds to move toward denying a workers' compensation claim. Many states and private insurance carriers itemize program criteria for employers instituting a drug-free workplace, allowing them to realize premium discounts for workers' and/or health, liability, commercial auto, auto and other insurances.

In addition, a drug-free workplace protects the employer

- from operational losses attributable to substance abusing employees
- by buffering their liability for the damage such employees can cause
- by saving money where systems permit



Done appropriately, a drug-free workplace program is a win-win proposition. It helps to save employees' lives and the employer's money and time.

Components of a Drug-Free Workplace Program

A comprehensive drug-free workplace program recognized by both public (Department of Labor, Department of Transportation [DOT], Substance Abuse and Mental Health Services Administration [SAMHSA], etc.) and private industries (American Management Association [AMA], Institute for Drug-Free Workplace, etc.), involves five components.

1. **A Written Drug-Free Workplace Policy and Procedures**– Together, these serve to guide the entire program as the executive summary and the rule book. The policy document sets the tone of the program; outlines the employer's and employees' rights and responsibilities; references available help; and explains the program including prohibited conduct, types and circumstances of testing, and the consequences of violating the policy. For a program to be effective, all the parameters and procedures have to be thoughtfully developed and articulated in a user-friendly manual. These procedural operations, with accompanying forms, help the organization maintain a smooth and consistent program.
2. **Employee Awareness & Education** – Employees are made aware of and receive education about the policy, their rights and responsibilities, consequences, course-of-action for appeal, alcohol and other drug information, and the resources available to them through the company and community if they (or their family members) need help.
3. **Supervisor Training** – Supervisors need to be trained on their role within the company's drug-free workplace program. The curriculum should include information about the impact of alcohol and other drugs on the workplace; how to *recognize, document* and *confront* a possible substance abuse problem; the company's policy and operational procedures; how to refer a troubled employee to available resources and/or to testing; and how to appropriately assist in the process when an employee returns to duty.
4. **An Employee Assistance Plan** – While employers are not required to provide treatment for a troubled employee, they need to identify a plan of action and the applicable resources for employees who seek help on their own, are referred by management for a possible problem with alcohol or other drugs, and/or have a positive alcohol or drug test. The possibilities range from establishing a comprehensive contractual relationship with an Employee Assistance Program (EAP) vendor to maintaining a list of community service providers where fees may be subsidized by tax dollars.
5. **Drug and Alcohol Testing (as appropriate)** – Systems presence testing (drug and alcohol testing) serves as the scientific, objective evidence that a certain level of substance exists within the employee's system. However, decisions about testing must take into consideration the cost and practicalities of testing as well as its benefits. Employers have a myriad of decisions to make about their testing program including when to test (there are 25 different options, e.g., pre-employment, random, etc.), who to test, how to test (e.g., urine, blood, breath) what drugs to test for and at what cut-off levels, what laboratory will do the testing and how the employee will be notified of the test results.

An efficient, quality program is a strategically prescribed balance between legal and managerial concerns.



The Process of Operating a DFWP Program

To establish an effective and legally sound drug-free workplace program, employers must first determine to which authorities they are required or elect to respond. For example, there are specific requirements regarding drug and alcohol testing for employers with federal government grants or contracts; those who employ workers with certifications such as commercial drivers (CDLs) to perform safety sensitive duties; employers who have workers governed by collective bargaining agreements; and/or those who operate across state lines.

In general, there are two phases to accomplishing a comprehensive drug-free workplace program:

Phase One - Program and Document Development

Decision-makers of an organization or company need to learn the fundamental issues involved in establishing and administering a drug-free workplace program. These fundamentals include

- the substances and their impact on the individuals and the workplace
- the legal issues and concerns involved
- the assessment and treatment process and options
- the process of drug and alcohol testing
- the program options available to an employer

Based on this body of knowledge, a written policy and procedural manual for operations should be crafted and customized to the individual workplace and workforce.

Let's consider an employer who has never utilized alcohol or drug testing. Because he has heard a tip that employees are using cocaine on his premises, he wants to immediately test all employees and fire those who test positive. (This would qualify as an unannounced or random-form of testing.)

Implementing such a course of action would probably *not* identify if he has a problem or solve it if he does. However, this approach probably would estrange and demoralize his personnel and may even violate some state and federal laws. Additionally, a reactionary program of random testing to rid a workplace of cocaine use would not generate desired long-range effects. Prior to any action or even developing a drug-free workplace program outline, there is much that needs to be considered.

In our example, it would be necessary to know if the employer's company is a public sector employer and in which state the company operates; both factors may prevent the employer from performing random testing and may even limit what consequences can be leveled as the result of a positive test. It is important to analyze how the company would handle operational details and whether the employer's operations would logistically support random testing. Any mistakes or sloppiness could compromise an employee's right to privacy and/or even defame or discriminate against an employee; putting the employee at risk and the employer in a position of liability.

Drug-free workplace policies and practices should not be enacted until management learns exactly what is involved and what options need to be considered. Careful consideration of all the issues needs to be taken prior to adopting program specifications. These details and operational procedures should be articulated for staff and management in a written policy, program documents and operational guidelines.



Phase Two - Program Implementation and Maintenance

At this phase the employer needs to roll-out the program and build systems for ongoing maintenance. This involves

- contracting with vendors for necessary support services such as assistance and drug testing
- establishing systems for administering practices and paperwork
- making an announcement to all personnel
- training supervisors to perform their role within the program
- educating employees about the issues, the policy/program and available resources for help
- establishing a system and schedule for critical policy updates and review, and education and training

To operate a drug-free workplace program with limited exposure, and/or to meet the requirements of the federal government or the requirements for a workers' compensation discount or insurance benefit, a company must carefully accomplish the first phase and maintain records to verify phase two activities.

Understanding State Requirements and Benefits

Being a drug-free workplace may be a business decision made to gain benefits. In other cases it is a business *requirement*. Reviewing and knowing the state laws impacting an employer's drug-free workplace program is critically important. Whether there is a requirement, an incentive or a benefit provided to motivate an employer to operate a drug-free workplace program, the goal is the same - ensuring drug-free operations to save lives, prevent destruction and thereby save dollars.

In Indiana, Ohio and several other states, to work on a state construction project the employer must operate a drug-free workplace program as specified under that state's specific criteria. In Kentucky, Virginia, West Virginia and some other states, the mining industry requires a sound drug-free workplace program, including drug testing, to maintain safety. Other states require drug-free workplace programs for jobs considered high risk (e.g., hoist operators). Some states have coupled their requirements to federal requirements, e.g., Arkansas and Texas, and require violations under the Department of Transportation's drug and alcohol testing program be reported to the states' departments governing transportation.

Ohio, Florida, Georgia, Kentucky and over eight other states allow for discounts in workers' compensation premiums for employers operating drug-free workplaces. Sometimes for those same or adjusted program criteria, an employer in that state can also mitigate liability in unemployment, workers' compensation and other legal claims. Several states will even protect an employer from liability and damages caused at the hands of a substance abusing employee or enable an employer to collect damages from an abusing employee.

These and many more requirements and benefits should be understood and considered by an employer. With the help of a knowledgeable consultant these specifics will be used to determine the specifics of the employer's drug-free workplace program.

Selecting a Vendor to Develop Your Program

Understanding the liability faced by an employer is a key characteristic that defines the difference between true versus inferred client consultation. Many drug testing services, EAPs, treatment centers and human resource consultants try, in good-faith, to consult with clients struggling to establish a drug-free workplace programs.

There is often a lack of critical understanding about the complexity involved in developing a policy and procedures to articulate every element and action of a drug-free workplace program. Vendors who offer services to maintain a program (but who are actually not qualified to help *develop* a program) secure contracts with a commitment to



provide a value-added service of “policy development” or “program support.” Unfortunately, unless the consultant or vendor stays constantly abreast of substance abuse/workplace issues as it relates to several professional disciplines, they can be putting the employer at greater risk than if the employer had no policy at all.

It is imperative that employers adopt policies and procedures that

- reflect the most current federal legislation, guidelines and interpretations (e.g., the EEOC Guidelines for ADA [2000] and ADAAA [2008] which made an alcohol test a medical examination thereby limiting when one can be applied, and expanded the disabilities and accommodation guidelines)
- reflect the most current state legislation, opportunities, administrative rules and interpretations
- anticipate the impact of the most recent court decisions and case law
- integrate the most evolved management knowledge from expert employer and labor-consultants on this subject
- adjust to the dynamic changes afoot in the arena of workers’ compensation (all states), employee benefits and healthcare
- consider the economics of a program including assignments of tax dollars
- balance managerial and legal issues

Not addressing all these issues can result in missed corporate opportunities or, worse, legal troubles thereby

- 1) defeating the original purpose for the policy and procedures
- 2) costing the company dollars in legal defense and lost managerial time to neutralize a situation
- 3) operating with unnecessary risks

Policies and procedures not sculpted with care can easily violate one of these highly sensitive categories: privacy or employees’ rights, discrimination, confidentiality, consistency and/or security of person or property. There are reams of cases wherein a single episode in one of these categories resulted in the catastrophic fall of a company.

It is critical for a consumer to select a consultant who has an established record that demonstrates a comprehensive knowledge of issues that intricately tie to the specific process of drug testing employees. Differences in the alcohol and drug testing requirements and obligations exist between states. Because the most crucial, legally-laden aspect of a drug-free workplace program is testing, it is especially important to know the laws of any state in which an employee *could* be drug and/or alcohol tested, including states through which the employee is traveling, delivering a product or performing a service and may be subject to the company’s testing requirements, e.g., following an accident.

Policy and procedure development is the backbone of your drug-free workplace program. This isn’t work a consultant or vendor should minimize or just “toss in” to your service contract. There is a lot of research and attention required to “keep on top” of all the issues as well as the a lot of time and attention in customizing program specifics for an individual client company, no consultant or vendor could afford to provide *quality* consultation on policy and program without a fee.

Developing and implementing a drug-free workplace program takes time and attention to detail, but once in place a well-developed program can arm an organization with the tools needed to handle issues that could result from an employee misusing or abusing alcohol and other drugs and protect not only an organization from liability but its most valuable asset – its employees.



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