



*Employer's Program Development
and Implementation Guide*

**How to Build
A Drug-Free Workplace Program
For Your Business**



Foreword:

***Intent of the Tennessee
Drug-Free Workplace Program***

It is the intent of the general assembly to promote drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace and reach their desired levels of success without experiencing the costs, delays and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is further the intent of the general assembly that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of worker's compensation benefits.*

*(from T.C.A. Section 50-9-101. Legislative intent.)



The Problem: Substance Abuse in the Workplace.*

- 60% of the world's production of illegal drugs is consumed in the U.S.
- Nearly 70% of current users of illegal drugs are employed.
- Nearly 1 in 4 employed Americans between the ages of 18 - 35 have illegally used drugs in the past year.
- 1/3rd of employees know of the illegal sale of drugs in their workplace.
- 20% of young workers admit using marijuana on the job.

Consider this.....

90% of large businesses have drug-free workplace programs in place today, while only 5 to 10% of small and medium sized businesses have implemented similar programs. The irony here is that about 75% of employed Americans work for these small and medium sized businesses. Workers who want to avoid substance abuse policies at the large companies take their job search to the smaller businesses, and that's where they are today!



The Cost: Substance Abuse Adversely Affects Your Balance Sheet.*

Even though many employers choose to ignore the problem, substance abuse in the workplace has a real impact on their bottom line. Substance abuse drains more than \$100 Billion from American businesses every year in ...

- **WORKERS' COMPENSATION:** 38% to 50% of all Workers' Compensation claims are related to substance abuse in the workplace; substance abusers file three to five times as many Worker's Compensation claims.
- **MEDICAL COSTS:** Substance abusers incur 300% higher medical costs than non-abusers.
- **ABSENTEEISM:** Substance abusers are 2.5 times more likely to be absent eight or more days a year.
- **LOST PRODUCTIVITY:** Substance abusers are 1/3rd less productive.
- **EMPLOYEE TURNOVER:** It costs a business an average of \$7000 to replace a salaried worker.

Companies who have a Drug-Free Workplace Program will find that an investment in education, prevention, and assistance programs pays dividends for both the employer & the employee.

* Source: 'Working Partners', National Conference Proceedings Report: sponsored by U.S. Dept. of Labor, the SBA, and the Office of National Drug Control Policy.



The Solution: A Drug-Free Workplace Program.



It's Good for Employees. Employees are more productive and have better morale when their health and safety is protected from the increased dangers and risks that substance abusers present in the workplace. Workers will appreciate your concern for their health, safety & well-being.

It's Good for Employers. The covered employers choosing to participate in this voluntary program will be entitled to the following, (*pursuant to T.C.A. 50-6-418, 50-9-100 et. seq., and 50-6-110*):

- Receive a 5% premium credit on their workers' insurance policy.
- Discharge or discipline of an employee, or refusing to hire a job applicant, who is found to be in violation of the covered employer's Drug-Free Workplace Program will be considered done for cause.
- If an employee suffers a workplace injury and receives a positive confirmed post-accident drug test for illegal use of drugs or alcohol, or refuses to submit to a post-accident drug or alcohol test, the burden of proof is shifted to the employee.

It's Not Difficult. Model policies and programs are available. You'll find sample letters & forms in this booklet.

It's Not Expensive. Use existing materials and the information provided in this package, it's all you need to get started. This guide will assist you to develop a comprehensive program including; drug and alcohol testing, supervisor training, employee education and provide for employee assistance. Covered employers should realize a cost savings that is sufficient to pay for most programs.

You don't have to do it alone. A variety of resources are available to assist you; your Business Insurance agent, your industry trade association representative, the staff of the Tennessee Drug-Free Workplace Program, or try calling the organizations listed in the back portion of this brochure. You can even contract with a qualified Substance Abuse Program Administrator to do the job for you!



Preparing Your Drug-Free Workplace Program

You can start by using this easy sample as a guide...

1. Plan & develop your drug-free workplace program carefully.

Important: Study the Rules & Guidelines of the Tennessee Drug-Free Workplace Program, make certain you understand them.

Talk to employees & supervisors about the benefits of a drug-free workplace.

Stress the positive aspects of a drug-free workplace...management and workers meeting their shared responsibilities for a safe and healthy work environment. Case studies show a well-planned program to reduce substance abuse can increase productivity, reduce accidents, and avoid increased costs due to substance abuse related insurance claims.

Listen to employees' ideas.

Ask for their input: "We're going to implement a drug-free workplace program. What suggestions do you have for us as we do this?" Compliance with any change in company policy requires the understanding and acceptance of all employees. If your company's workers are represented by a union, the development of the policy will be a part of the collective bargaining process. A firm, compassionate program will help to provide a healthy and safe workplace for everyone.

2. Consider the resources available to you. Determine the best way to provide each of the following:

(Covered employers must meet minimum requirements and guidelines established in T.C.A. Section 50-9-100 et. seq.)

- A Drug & Alcohol Testing Program.
- An Employee Assistance Program (EAP) for workplace substance abuse treatment. You may contract with a designated treatment provider, or furnish a directory of local EAP/substance abuse treatment providers to employees.
- A Workplace Substance Abuse Recognition Training Program for Supervisors.
- A Workplace Substance Abuse Education/Awareness Program for All Employees.

Important: Before taking the next step, employers should consult with an attorney concerning the legal aspects of this program.

3. Write down your substance abuse policy then print it on your company letterhead.

The policy should expressly prohibit the illegal use of drugs and/or abuse of alcohol by any employee and spell out the consequences of policy violations. Sample policies are printed in this booklet. You may duplicate the sample policy word for word, customizing it with your company's name, or you may change portions of it to suit your specific needs.



Implementing & Maintaining Your Drug-Free Workplace Program

4. Distribute the policy statement to all employees and post notifications of your drug-free workplace program.

Employees must be notified at least 60 days before drug & alcohol testing can begin. (T.C.A. Section 50-9-105) Place notices in prominent locations throughout your business facilities as well as on your employment applications. All employees must be given a copy of your substance abuse policy statement and sign a drug & alcohol testing consent form.

5. Educate your employees and supervisors about the program.

Hold a meeting for all employees - labor and management - to explain the value of maintaining a drug-free workplace. Try to answer all questions and make yourself available to meet privately with employees to discuss any concerns they may have.

6. Maintaining the certification of your program.

Last, but not least....make a long-term commitment to participate in the Tennessee Drug-Free Workplace Program. Ultimately, your program will have a greater impact when everyone involved clearly understands that your company is serious about addressing the problems caused by substance abuse in the workplace.

Please Remember; covered employers must re-certify their compliance each year with the Tennessee Department of Labor. A Tennessee Drug-Free Workplace Application Form, (LB-0393 ed. 9-97), must be submitted at the renewal of the worker's compensation insurance policy or before the anniversary date of original Tennessee Department of Labor certification.



Q. When an employee/applicant is drug tested, is the employer required to utilize a Medical Review Officer (MRO)?

A. Yes. As defined in the Rules & Guidelines, “Medical Review Officer” or “MRO” means a licensed physician, employed with or contracted with a covered employer, who has knowledge of substance abuse disorders, laboratory testing procedures and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee’s positive test result in relation to the employee’s medical history or any other relevant biomedical information. The MRO acts an agent of the employer. The MRO should be used to review all positive tests with the employee or applicant before the employer is advised of the test results. Using an MRO provides the employer with a medically qualified interpretation of a positive test result, which would be defensible in a court of law. The MRO helps to protect both the employer and the employee.

Q. How accurate are the drug testing methods that I will be required to use?

A. If testing is done in accordance with the Rules & Guidelines, (Chapter 0800-2), the results are highly accurate and reliable. Sometimes, you’ll hear that urine drug tests can be “beaten”. Once, this was true; people could add water, soap, ammonia, vinegar or even table salt to a specimen and produce a negative test result. Today, collection-site and laboratory procedures make tampering nearly impossible.

At the collection site, employees must leave coats, purses and briefcases outside the cubicle where they provide the specimen. The person collecting the specimen adds a bluing agent to the toilet bowl and remains in the area directly outside the stall while the specimen is being given. Immediately afterward, the collector applies a temperature strip to the specimen to make sure that it matches body temperature. The collector also checks the specimen for unusual color and odor. Later, when the specimen arrives at the laboratory, technicians perform simple tests for gravity and acidity to detect adulterated specimens.

Another misconception is that drug testing is prone to inaccuracy with so-called “false” positives. Several years ago, some over-the-counter drugs such as ibuprofen or diet pills could cause false positives for illicit drugs. Today, tests have been refined to the point where this does not occur.

A more legitimate concern is that of true “false” positives. That is, where the laboratory accurately determined the presence of a drug, but its presence is not the result of abuse or illicit use. Certain foods and medicines do contain detectable amounts of “controlled” drugs. For example, poppy seeds used in bagels and other baked goods can sometimes contain enough morphine to produce a detectable level in urine. Over-the-counter drugs that are sold in countries outside the U.S. often contain codeine. Codeine is also found in commonly-prescribed cough and cold medicines, such as Tylenol™ with codeine, can produce a positive result in drug tests. In all these cases, a Medical Review Officer (MRO) is able to determine if the drug is being properly and legitimately used.

While there have been some reports of errors, they can usually be traced to the fact that a confirmation test was not performed to verify an initial positive result.

Q. Could there be legal challenges?

A. Yes. The United States Constitution, which restricts governmental but not private actors from arbitrarily interfering with individual rights, prohibits the Government from unreasonably infringing on workers’ rights relating to privacy and job security. With respect to workplace privacy, the Fourth Amendment to the U.S. Constitution prohibits unreasonable “searches.” In 1989, the Supreme Court, considering the issue of workplace drug testing for the first time, concluded that a public employer taking of a blood, urine, or breath specimen for the purpose of alcohol and other drug testing, (or testing conducted by a private employer at the request of the Government), constitutes a search under the Fourth Amendment because it implicates significant privacy concerns. The Court further held that the determination of whether such testing is “reasonable” and therefore constitutionally valid, requires a balancing of the degree of invasion on the individual’s privacy interest against the promotion of the employer’s legitimate interests. Employment decisions based on a substance abuse test result can be contested. The Courts favor employee testing that is based on procedures that are clear, fair, consistent, and communicated in a written policy statement.



YOUR
COMPANY
LETTERHEAD

SUBSTANCE ABUSE POLICY STATEMENT

(insert date here)

(Company Name) is committed to providing a safe work environment and to fostering the well-being and health of its employees. That commitment is jeopardized when any (Company Name) employee illegally uses drugs on or off the job, comes to work under their influence, possesses, distributes or sells drugs in the workplace, or abuses alcohol on the job. Therefore, (Company Name) has established the following policy, pursuant to T.C.A. Section 50-9-100 et. seq.:

- (1) It is a violation of company policy for any employee to use, possess, sell, trade, offer for sale, or offer to buy illegal drugs or otherwise engage in the illegal use of drugs on or off the job,
- (2) It is a violation of company policy for any employee to report to work under the influence of or while possessing in his or her body, blood or urine, illegal drugs in any detectable amount.
- (3) It is a violation of company policy for any employee to report to work under the influence of or impaired by alcohol.
- (4) It is a violation of the company policy for any employee to use prescription drugs illegally, i.e., to use prescription drugs that have not been legally obtained or in a manner or for a purpose other than as prescribed. However, nothing in this policy precludes the appropriate use of legally prescribed medications.
- (5) Violations of this policy are subject to disciplinary action up to and including termination.

It is the responsibility of the company’s supervisors to counsel employees whenever they see changes in performance or behavior that suggest an employee has a drug problem. Although it is not the supervisor’s job to diagnose personal problems, the supervisor should encourage such employees to seek help and advise them about available resources for getting help. Everyone shares responsibility for maintaining a safe work environment, and co-workers should encourage anyone who has a drug problem to seek help.

The goal of this policy is to balance our respect for individuals with the need to maintain a safe, productive and drug-free environment. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that the illegal use of drugs and the abuse of alcohol are incompatible with employment at (Company Name).

.....

- If your company is subject to the requirements of the Drug-Free Workplace Act of 1988 (By nature of a grant/contract with the Federal Government) you should add the following statement to your drug policy:

As a condition of employment, employees must abide by the terms of this policy and must notify The Company in writing of any conviction of a violation of a criminal drug statute occurring in the workplace no later than five

calendar days after such conviction.

.....

- If you are including a designated EAP in your company's program, add the following paragraph to your policy:

The company offers an Employee Assistance (EAP) benefit for employees and their dependents. The EAP provides confidential assessment, referral and short-term counseling for employees who need or request it. If an EAP referral to a treatment provider outside the EAP is necessary, costs may be covered by the employee's medical insurance; but the cost of such outside services are the employees responsibility.

Confidentiality is assured. NO information regarding the nature of the personal problem will be made available to supervisors, nor will it be included in the permanent personnel file.

Participation in the EAP will not effect an employee's career advancement or employment, nor will it protect an employee from disciplinary action if substandard job performance continues. The EAP is a process used in conjunction with discipline, not a substitute for discipline.

The EAP can be accessed by an employee through self-referral or through referral by a supervisor. We will distribute information about the EAP to employees for their confidential use.

.....

- If you are Not contracting with a designated EAP, but are providing a directory of local EAP/substance abuse treatment providers instead, add the following paragraph to your policy:

The company offers resource information on various means of employee assistance in our community, including but not limited to drug and alcohol abuse programs. Employees are encouraged to use this resource file; which is located [insert where]. In addition, we will distribute this information to employees for their confidential use.

.....

(Insert this section for all.)

General Procedures

Any employee reporting to work visibly impaired will be deemed unable to perform required duties and will not be allowed to work. If possible the employee's supervisor will first seek another supervisor's opinion to confirm the employee's status. Next, the supervisor will consult privately with the employee to determine the cause of the observation, including whether substance abuse has occurred. If, in the opinion of the supervisor, the employee is considered impaired, the employee will be sent home or to a medical facility by taxi or other safe transportation alternative - depending on the determination of the observed impairment - and accompanied by the supervisor or another employee if necessary. A drug or alcohol test may be in order. An impaired employee will not be allowed to drive.

(Insert this section for all.)

Opportunity to Contest or Explain Test Results

Employees and job applicants who have a positive confirmed drug or alcohol test result may explain or contest the result to the medical review officer within five (5) working days after receiving written notification of the test result from the medical review officer; if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the company; a person may contest the drug test result pursuant to rules adopted by the Tennessee Department of Labor.

Confidentiality

The confidentiality of any information received by the employer through a substance abuse testing program shall be maintained, except as otherwise provided by law.

Job Applicant Drug Testing

All job applicants at this Company will undergo testing for substance abuse as a condition of employment. Any applicant with a confirmed positive test result will be denied employment.

Applicants will be required to submit voluntarily to a urinalysis test at a laboratory chosen by this Company, and by signing a consent agreement will release this Company from liability.

If the physician, official or lab personnel has reasonable suspicion to believe that the job-applicant has tampered with the specimen, the applicant will not be considered for employment.

This Company will not discriminate against applicants for employment because of a past history of drug or alcohol abuse. It is the current illegal use of drugs and/or abuse of alcohol, preventing employees from performing their jobs properly, that this Company will not tolerate.

Employee Drug Testing

This Company has adopted testing practices to identify employees who use illegally use drugs on or off the job or who abuse alcohol on the job. It shall be a condition of employment for all employees to submit to substance abuse testing under the following circumstances:

1. When there is reasonable suspicion to believe that an employee is illegally using drugs or abusing alcohol. 'Reasonable suspicion' is based on a belief that an employee is using or has used drugs or alcohol in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon, but not limited to, the following:
 - (A) Observable phenomena while at work such as direct observation of substance abuse or of the physical symptoms or manifestations of being impaired due to substance abuse;
 - (B) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
 - (C) A report of substance abuse provided by a reliable and credible source;
 - (D) Evidence that an individual has tampered with any substance abuse test during his or her employment

- with the current employer;
- (E) Information that an employee has caused or contributed to an accident while at work; or
 - (F) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.
2. When employees have caused or contributed to an on-the-job injury that resulted in a loss of work-time, which means any period of time during which an employee stops performing the normal duties of employment and leaves the place of employment to seek care from a licensed medical provider. An employer may send employees for a substance abuse test if they are involved in on-the-job accidents where personal injury or damage to company property occurs.
 3. As part of a follow-up program to treatment for drug abuse.
 4. Routine fitness-for-duty drug or alcohol testing. A covered employer must require an employee to submit to a drug or alcohol test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination where the examinations are required by; law, regulation, are part of the covered employer's established policy, or one that is scheduled routinely for all members of an employment classification group.

Alcohol Testing

The consumption or possession of alcoholic beverages on this Company's premises is prohibited. (Company sponsored activities which may include the serving of alcoholic beverages are not included in this provision.) An employee whose normal faculties are impaired due to alcoholic beverages, or whose blood alcohol level tests .10% by weight for non-safety sensitive positions, or .04% for safety sensitive positions, while on duty/company business shall be guilty of misconduct, and shall be subject to discipline up to and including termination.

Refusal to Submit

Failure to submit to a required substance abuse test also is misconduct and also shall be subject to discipline up to and including termination.

Important Information for Job Applicants and Employees

When an employee or job applicant submits to a drug and/or alcohol test, they will be given a form by the specimen collector that contains a list of common medications and substances which may alter or affect the outcome of a drug or alcohol test. This form will also have a space for the donor to provide any information that he/she considers relevant to the test, including the identification of currently or recently used prescription or non-prescription medication or other relevant information. The information form should be kept by the job applicant or employee for their personal use. If the job applicant or employee has a positive confirmed test result a medical review officer will attempt to contact the individual in order to privately discuss the findings with that person. The job applicant or employee should keep the form as a "reminder " to discuss this information at that time. The medical review officer will take this information into account when interpreting any positive confirmed test results. The information provided shall be treated as confidential and will not be given to the employer. Employees and job applicants have the right to consult with a medical review officer for technical information regarding prescription and non-prescription medicine.

It is the responsibility of every employee or job applicant to notify the testing laboratory of any administrative or civil action brought pursuant to TCA Section 50-9-100 et. seq. , Drug-Free Workplace Programs.

The provisions of this policy are subject to any applicable collective bargaining agreement or contract and include the

right of appeal to the applicable court.

.....
(*Insert this section for all*)

Substance abuse testing for job applicants and employees will include a urinalysis screen for the following drugs: *

Alcohol: (not required for job applicant testing)

Any “ Alcoholic Beverage ”, all liquid medications containing ethyl alcohol (ethanol). Please read the label for content. For example; Vicks Nyquil™ is 25% (50 proof) ethyl alcohol, Comtrex™ is 20% (40 proof), Contac Severe Cold Formula Night Strength™ is 25% (50 proof) and Listerine™ is 26.9% (54 proof).

Amphetamines: “ speed,” “uppers,” etc.

Cannabinoids: THC, marijuana, hashish, “pot,” “grass,” “hash,” etc.

Cocaine: “ coke,” “crack,” etc.

Phencyclidine: PCP, “angel dust.”

Opiates: Narcotics, Heroin, Codeine, Morphine, “ smack, dope, etc... ”.

* An employer must test for these 5 substances in order to be certified. The Rules & Guidelines of the Drug-Free Workplace Program do not prohibit an employer from testing for a broader range of substances. If you decide to test for additional drugs, it is advised that they be included on this list.



Pre-Employment Drug Testing Consent and Release Form



YOUR
COMPANY
LETTERHEAD

I hereby consent to submit to urinalysis and/or other tests as shall be determined by [Company Name] in the selection process of applicants for employment, for the purpose of determining the drug content thereof.

I agree that

(name of physician or clinic)

may collect these specimens for these tests and may test them or forward them to a testing laboratory designated by the company for analysis.

I further agree to and hereby authorize the release of the results of said tests to the company.

I understand that it is the current illegal use of drugs and/or abuse of alcohol that prohibits me from being employed at this Company.

I further agree to hold harmless the Company and its agents (including the above named physician or clinic) from any liability arising in whole or part out of the collection of specimens, testing, and use of the information from said testing in connection with the Company's consideration of my employment application.

I further agree that a reproduced copy of this pre-employment consent and release form shall have the same force and effect as the original.

I have carefully read the foregoing and fully understand its contents. I acknowledge that my signing of this consent and release form is a voluntary act on my part and that I have not been coerced into signing this document by anyone.

Applicant:

Print Name _____ S.S.#: _____ - _____ - _____

Applicant:

Signature _____ Date: ____ / ____ / ____

Witness Printed Name: _____

Witness Signature: _____



Active Employee Certificate of Agreement



This certificate becomes part of the active employee's personnel file.

YOUR
COMPANY
LETTERHEAD

I do hereby certify that I have received and read the [Company name] substance abuse and testing policy and have had the drug-free workplace program explained to me. I understand that if my performance indicates it is necessary, I will submit to a drug and/or alcohol test. I also understand that failure to comply with a drug and/or alcohol testing request or a positive confirmed result for the illegal use of drugs and/or alcohol may lead to discipline up to and including termination of employment and/or loss of workers' compensation benefits. *

* (pursuant to T.C.A. Section 50-9-100 et. seq.)

Name of Employee (please print)

Employee's Signature

Date



Sample Letter To Employees To Accompany Substance Abuse Policy Statement



YOUR
COMPANY
LETTERHEAD

LETTER TO ALL EMPLOYEES

(Insert date here)

The illegal use of drugs and the abuse of alcohol are problems that invade the workplace, endangering the health and safety of the abusers and those who work around them. This Company is committed to creating and maintaining a workplace free of substance abuse without jeopardizing valued employees' job security.

To address this problem, our Company has developed a policy regarding the illegal use of drugs and the abuse of alcohol that we believe best serves the interests of all employees. Our policy formally and clearly states that the illegal use of drugs or the abuse of alcohol or prescription drugs will not be tolerated. As a means of maintaining our policy, we have implemented pre-employment and active employee substance abuse testing. This policy was designed with two basic objectives in mind: (1) employees deserve a work environment that is free from the negative effects of drugs and alcohol and the problems associated with their abuse, and (2) this Company has a responsibility to maintain a healthy and safe workplace.

** To assist us in providing a safe and healthy workplace, we maintain a resource file of information on various means of employee assistance in our community, including but not limited to drug and alcohol abuse programs. Employees are encouraged to use this resource file, which is located [insert where]. In addition, we will distribute this information to employees for their confidential use.

An employee whose conduct violates this Company's Substance Abuse Policy (*and who does not accept the help we offer under the EAP) will be disciplined up to and including termination.

I believe it is important that we all work together to make this Company a drug-free workplace as part of our continual efforts to provide a safer and more rewarding place to work.

Sincerely,

President

* Insert if your business has added a designated EAP to its Drug-Free Workplace Program.

** Insert if your business is not using a designated EAP, but is providing a directory of local EAP/substance abuse treatment providers instead.

Notice

The various components of a drug-free workplace program, especially active employee testing, may raise legal issues for your company.

These model programs/policies have been reviewed by legal counsel. This program and its supporting policies are similar to those in effect in many major companies.

Companies with special requirements or contracts may need to modify sections of this program; therefore, these model policies are intended for general information only.



State of Tennessee
Department of Labor
Drug-Free Workplace Program
Andrew Johnson Tower, 2nd Floor
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Nashville, TN 37243
1-800-332-2667



Tennessee Department of Labor. Authorization No. 337166, 75,000 copies, October 1997. This public document was promulgated at a cost of \$.284 per copy.

The Tennessee Department of Labor, Division of Workers' Compensation, and The Drug-Free Workplace Program disclaim any responsibility for the implementation of these policies. All employers are advised to seek legal counsel prior to implementing substance abuse policies.