



State Construction Employer Drug-Free Guide

BWC has designed this guidebook to provide answers to common questions by construction-industry employers interested in working or bidding on State of Ohio public improvement/construction projects.

 **What general information do I need to know about the Drug-Free Safety Program?**

 Ohio law requires every construction industry employer, regardless of size and including sole proprietors (employers with no employees), to have a drug-free program to protect construction workers and supervisors working on state contracts. At a minimum, the program must meet the requirements specified in Section 153.03 of the Ohio Revised Code (ORC).

BWC's state construction Web page describes Ohio's legal requirements. It is intended to help construction employers comply with the law and be considered eligible to bid/work state construction projects. You may access the link by clicking here or viewing it at www.bwc.ohio.gov/employer/services/StateContract/StateContractdescriptions.asp.

An employer may submit a completed *Application for Drug-Free Safety Program* (U-140) to BWC if he or she:

- Is in good standing with BWC;
- Has an active workers' compensation policy;
- Is current on monies owed BWC.

The application is available at www.bwc.ohio.gov on our Forms page or the Drug-Free Safety Program Web page, listed under Related Links.

Employers wishing to participate at the Basic or Advanced levels of BWC's Drug-Free Safety Program (DFSP) and to be eligible for premium rebates must meet the program's application deadlines. Information on the DFSP, and application deadlines for the July and January program years are available on the DFSP Web page on ohiobwc.com.

A comparable program may be the right answer for most small employers and is the only option for self-insuring employers. A comparable drug-free program also meets the requirements of ORC Sec. 153.03. The comparable program offers no rebate, must be applied only for the duration of the project, but must apply and be listed as approved in BWC's state construction database. Employers interested in operating a comparable program may apply at any time but must apply prior to beginning work on a state project.

What does Ohio law require?

 All companies, whether in-state or out-of-state, bidding on or providing labor on state construction projects must have a drug-free workplace program. This can be either Ohio's DFSP or a comparable program. The law applies to companies of all sizes, and to contractors and all levels of subcontractors who:

- Work on a State of Ohio public improvement/construction project;
- Bid on and/or provide labor services for such a project;
- Supervise labor on a state construction site.

For a comparable drug-free program, the company must meet the basic eligibility requirements listed below to bid or work on Ohio-state construction jobs and maintain approved status in the state construction contractor database.

An employer must:

- Establish and/or maintain an active Ohio workers' compensation policy and be in good standing;
- Apply for and meet the requirements of a comparable drug-free program or DFSP;
- Report progress to BWC annually on the applicable Drug-Free Safety Program (DFSP) Annual Report – either the *DFSP Annual Report – Basic and Advanced Levels* (DFSP-3) or the *DFSP Annual Report – Comparable Program* (DFSP-4). BWC provides access to the appropriate report approximately one month before the report is due. Employers complete the report to document compliance with the requirements of the program level they've selected.

Frequently asked questions and answers

 **Why must out-of-state construction employers be required to have a BWC policy when Ohio law doesn't require out-of-state contractors who do a limited amount of project work in the state to have Ohio workers' compensation coverage?**

 BWC agreed to create a real-time, searchable database that would be accessible to state contracting authorities seeking to determine compliance for employers providing or supervising labor services on State of Ohio construction projects. For BWC to operate such a database, an employer must have an Ohio workers' compensation policy. This is a requirement even if he or she is not interested in covering employees working or supervising on Ohio construction projects under this policy. BWC has no way of managing participation and determining compliance with drug-free requirements without an employer having a policy. A basic policy costs \$120 semiannually.

Q I just learned my company will provide labor services on a State of Ohio construction project, and that I am required to have an Ohio workers' compensation policy. How quickly can I obtain a workers' compensation policy?

A BWC receives hundreds of coverage applications daily. Volume varies, but it can take six or seven weeks to issue a policy. The quickest way to apply for coverage is to go online at www.bwc.ohio.gov. From the home page under Ohio Employers, select the second bullet, Apply for coverage. Be prepared with a credit card to pay a \$120 minimum, non-refundable application fee and make copies of the screens where you complete the information requested. To apply for a policy number, you will need to submit a completed U-3 form.

Then, contact employer programs staff at dfsp@ohiobwc.com for guidance. Our staff will provide a fax number for you to send copies of the documents you completed, including the temporary certificate of coverage provided by BWC to help speed up the process. BWC uses the application number on the temporary certificate to identify the application quickly and accurately. The expedited process can take a week or less. One day after we finalize your application, BWC's computer system will allow the state construction database to display your policy number as approved as long as you have submitted a fully completed U-140.

How do I apply for a comparable drug-free program or for the DFSP?

Q Complete the U-140 application. If you only want to fulfill the minimum requirements needed to apply to workers and supervisors on the job, check the box on the application to request comparable participation.

A

If you want a premium rebate for successfully completing the program, check the box on the application to request the Basic or the Advanced level of DFSP participation. Check this box only if you are willing to exceed the minimum requirements needed by applying the program requirements to all company employees at all times during each program participation year.

What are the various DFSP levels, and how do they differ from the comparable program?

Q

A

The Basic and Advanced levels of the DFSP have more requirements for participation and can result in premium rebates for an unlimited number of years and/or eligibility for start-up grants.

Comparable program participants only need BWC approval to be eligible to bid or work on state construction sites. However, these participants are not eligible to receive premium discounts or DFSP grants. This program applies to anyone who works on a state construction project and/or supervises labor on a state construction site.

For specific guidance about the program that would work best for you, contact your local BWC customer service office to speak with an employer services staff member.

Q Does BWC maintain a database of contractors and subcontractors approved to bid or work on state construction or public improvement projects?

A Yes. State contracting authorities may consider bids from only those contractors who are listed as approved in BWC’s drug-free state construction contractor database. State contractors and subcontractors not listed as an approved employer on BWC’s state construction contractor database are not permitted to provide or supervise labor services on a public improvement project.

Q What are the requirements for employee education and supervisor training?

The requirements include:

- A**
- Each employee and supervisor must receive education on alcohol and other drugs, and each supervisor must receive training aimed at early intervention to prevent accidents and injuries;
 - Employees and supervisors of comparable program contractors/subcontractors must receive at least one hour of drug-free employee education on alcohol and other drugs. This education must be conducted prior to any work or direct supervision on a state construction site;
 - Supervisors must also get an additional hour of skill-building training before working on a state site.

DFSP Basic and Advanced level requirements involve annual drug-free education for each employee and supervisor. Employees receive one hour of training annually. Supervisors must also receive at least one hour of training before working on a state construction site. They must receive two hours of initial training and an hour of refresher training in each subsequent year of participation.

Q What are other requirements with which a state construction employer must comply?

A All employees and supervisors on state construction sites are subject to random drug testing. The contract for each project will specify the percentage of employees subject to random testing. However, state contracting authorities have agreed to test 5 percent of the total workers’ pool on each state project over the lifetime of each project.

Contractors must make certain their subcontractors have enrolled in or are in good standing in a BWC-approved DFSP or a comparable program. Contractors who do not comply with this requirement will be considered in breach of their contracts. The state may bar contractors/subcontractors who breach their contracts from bidding on or working on state projects for up to five years. Subcontractors who bring a lower-tier subcontractor onto a state construction project are bound by the same requirements.

BWC considers contractors in the Basic or Advanced level or the Comparable program to be compliant if they meet the stated drug-free safety requirements, and they submit annual reports and supporting documentation that demonstrate substantive compliance with program requirements.

Contractors and subcontractors must remain in good standing with BWC to stay in an approved status in the state construction database.



What are the Comparable program-level requirements?



- **Develop and maintain a written drug-free policy that applies to all workers and supervisors on a state construction project.** The policy should state that employees cannot have alcohol or drugs in their systems while working on a state job. It should also list the consequences for violating this work rule. To develop a DFSP policy, contractors may follow the guidance in BWC's *Drug-Free Safety Program Self-Implementation Workbook*.
- **All employees and supervisors must attend a one-time, one-hour class on substance-abuse issues before work begins on any state construction site.** This also applies to subcontractors. Qualified substance professionals must be involved in preparing the educational materials used in this class, which is intended to reduce the risk of on-the-job accidents caused by drugs/alcohol through prevention education.
- **Supervisors must receive an additional hour of skill-building training to help them identify employees showing signs of alcohol or drug use.** This is a one-time session and only applies to contractors with on-site supervisors at state construction jobs. A qualified substance professional must be involved in developing or delivering the supervisor training.
- **Pre-employment drug testing must occur for anyone brought on to a state project to provide labor or supervision.** This includes new employees, supervisors, contractors or subcontractors.
- **Random drug testing must apply to everyone working or supervising on a state project for as long as they are on the state job.** All workers and supervisors on a state construction job must be subject to the possibility of selection by neutral computer software operated by a third-party administrator for random drug-testing. Again, this includes subcontractors. Employees may be placed into a pool through a consortium along with employees of other employers and be considered compliant. This is regardless of whether any of their own workers are subject to a random drug test. This applies as long as the consortium draws at the minimum percentage required by the contracting authority (at least 5 percent of the total pool numbers over the length of the state project).
- **Conduct post-accident and reasonable suspicion testing as necessary.** BWC's **DFSP Web page contains the details about post-accident and reasonable suspicion testing.** The *Drug-Free Safety Program Guide* and *Drug-Free Safety Program Self-Implementation Workbook*, under Related Links, provide a wealth of information.
- **Offer employee assistance.** State construction contractors must have a list of employee assistance vendors available for any worker who has a substance problem. This includes anyone who tests positive.
- **Submit a DFSP Annual Report — Comparable Program Only (DFSP-4).** We will ask employers to complete an annual report that details their drug-free efforts and that will be due either the last business day of March (for the July program year) or the last day of September (for the January program year). We encourage you to complete this report online as we strive to cut paper costs. A sample version of a completed DFSP-4 appears on pages 8 to 10.



Where do I obtain proof of BWC approval to be eligible to work a state construction job?



Verification of an employer's drug-free status (Comparable program or DFSP) is available in our state-construction contractor database, located at <https://www.ohiobwc.com/employer/services/StateContract/nlbwc/StateContract1.asp>.

You should refer the contracting authority to this site to view and/or print your verification information.

Information

For more information, call 1-800-644-6292, and listen to the options. BWC's customer contact center staff members are available for live support from 7:30 a.m. to 5:30 p.m., Monday through Friday. They may answer your questions or refer you to your local safety consultant or employer services specialist. You may also e-mail your questions to dfsp@ohiobwc.com.



Please complete this form and return it with requested information, including required attachments as directed by BWC.

Employer information			
Name of employer and DBA		Federal Tax ID number	BWC policy number
Address	City	State	ZIP code
Telephone number		Fax number	
Email address			

Contact information	
Contact name	
Contact title	Contact email
Contact telephone number	Contact fax number

Program information
<p>Current program level: <u>Comparable</u></p> <p>This form is the annual self-assessment report of progress due by the last business day of September for the January program year or by the last business day of March for the July program year to remain in a comparable drug-free program. Comparable is a category for state construction contractors and all levels of subcontractors. Participants receive no discount from BWC but, if they meet program requirements as set by Section 153.03 of the Revised Code, are eligible to bid and provide labor services in relationship to State of Ohio public improvement/construction contracts. Please fill in the requested information below with the understanding you must submit all required attachments and answer all required questions in order to document compliance and retain approved status in the state construction database. If you check the No box in response to any of the Yes/No questions, you must provide an explanation since each of these questions involves a requirement to remain in approved status for the comparable program. Attach explanations and any other pertinent information on additional sheets as appropriate.</p> <p>Select the program/level you wish to participate in for the next program year (check one only).</p> <p><input type="checkbox"/> Advanced</p> <p><input type="checkbox"/> Basic</p> <p><input type="checkbox"/> Comparable (state construction only)</p> <p><input type="checkbox"/> I do not wish to participate next program year. I understand that future participation will require timely submission of a new application (U-140).</p> <p>Our company has had a state public improvement/construction job during this program year. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, complete the rest of this form. If no, sign, date and submit this form.</p> <p>If BWC determines you did have a project that required a comparable program, BWC will disqualify you and may consider your company's certifying the accuracy of information on this report to constitute a fraudulent representation, with notification to appropriate authorities.</p> <p>1. General information (For purposes of this report, information regarding employee and/or supervisor pertains to only those employees performing state contract work.)</p> <p>Total number of employees including supervisors who worked/supervised on a state project this program year: _____</p> <p>2. Written drug-free policy</p> <p>a. Our company has developed or maintained a written policy that complies with the requirements of the comparable drug-free program that we are participating in for this program year. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>b. I have previously submitted a copy of my written drug-free policy. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>3. Employee education</p> <p>a. Number of state construction employees including supervisors who were required to receive one time employee education this program year: _____</p> <p>b. Our company has ensured that each employee and supervisor who works/supervises on state of Ohio public improvement/construction projects has received at least one hour of education on substance abuse from a qualified substance professional or through a process approved by BWC <u>prior to</u> working on a state construction project. Yes <input type="checkbox"/> No <input type="checkbox"/></p>

Program information

c. If your company was required to provide employee substance abuse education, indicate below the name(s) of the qualified substance professional(s) who provided drug-free substance education sessions to your state construction work force (employees AND supervisors) for this policy year, credentials and the dates (month/day/year) on which these sessions occurred.

Name(s)/credentials of vendors who provided employee education sessions this policy year: Month/Day/Year held

4. Supervisor training

a. Number of state construction supervisors who were required to receive one time supervisor training this program year: _____

b. Our company has ensured that each supervisor who provides direct supervision on state of Ohio public improvement/construction projects has received at least one hour of supervisor skill-building training on required substance abuse topics from a qualified substance professional or through a process approved by BWC, or our company had at least one state of Ohio public improvement/construction project but did not provide direct supervision of our company's labor force on the state project. Yes No

c. If your company was required to provide supervisor skill-building training, indicate below the name(s) of the qualified substance professional(s) who provided supervisor training to your state construction work force for this program year, their credentials and the dates (month/day/year) on which these sessions occurred.

Name(s)/credentials of vendors who provided supervisory training sessions this policy year: Month/Day/Year held

5. Alcohol and other drug testing

a. Our company has initiated and is maintaining the full range of substance testing in compliance with comparable program requirements. Yes No

b. Below, record the total number of alcohol or drug tests by type of test (pre-employment, etc.). Then, for each substance (alcohol and each listed drug), record number of positives under each type of test.

c. If your company had any positive test results, please indicate below by gender and age range the number of tests for each category.

Number of positive tests by age ranges and gender

	Male	Female	Total
i. Under 21	_____	_____	_____
ii. 22-30	_____	_____	_____
iii. 31-40	_____	_____	_____
iv. 41 and over	_____	_____	_____

Number of positive tests by type of substance found

	Total number of tests	Alcohol	Amphetamines	Cocaine	Ecstasy	Marijuana	Opiates	PCP/Angel Dust	Barbiturates	Benzodiazepines	Methadone	Oxycodone	Propoxyphene	Other
Pre-employment/new hire														
Reasonable suspicion														
Post accident														
Return to duty														
Follow-up														
Random														

Program information

- d. Our company has contracted to use services of a collection site, which follows the specimen collection and testing protocols that meet federal testing requirements, including analysis of urine specimens by a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA). Yes No
- e. Complete the information below. (Please do not leave any of these blank.)
 - i. Name of collection site or consortium: _____
 - ii. Name of contact person at collection site or consortium: _____
 - iii. Phone number of collection site or consortium: _____
 - iv. Name of certified medical review officer used: _____
 - v. SAMHSA-certified laboratory used for urine analysis: _____
- f. Our company has ensured at least 5-percent random drug testing occurs for our state construction workers and supervisors while they are providing or supervising labor on a State of Ohio construction project. Yes No

6. Employee assistance

- a. Our company has a list of local assistance resources to provide to an employee who tests positive for alcohol or other drugs or who comes forward voluntarily to request help. Yes No
- b. List one company or individual that offers employee assistance services from the list your company has compiled.
 - i. _____

Certification Statement

Your signature below, as the designated representative for this employer, signifies you have submitted a complete and accurate report. If your company fails to submit a fully completed Self-Assessment Progress Report and required attachments by the required deadline or has failed to meet all program requirements, BWC will remove your company from its comparable drug-free program. In addition, BWC will remove you from the state construction database, which means that you will no longer be eligible to bid or work on state construction projects. BWC may conduct an audit of any participating employer's program. Your signature constitutes acknowledgment of the possibility of BWC auditing your company and your willingness to cooperate with such an audit as a condition of program participation.

I hereby certify my organization has implemented all components of the comparable program in accordance with, at minimum, specified requirements. I understand that my signature constitutes my company's certification of compliance with BWC's program requirements and – if this Self-Assessment Progress Report and/or any attachments are not accurate – constitutes a fraudulent representation on the part of the employer and may subject me to civil and criminal penalties. It may also result in the taking back of discounts and removal from current and/or future program participation.

I hereby certify my organization is applying to implement a DFSP pursuant to Rule 4123-17-58 of the Ohio Administrative Code. I also certify my organization is willing to meet, at minimum, the requirements associated with the level of program for which I have applied (Advanced, Basic or Comparable). This includes timely submission of a fully completed annual report, which BWC must receive by the deadline date as specified by rule. Also, I certify this information is accurate and, if not, may subject the employer and me to civil and criminal penalties.

Printed name of designated employer representative

Title

Signature of designated employer representative

Date of submission

Checklist of required documents for submission to BWC in addition to this report

- Copy of written DFSP policy if not previously submitted
- Invoice for employee education
- Sign-in sheet for employee education
- Invoice for supervisor training
- Sign-in sheet for supervisor training
- Invoice for collection/testing
- Explanation for any "No" responses in completing the Annual Report