

Drug-Free Safety Program (DFSP) information

Notice: New Drug-Free Safety Program replaces Drug-Free Workplace Program (DFWP) effective July 1, 2010

The end of DFWP

BWC will phase out DFWP effective July 1, 2010. The new program, Drug-Free Safety Program (DFSP), will be available for employers the same day with many of the same features as DFWP. The new program will be easier to understand and implement, more actuarially sound and more effective. DFSP relies upon better integration of an employer's drug-free efforts with its comprehensive workplace safety program. DFSP provides a long-term discount for an unlimited number of years of participation as well as in-and-out-of-the-program privileges to provide greater flexibility for employers.

Private employers will be eligible for DFSP beginning July 1, 2010, and may choose to wait to participate until the January program year. Public employers will be eligible beginning Jan. 1, 2011.

Correspondence for employers currently participating in DFWP

We will be sending correspondence to employers participating in the July 1, 2009, program year to let them know when they'll receive their last DFWP discount (approximately the end of August 2010). To keep the July 1, 2009, program year discounts, employers must meet all program requirements.

[Letter to current DFWP and DF-EZ participants](#)

Making the switch to DFSP

If you are currently participating in DFWP for the July 1, 2009, program year, you only need to complete the new [Application for Drug-Free Safety Program \(U-140\)](#) to participate in the new program. Indicate on the application whether you want to participate at the basic or advanced level. If you do not choose to participate in DFSP, simply e-mail [employer programs](#) to let us know. To learn more about DFSP, its benefits and how to select a program level that suits you, download and print these [frequently asked questions](#) or continue reading below.

Introduction to DFSP

DFSP offers a premium discount to eligible employers for implementing a loss-prevention strategy addressing workplace use and misuse of alcohol and other drugs, including prescription, over-the-counter, and illegal drug abuse within the context of a holistic safety program. DFSP is designed to more effectively prevent injuries and illness by integrating drug free into each company's comprehensive safety management system. As noted above, the DFSP will be available for private employers as early as July 1, 2010, and for public employers effective Jan. 1, 2011. The initial application deadline is June 30, 2010, for the July 1, 2010, program year and the last business day in October for the Jan. 1 program year.

[Drug-Free Safety Program kick-off, April 8](#) (PowerPoint Presentation)

Comparing DFSP with DFWP/DF-EZ, DFSP is:

- Wider reaching with expanded benefits;
 - Benefits not limited to five years;
 - Previous participants eligible to join;
 - Simpler and easier to implement than DFWP/DF-EZ; one program with two levels, basic and advanced;
 - Streamlined application process
- Effective with measureable results;
 - Streamlined safety components;
 - Better reporting data;
 - Continuous measurement and evaluation;
- Actuarially sound.

DFSP is a voluntary program that encourages employers to detect and deter substance use and misuse,

and take appropriate corrective action within the context of addressing overall workplace safety. The most obvious change from DFWP and DF-EZ to DFSP is the emphasis on tailored approaches to loss prevention and risk management. This includes conducting a safety review, providing accident-analysis training for supervisors, submitting accident reports and designing a safety action plan to improve the company's safety systems.

The problem?

The courts and the public are holding American employers responsible for the behavior of employees who have alcohol and other drugs in their system at work. Not only do alcohol and other drugs affect profitability of companies, they also affect the health, safety and productivity of substance-using employees and their co-workers. Attempting to address alcohol and drug use alone is insufficient. Employers must do so as part of a heightened focus on improving safety.

Why participate?

Substance use is often the silent and unseen cause of work-related accidents. Unfortunately, employers and their employees don't realize it until it's too late. No one disputes that substance use is a problem that can affect every workplace and that the costs are potentially very damaging to an employer's bottom line, and to the health and well-being of employees. Add unsafe machinery, inadequate work rules and lack of effective safety processes to employee alcohol and drug use, and workplace accidents and injuries become more likely. The DFSP's long-range benefits provide the greatest value.

Who benefits?

Employers who implement the DFSP provide greater protection for all employees. Consider these benefits.

- Heightened awareness of safety and the ability to address gaps in safety systems which lead to:
 - Fewer accidents;
 - Decreased severity of accident;
 - Increased productivity;
 - Higher morale (employer shows caring through focus on safety).
- Reduction in use of workers' compensation medical benefits by substance users
- Decrease in loss, theft and pilferage to support substance user habits
- Protecting the bottom line
- Greater credibility in the community through reliability in products/services

Who is eligible to participate in DFSP?

- Only state-fund employers may receive a discount. That includes private employers and public employer taxing districts with the exception of state agencies. Although ineligible for premium discounts, self-insuring construction employers may apply to be included in the state construction contractor database.
Note: Ohio workers' compensation coverage is required to be included in the state construction contractor database regardless of whether an employer is otherwise not required to hold Ohio coverage.
- The employer shall be current at the time of the application review for the DFSP and throughout the policy year.
Current means an employer is not more than 45 days past due on any and all premiums, assessments, penalties or monies otherwise due to any fund administered by BWC, including amounts due for retrospective rating.
- The employer may not have cumulative lapses in workers' compensation coverage in excess of 40 days within the 12 months preceding the original application deadline or subsequent anniversary deadline wherein the employer seeks renewal for the DFSP.
- The employer shall be in good standing at the time of application review.
- The employer shall continue to meet all eligibility requirements during participation in the program, when applying for renewal, and during each subsequent year of participation in the program.
- Self-insuring employers and state agencies are not eligible for the discounts but may receive

technical assistance from BWC to establish a drug-free work environment.

These are the initial requirements for program eligibility. Employers determined to be ineligible may reapply in a subsequent program year. Private employers have two program years from which to choose, Jan. 1 to June 30 or July 1 to Dec. 31. Public employers have a Jan. 1 to Dec. 31 program year.

Program benefits

DFSP offers discounts of 4 percent for implementing a DFSP Basic level program, 7 percent for an Advanced level program and the incremental discount of 3 percent off their already credited rate for group-experience-rated employers participating in DFSP Advanced up to the group cap. In addition, DFSP employers may apply for reimbursement for specified start-up costs for the first two years of DFSP program operation. However, **DFSP discounts are not intended to incent employers into doing the right thing but rather, to reward those employers that see the value in doing the right thing.**

What about employers participating concurrently in DFSP and another BWC discount program?

Compatibility refers to being able to receive a discount or other benefit concurrently from more than one BWC program. DFSP employers may receive a DFSP discount on top of another program/plan benefit only under the following circumstances:

- Employers participating in DFSP at the Advanced level and group-experience rating will be eligible for the incremental difference between the DFSP Advanced discount (7 percent) and the DFSP Basic discount (4 percent), so an additional 3 percent may be received on top of the group credit up to the established cap pursuant to the current credibility table.
Note: The combination of DFSP Basic and group-experience rating does not offer the ability to stack a DFSP discount on top of the group credit;
- Employers participating in DFSP at either advanced or basic levels and the small deductible program may receive both benefits;
- Employers participating in DFSP and the Safety Council Incentive Program may receive both benefits;
- Employers participating in DFSP for a discount cannot pay salary continuation on claims with dates of injury Jan. 1, 2011 and beyond.

What are the key components of DFSP?

DFSP is designed to help employers deter, detect and take corrective action related to substance use that affects workplace safety. Participants must develop a substance policy that describes their drug-free program, and the starting point is a focus on identifying the effectiveness of the employer's current safety efforts. Employers accomplish this by completing a safety review that walks them through a series of questions designed to demonstrate where the gaps are within the overall approach to workplace safety.

Accident reporting, accident-analysis training for supervisors and the design of an employer-specific safety action plan are ways in which we assist employers in addressing their industry and operational safety needs. The differences in safety-related requirements between employers participating in DFSP Basic and Advanced levels is the addition of the Safety Action Plan, which moves employers from identifying gaps in safety to taking the appropriate steps to address these issues and better protect the workforce. Our safety consultants are available to offer professional guidance in how to identify and implement these improvements.

The written DFSP policy describes every program element. As such, it provides the operational rules of the program; a full and fair disclosure of prohibited conduct and consequences for violating the policy; and describes the various pieces that make up the entire DFSP.

As such, the written policy should describe safety requirements; annual employee education and supervisor training; alcohol and other drug testing; and employee assistance, which along with the written DFSP policy, comprise the key integrated elements of any effective DFSP program.

Basic Level (4-percent discount)

DFSP Basic requires completion of a safety review within a time frame identified in BWC written program publications; timely accident reporting; accident-analysis training for supervisors; and development of a written DFSP policy with certain types of testing, such as pre-employment and/or new hire, reasonable suspicion, post-accident, return-to-duty and follow-up. In addition, employers must do annual employee education and supervisor training, and develop a list of local community resources that employees with problems can turn to for assistance as well as commit to employee health and well-being in the DFSP policy.

Advanced Level (7-percent discount)

DFSP Advanced requires employers to commit to putting together a safety action plan based on the results of the completed safety review and to meet all safety requirements of the Basic level. It also requires the same alcohol and other drug testing requirements as the Basic level along with random drug testing of 15 percent of the average annual total work force. For public employers, random testing applies only to safety-sensitive positions or functions, as defined by the employer. Advanced-level employers must offer annual employee education and supervisor training, and must expand available employee assistance to, at minimum, facilitating and paying for a substance assessment for employees testing positive for alcohol or other drugs who are offered a second chance and who retain employment. Advanced-level employers are not free to terminate an employee for a first positive alcohol or other drug test although there are some exceptions described in BWC policy.

Program requirements

- [Safety processes](#)
- [Written DFSP policy](#)
- [Employee education](#)
- [Supervisor training](#)
- [Alcohol and other drug testing](#)
- [Employee assistance](#)
- [Rebuttable presumption](#)

For more details, you can review the Drug-Free Safety Program Procedural Guide, which will be available in June 2010.

Safety processes

While DFSP is a safety program that focuses on alcohol and other drug use that can compromise workplace safety, it's very important that organizations take a broader view of safety management. Employers must develop safety and health processes that are customized to their unique operations. Safety needs to be integrated with all aspects of the business operations, including production, quality and service delivery.

Top management must demonstrate a commitment to safety as a core value. Employees must be actively involved in the safety process and take personal responsibility for their own safety. When an accident occurs, line supervision should identify and analyze the root causes of the accident and make the necessary changes that will systematically eliminate the potential for a recurrence. 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; ensuring the safety of all equipment; training employees to perform their jobs safely; developing and enforcing work rules that support safety; accountability for supervisors to address safety issues; analysis of accidents and incidents to determine what safety processes need improvement; encouraging and rewarding employees for bringing forward safety issues; support for safety from top management; comprehensive safety review to identify gaps in the safety systems and determine appropriate actions to improve safety. All of this should be shared with your employees to help them

understand how important safety is in the workplace and that your company considers safety to be everyone's responsibility.

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Written DFSP policy

Developing an effective DFSP policy takes some effort. You will be able to review an outline that will help you develop your initial policy. The outline walks you through a series of questions, the answers to which will help you design a policy. Then, you will be able to add the operational specifics for your business and take the policy to legal counsel for review – a cost savings over paying an employment law attorney to design the policy. A carefully written DFSP policy is a key element because it lays out all the ground rules and describes acceptable and unacceptable work behavior along with the consequences for violating the policy. A good policy then must be followed by operational procedures that flesh out the policy and tell employees and supervisors how your program will operate.

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Employee education

DFSP education incorporates awareness of the dangers of substance use in the workplace. Participating employers must arrange for each employee and supervisor to receive at least one hour initially within the first four months of the initial program year, with a one hour refresher annually thereafter. You can contract with substance professionals to do these sessions or, through sending a manager through a train-the-trainer course for employee education, you can do it yourself. The key is still to provide information on substance problems in the workplace to ALL employees and to not offer the same information year after year.

While a qualified/credentialed substance professional may present the educational material, it's also possible for the employer to obtain these materials from a qualified source and have a manager who is a skilled trainer present the information. However, questions raised by employees that this manager is not able to answer must go to a qualified substance professional for a response so that employees get a timely answer, typically within two business days. Although a credentialed person does not have to present the information to your employees, it's important to use a qualified, credentialed person or anyone else who has experience in the substance education field to prepare the training content and act as a resource for you. A DFSP start-up grant may be available to help offset this expense for the first two years of program operation.

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Supervisor training

Skill-building training for all supervisors is a minimum of two hours initially and one hour annually as a refresher for supervisors who already have received the initial two hours. New supervisors should receive the initial training within eight weeks of becoming a supervisor, and these supervisors would then get the one hour refresher in subsequent years. You must use a trainer that is credentialed or qualified by experience in substance training for supervisors, so your supervisors can meet their responsibilities for supporting your program while buffering your legal liability. In Ohio, employers are liable for the actions of their supervisors AND the supervisors are individually liable for their actions. Consider additional training as needed in your workplace.

Required supervisor skill-building training content includes:

- Behavioral observation aimed at detecting when an employee may be in violation of the employer's DFSP policy and require an intervention before there is an incident/accident/injury;
- Documentation of the behavior that suggests reasonable suspicion and justifies an intervention;
- Appropriate and professional confrontation of the behavior that suggests a possible violation of the employer's DFSP policy before there is an incident/accident/injury;
- How to make referrals for testing;

- How to make referrals for assistance including a substance assessment.

The above content is IN ADDITION TO accident-analysis training.

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Alcohol and other drug testing

Employers will need to do:

- 100-percent, pre-employment drug testing (or new-hire testing or a combination of the two) for private employers and 100-percent of safety-sensitive or special needs positions for public employers;
- Reasonable suspicion alcohol and/or other drug testing as appropriate;
- Post-accident alcohol and/or other drug testing of anyone who may have caused or contributed to an accident following an accident investigation for private employers and, with documentation of reasonable suspicion following an accident investigation, for public employers;
- Return-to-duty alcohol and/or other drug testing for employees who are given a second chance after a positive test;
- Follow-up alcohol and/or other drug testing for employees who are allowed to retain employment following a positive test and who return to duty;
- For Advanced-level employers only, random drug testing of 15-percent of the total average annual work force for private employers or 15-percent of the total average annual safety-sensitive positions for public employers.

You do **not** have to conduct a post-accident test if **all** of the following circumstances exist:

- The accident resulted in a minor injury, even when off-site medical attention was required;
- There was no violation of work rules;
- An accident investigation determined there was no reasonable suspicion related to the accident;
- The accident is considered normal in relationship to the job functions of the injured employee.

Testing focuses on who may have caused or contributed to a work-related accident where there is an injury requiring off-site medical attention, a fatality or damage to company property or vehicles in apparent excess of amounts the employer specifies in its written DFSP policy. An accident investigation is the key to determine whom to test and when alcohol testing is appropriate along with a possible drug test. The testing system used for DFSP is called systems presence testing. This form of testing for specified drugs and alcohol has the support of organized labor and is considered the fairest and most reliable testing system in existence. It has withstood court challenges nationally and retained its basic structure based on reliability and accuracy in determining the presence of metabolites in an employee's system that reflect use of drugs or in breath/blood that reflect use of alcohol. BWC's approach to alcohol and other drug testing follows the federal testing model that is considered the gold standard in testing with substantial built-in protections for employees through acknowledged accuracy and reliability, and the involvement of a certified medical review officer who reviews all testing results.

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Employee assistance

We recommend the highest degree of assistance available for employees and, at the Basic level, a commitment to the health and well-being of employees, including compiling and sharing a list of local assistance resources for employees with substance problems and their families. In addition, we require employers participating in the Advanced level to also pre-establish a working relationship with an employee assistance professional to whom they can refer an employee with a substance problem for an assessment and pay for the cost of the assessment.

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Rebuttable presumption

The rebuttable presumption law (HB223) put the burden of proof on employees to prove that alcohol or drugs in their system were **not** the proximate cause of a workplace injury. This legislation is intended to curb substance abuse in the workplace.

The law allows employers to ask for disallowance of a workers' compensation claim filed by an employee who tests positive on a qualifying chemical test. The law also applies if the injured employee refuses the test. For the claim to be allowed, the injured employee must produce sufficient evidence to prove that being intoxicated by alcohol or under the influence of any of nine controlled substances (not prescribed by the employee's physician) did not cause the injury.

We provide employers with a written notice along with their certificate of coverage (or self-insurance). Employers must post this notice to alert employees they may not be eligible for workers' compensation benefits if they're injured while intoxicated or under the influence.

[Written notice for private and self-insuring employers - Posting required](#)

[Written notice for public employers - Posting required](#)

[Written notice in Spanish](#)

Notice: Employers who wish to contest a workers' compensation claim must post notice that is no smaller than the certificate of coverage in the same location as the certificate. Rebuttable presumption cannot be considered in relationship to a claim unless this written notice was properly posted before the accident leading to injury.

This law does not impact the policies or operations of BWC's Drug-Free Safety Program (DFSP). Post-accident, random and other forms of testing in BWC's drug-free workplace programs are still permissible and do NOT address claim compensability.

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State construction contractors

Ohio law requires all companies that bid or provide labor services or supervise work on state construction jobs to have a drug-free program that is comparable to the general elements of BWC's DFSP — no matter how few or how many employees they have. This applies to all contractors and all levels of subcontractors who want to work a State of Ohio public improvement/construction project or who want to bid on and eventually provide labor services and/or supervise workers on state construction sites.

[Click here for more information on state construction contractors.](#)

Is your company currently in approved status in the state construction contractor/subcontractor database? Click on the link below to find out.

[State construction contractor look-up](#)

Obtaining drug-free services through a consortium

We encourage you to consider the drug-free services from a one-stop shop consortium that packages and offers services to help you meet DFSP requirements and realize costs savings associated with economies of scale.

Answers to some basic questions

Q: What type of legal review do I need for my DFSP and written policy?

A: We strongly urge employers to have the company's program reviewed by competent legal counsel familiar with employment law and drug-free case law. Counsel should ensure adherence to applicable state

laws, review the written DFSP policy for protection of employer interests and employees' rights and ensure adherence to any collective bargaining agreements currently in place. BWC expressly disclaims that any information provided by BWC staff or BWC documents constitutes legal advice.

Q: How can I protect my employees' confidentiality rights?

A: Our DFSP has built-in protections that ensure the privacy of all employees. We advise employers to consider sending faxes that share individual testing information and employee assistance to a secure fax machine in the interest of confidentiality. We recommend that all program documents concerning an individual's testing and treatment results be kept separate from the general personnel file and secured.

It's important for employers to note the new Health Insurance Portability and Accountability Act (HIPAA) appears to have limited but important implications for participating DFSP employers. BWC program requirements already strongly stress confidentiality of personal information and a signed consent-to-testing form for each employee as a term and condition of employment. Employers should follow the guidance provided by their legal counsel in terms of updating their consent-to-testing forms and any release of information forms to ensure adherence to HIPAA privacy requirements.

[DFSP Vendor Directory](#)

BWC has partnered with The Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to offer Ohio employers a listing of companies and individuals qualified to supply services related to a drug-free workplace. Employers may access the directory to obtain contact information for providers by service such as employee education and supervisor training. Employers also can search by county served or statewide service availability. Employers also may use DFSP services from other qualified vendors.

Related links

[Application for Drug-Free Safety Program \(U-140\)](#)

[SafetyGRANT\\$ information](#)

[Rebuttable presumption: Obtaining proper evidence](#)

[HB 223 - copy of legislation](#)

[HB 223 - Legislative Services Commission summary](#)