



# Developing a Drug-Free Workplace Policy

## **Deciding What to Put Into a Policy**

This section of the Kit describes the key elements of an effective drug-free workplace policy. When developing a policy, organizations need to take into account factors such as drug-free workplace laws and regulations that may apply to them, characteristics of their workplace and employees, and the organization leaders' values and priorities. When it comes to drug-free workplace policies and programs, one size does not fit all—different organizations in the same industries and in different industries may address workplace drug use and abuse in a variety of ways. There are many options. It is vital that organizations go through the steps needed to ensure that the drug-free workplace policy is right for their workplace and their workers. Every business owner and every department director will want to talk with their employees and with colleagues in other organizations and gather accurate information about the challenges, problems, and strengths unique to their workplaces.

## ***When Drug-Free Workplace Laws and Regulations Apply***

Businesses and other organizations covered by drug-free workplace laws and regulations must ensure that their drug-free workplace policies and programs fully comply with those laws and regulations. This compliance will help reduce drug-related problems in the workplace.

In addition, organizations may want to go beyond meeting the minimum requirements. For example, they may want their policies and programs to address legal substances (such as alcohol and tobacco) as well as illegal substances (such as marijuana and cocaine) and workplace behaviors and outcomes that can be related to drug use (such as repeated sickness and

absenteeism directly before or after holidays or weekends).

## ***When Drug-Free Workplace Laws and Regulations Do Not Apply***

Organizations may want to establish drug-free policies and programs even if there are no drug-free workplace laws or regulations that apply to them. Such policies can be relatively narrow (with a concentration on illegal drugs) or broader (with attention paid to legal substances, prescription drugs, and behaviors that can be drug related).

## ***Whether or Not Drug-Free Workplace Laws Apply, a Lawyer or Other Legal Expert Must Review the Policy***

Every organization should ask a lawyer or other legal expert—with specific knowledge about drug-free workplace policies, programs, and case law—to review the draft policy, whether or not the businesses are covered by drug-free workplace laws or regulations. (Some organizations may ask a lawyer to do more than review the draft policy; they may want a lawyer to help them put it together from the beginning.)

The steps taken to prevent or reduce drug abuse can affect the employment, and future



employability, of the workers. As a result, there are legal, health, safety, and productivity issues that can lead to legal appeals and lawsuits. Every organization needs to

ensure that all legal obligations are fully met and that both the employer's and the employees' legal rights are properly protected.



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## ***A Written Policy Helps Each Organization***

There are many reasons to put the drug-free workplace policy in writing:

- A written policy may be required by a law or by the organization's insurance carriers.
- It makes legal review possible.
- It provides a record of the organization's efforts and a reference if the policy is challenged. It may protect the employer from certain kinds of claims by employees.
- A written policy is easier to explain to employees, supervisors, and others.
- Putting the policy in writing also helps employers and employees concentrate on important policy information.

## **Basic Elements of an Effective Policy**

An effective drug-free workplace policy covers the following elements:

### ***Statement of Purpose***

#### **Background**

- How was the policy developed? (For example, was it developed in meetings with union representatives or employees representing different segments of the workforce, after consultation with other businesses in the same industry, in collaboration with the organization's legal counsel?)

#### **Goals**

- What are the drug-free workplace laws and regulations (Federal, State, or local) with which the organization must comply (if applicable)?
- What other goals does the organization expect to achieve? (For example, does it hope to reduce or eliminate drug-related workplace accidents, illnesses, and absenteeism?)
- Does the organization want to address the

issue of preventing and treating workplace drug use in the context of accomplishing a broader goal of promoting worker health, safety, and productivity? Many successful policies have taken this approach.

## **Definitions, Expectations, and Prohibitions**

- How does the organization define substance abuse?
- What employee behaviors are expected?
- Exactly what substances and behaviors are prohibited?
- Who is covered by the policy?
- When will the policy apply? (For example, will it apply during work hours only, or also during organization-sponsored events after hours?)
- Where will the policy apply? (For example, will it apply in the workplace, outside the workplace while workers are on duty, in organization-owned vehicles while workers are off duty?)
- Who is responsible for carrying out and enforcing the policy?
- Will the policy include any form of testing for alcohol or other drugs?
- Are any employees covered by the terms of a collective bargaining agreement, and, if so, how do the terms affect the way the policy will be carried out and enforced for those employees?

## ***Implementation Approaches***

### **Benefits and Assurances**

- How will the organization help employees comply with the policy?
- How will the organization protect employees' confidentiality?

- How will the organization help employees who seek help for drug or related problems?
- How will the organization help employees who are in treatment or recovery?
- How will the organization ensure that all aspects of the policy are implemented fairly and consistently for all employees?

### Consequences and Appeals

- What are the consequences of violating the policy?
- What are the procedures for determining whether an employee has violated the policy?
- What are the procedures for appealing a determination that an employee may have violated the policy?

### Dissemination Strategies

How will the organization educate employees about the policy? (For example, the organization



can train supervisors, discuss the policy during orientation sessions for new employees, and inform all employees about the policy using a variety

of formats—such as a section in the employee handbook, posters in gathering places at work sites, information on the organization intranet.)

### Resources for Developing a Written Policy

The most important task for every organization is to ensure that the policy meets the needs of its employees and workplace. Whether or not laws and regulations apply, the policy should address the key topics outlined above. Organizations can write (or adapt) and organize content on the key topics using whatever language and structure will best communicate the information to their workers. Organizations do not need to start from

scratch. They can borrow and adapt information from drug-free workplace policies put together by other organizations in their industry. Since the Drug-Free Workplace Act was passed, many national, regional, and local programs have been set up to help employers create effective policies. The programs provide free or low-cost information, technical assistance, or model policies that organizations can customize to meet their particular needs. To learn more about these and other resources, organizations can call SAMHSA's Workplace Helpline at 1.800.Workplace.

Following are general guidelines for developing or adapting a written drug-free workplace policy.

### Statement of Purpose

The statement of purpose should contain the organization's goals for the workplace policy, the organization's definition of *substance abuse*, other information outlined under "Definitions, Expectations, and Prohibitions," and a description of how the policy was developed. Some organizations may want the policy to have a very narrow goal, such as meeting the minimum requirements of a law. Other organizations may prefer broader goals that go beyond minimum requirements.

### If Laws and Regulations Apply

Organizations covered by drug-free workplace laws and regulations may choose to use or adapt one of the following sample statements of purpose:

#### 1. Meeting the Legal Requirements

The purpose of this policy is to meet the requirements of applicable laws and regulations to ensure that the workplace is free of illegal drugs.

#### 2. Addressing Other Substances as Well

The purpose of this policy is twofold: a) to meet the requirements of applicable laws and regulations to ensure that the workplace is free of illegal drugs and b) to establish restrictions on the workplace-related use of legal substances, such as alcohol, cigarettes, and prescription drugs.

### 3. Addressing Other Problems, Which Can Be Related to Drug Use

The purpose of this policy is fourfold: a) to meet the requirements of applicable laws and regulations to ensure that the workplace is free of illegal drugs; b) to establish restrictions on the workplace-related use of legal substances, such as alcohol, cigarettes, and prescription drugs; c) to address other behaviors (such as repeatedly calling in sick or being absent directly before and after holidays and weekends, repeatedly damaging inventory or failing to meet reasonable production schedules, being involved in frequent accidents, and the like) that can be related to the abuse of alcohol and other drugs; and d) to explain the steps that will be taken to prepare employees, identify problems, and provide assistance.



#### ***If No Laws or Regulations Apply***

Even if drug-free workplace laws and regulations do not apply, organizations may want to develop a drug-free workplace policy and program. If so, they still can adapt one of the sample statements of purpose above, simply omitting the words “to meet the requirements of applicable laws and regulations.”

### **Policy Options**

#### ***Option 1. Meeting the Requirements of The Law***

When laws or regulations apply, organizations must ensure that they know exactly what the laws or regulations require. For this reason, it is essential to seek the advice of an experienced lawyer or other appropriate legal expert.

In addition, it is good practice for organization executives to be familiar with three types of Federal laws and regulations that cover many businesses. Summarized below are requirements, including rules and regulations, for 1) Federal grantees and contractors, 2) safety-sensitive

industries, and 3) Department of Defense (DOD) contractors. Organizations not covered by these requirements still may want to adopt some of the same language for use in their drug-free workplace policy.

### **Requirements of Federal Contractors and Grantees in General**

The most important piece of legislation regulating Federal contractors/grantees is the Drug-Free Workplace Act of 1988.<sup>1</sup> This Act requires any organization that receives a Federal contract worth at least \$100,000 to establish a drug-free workplace policy. It also requires that all organizations receiving Federal grants of any size establish and maintain such a policy.

At a minimum, the organization must

1. *Prepare and distribute a formal drug-free workplace policy statement.* This statement should clearly prohibit the manufacture, use, and distribution of controlled substances in the workplace and spell out the specific consequences of violating this policy.
2. *Establish a drug-free awareness program.* The program should inform employees of the dangers of workplace substance abuse; review the requirements of the organization's drug-free workplace policy; and offer information about any counseling, rehabilitation, or employee assistance programs that may be available.
3. *Ensure that all employees working on the Federal contract understand their personal reporting obligations.* Under the terms of the Act, an employee must notify the employer within 5 calendar days if he or she is convicted of a criminal drug violation in the workplace.
4. *Notify the Federal contracting agency of any covered violation.* Under the terms of the Act, the employer has 10 days to report that a covered employee has been convicted of a criminal drug violation in the workplace.

5. *Take direct action against an employee convicted of a workplace drug violation.* This action may involve imposing a penalty of some kind or requiring that the employee participate in an appropriate rehabilitation or counseling program.

6. *Maintain an ongoing good faith effort to meet all the requirements of the Act throughout the life of the contract.*

Covered organizations that fail to comply with terms of the Drug-Free Workplace Act may be subject to a variety of penalties, including suspension or termination of their Federal grants/contracts and prohibition from applying for Federal Government funds in the future.

#### **Requirements for Safety-Sensitive Industries**

***Department of Transportation (DOT) rules and regulations.*** Employers and employees in fields that affect public safety and national security are, understandably, subject to additional drug testing requirements. The most important piece of Federal legislation affecting safety-sensitive industries is the Omnibus Transportation Employee Testing Act of 1991.<sup>2</sup> This Act requires drug and alcohol testing of all safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries.

Any employer whose business is regulated by one of the following Federal agencies is covered under the Act:

- Federal Aviation Administration
- United States Coast Guard
- Federal Motor Carrier Safety Administration
- Federal Transit Administration
- Federal Railway Administration
- Research and Innovative Technology Administration
- Pipeline and Hazardous Materials Safety Administration

While each of these agencies has developed its own specific set of guidelines and procedures for complying with the Omnibus Transportation Employee Testing Act, the following core requirements apply to all employers and employees within the transportation industry:

1. All employers in the transportation industry are required to test safety-sensitive employees at certain key points in their professional careers. These key points include preemployment (before the employee is hired), whenever there is reasonable suspicion that the employee has been involved in drug use, immediately after the employee is involved in an accident, and before allowing the employee to return to duty following suspension for drug abuse.

2. All employers in the transportation industry are also required to have a program of random drug testing in place.

3. All drug testing conducted under the Act must be carried out by a laboratory certified by the U.S. Department of Health and Human Services.

4. All drug testing conducted under the Act must test for five different classes of drugs (and only those five classes): marijuana, cocaine, amphetamines, opiates, and phencyclidine (PCP).

5. All alcohol testing of employees must strictly adhere to the DOT's policies and procedures for alcohol testing, and the testing must be conducted using devices and equipment approved by DOT.

6. All positive tests must be reviewed by a trained Medical Review Officer, and employees must be allowed to consult with this officer before the test result is reported to the employer.

7. All employees, whether in safety-sensitive positions or not, must receive drug and alcohol awareness training and education.

8. All supervisors must receive at least 2 hours of training in substance abuse detection,

documentation, and intervention. Half this training time should be devoted to drug abuse, the other half to alcohol abuse.

9. Any employee who is determined to have a substance abuse problem must be referred by the employer to a trained Substance Abuse Professional. This person will be responsible for evaluating the employee's treatment needs and assessing the employee's ability to return to work.

Employers who are subject to the requirements of the Omnibus Transportation Employee Testing Act must ensure that their policies and procedures strictly adhere to DOT's requirements. Otherwise, employers run the risk of failing to comply with the Act or violating their employees' civil liberties, either of which can have serious consequences.

Organizations can obtain more detailed information on how to meet the requirements of the Act from DOT's Office of Drug and Alcohol Policy and Compliance, which publishes helpful guidelines and manuals for employers and employees. These materials are available online at [http://www.dot.gov/ost/dapc/NEW\\_DOCS/part40.html?proc/](http://www.dot.gov/ost/dapc/NEW_DOCS/part40.html?proc/).

### **Requirements for Security-Sensitive Industries**

***DOD rules and regulations.*** Transportation workers are not the only types of employees whose work affects public safety or security. The Department of Defense has developed its own set of regulations for contractors working in the national security arena (Section 48 CFR 252.223-7004<sup>3</sup>). Under these regulations, all DOD contractors with access to sensitive, classified information must maintain a drug-free workforce policy that includes the following:

1. A comprehensive employee assistance program, including coordination with local community service providers and resources.
2. Provision for self-referrals and supervisory referrals for drug treatment.

3. Supervisory training on detecting and responding to illegal drug use.

4. A carefully controlled and monitored employee drug testing policy. This testing policy should include provisions for testing a) when there is reasonable suspicion that an employee has been involved in illegal drug use, b) when an employee has been involved in an accident or unsafe practice, c) as part of a program of counseling or rehabilitation, and d) as part of a voluntary employee drug testing program.

The DOD regulations also require covered contractors to ensure that their drug testing policies are consistent with applicable State laws and that they are agreed to by any relevant labor unions. For more information on the Department of Defense's requirements, organizations can consult the Code of Federal Regulation (48 CFR 252.223-7004) and DOD's procurement center Web site at <http://www.acq.osd.mil/dpap/>.

### ***Option 2. Addressing Other Substances***

Organizations may want their drug-free workplace policies to cover one or more types of legally obtainable substances as well as illegal drugs. Under certain circumstances, substances such as alcohol, tobacco, and prescription drugs can adversely affect workplace health, safety, and productivity. Issues and options include the following:

#### **Alcohol**

***The presence and use of alcohol in the workplace.*** Alcohol in the workplace can compromise safety and productivity. Thus, organizations may want their policy to prohibit the presence and consumption of alcohol in the workplace.

#### ***Working under the influence of alcohol.***

Organizations also may want to prohibit working under the influence of alcohol, especially in safety-sensitive positions, where operating heavy machinery while under the influence of alcohol could result in serious accidents.

***Alcoholic and nonalcoholic beverages at work-related parties.*** Organizations also may consider restricting the use of alcohol at work-related parties and other events. Or they may require that nonalcoholic beverages be available for those who choose not to drink alcoholic beverages.

### **Tobacco**

Organizations may choose to specify in their policy that they maintain a smoke-free workplace. Or they may prohibit the sale of tobacco products through vending machines located in the workplace and designate certain areas of the workplace as smoke free.

### **Prescription Drugs**

Organizations may decide to set limits regarding allowing employees who are taking certain prescription medications to perform certain safety-sensitive jobs, especially if the medications could affect concentration and motor skills. Or they may choose to require that workers who perform certain safety-sensitive jobs inform their supervisors if they are using such medications.

### ***Option 3. Addressing Behaviors That Can Be Related to Drug Use***

In their drug-free workplace policy, organizations may want to mention behaviors that can be related to drug use—such as repeatedly calling in sick or being absent before and after holidays and weekends, damaging inventory, and repeatedly missing reasonable production schedules. (However, businesses will want to avoid jumping to the conclusion that drug use is the culprit, because many other factors can cause or contribute to such problems.) Organizations may consider framing the issue of drug-related workplace behaviors in the larger context of worker health, safety, and productivity. For example, they may want the policy to make two general points. First, the policy's immediate objectives are to a) comply with drug-free workplace laws and regulations (if applicable) and

b) prevent drug-related workplace accidents, illnesses, absenteeism, and performance problems, which can occur in any workplace. Second, the policy's broader goals are to help increase and protect worker health, safety, and productivity. Workplace alcohol and other drug use and abuse are the most widely occurring threats to worker well-being in many different kinds of businesses and industries.

### **Implementation Approaches**

The policy's implementation section should cover the elements listed under "Consequences and Appeals," "Benefits and Assurances," and "Dissemination Strategies." Businesses may also want to address the following broad categories: "Prepare the Workplace," "Identify Issues," and "Provide Assistance."

#### ***Prepare the Workplace***

The policy could state that all workers are responsible for being ready to work when they arrive at the workplace and for avoiding behaviors that could threaten their own safety and health or that of their coworkers. The policy could make clear that all employees will be educated about the policy, will be expected to understand it, and will know what they can do—given their particular work roles—to help make the policy succeed. The policy could clarify options for addressing coworkers' problem behaviors as well as the meaning of a) taking responsibility for one's own behavior, b) showing compassion by helping others, c) and being honest about problems that threaten health and safety in the workplace. The policy should state that the organization will train supervisors to ensure that they a) understand all applicable laws and regulations, b) know how to communicate effectively with their subordinates, and c) are consistent and fair when carrying out and enforcing the policy.

#### ***Identify Issues***

The policy could indicate that supervisors will continually be on the lookout for major health and

safety issues including, but not limited to, workplace alcohol and other drug abuse. (Examples of other common health and safety concerns are exposure to toxic chemicals and excessively long work shifts.) If applicable, the policy could state that random testing for alcohol and other drugs will be part of this process. The policy must clearly explain how the organization will protect workers' privacy and confidentiality rights. The policy also could indicate that there will be regular reviews of aggregated organization data on absenteeism, damaged or stolen inventory, production problems, and the like. The point could be made that a drug-free, safe, healthy, and productive workplace is not one that is paralyzed by overly intrusive watchfulness. Rather, it is one in which employees willingly pursue the organization's goals by performing their jobs to the best of their ability under work conditions that are safe and healthy.

#### ***Provide Assistance***

The policy should name the kinds of formal and informal assistance that the organization will provide to address and prevent workplace substance abuse. The policy could indicate that such assistance also will be available for mental health concerns such as depression and anxiety. Examples of formal assistance include access to an internal or external employee assistance program, a peer-to-peer assistance program based on Amtrak's highly successful Operation RedBlock, health care insurance that covers substance abuse and mental health treatment, and an organizationwide health promotion program that includes education about alcohol and other drug abuse. Examples of informal assistance include making available information on Alcoholics Anonymous, Narcotics Anonymous, and related 12-Step programs, and providing time out or walking breaks.

The policy should name the major consequences of violating the drug-free workplace policy and of failing to obtain and benefit from organization-provided assistance. Possible consequences could

range from a note in the record to suspension from work during treatment, transfer to a less safety-sensitive or security-sensitive position, demotion, or firing. The policy could state that the organization prefers to avoid severe penalties—by preventing workplace drug and alcohol abuse in the first place and by responding comprehensively as soon as a problem is identified—and will apply those penalties only when other actions have failed.

#### **References**

- <sup>1</sup> U.S. House of Representatives. 1988. Drug-Free Workplace Act of 1988 U.S.C. 701–707. and U.S. House of Representatives. 1998. Drug-Free Workplace Act of 1998 U.S.C. 105–584.
- <sup>2</sup> U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance. *Procedures for Transportation Workplace Drug and Alcohol Testing Programs*. Available at <http://www.dot.gov/ost/dapc/>.
- <sup>3</sup> U.S. Department of Defense, Office of the Under Secretary, Defense Procurement and Acquisition Policy. 2005. *Defense Federal Acquisition Regulation Supplement*, Subpart 223.5-Drug-Free Workplace. Available at [http://www.acq.osd.mil/dpap/dars/dfars/html/r20070212/223\\_5.htm/](http://www.acq.osd.mil/dpap/dars/dfars/html/r20070212/223_5.htm/).