

# Answers to frequently asked questions: Drug-Free Safety Program (DFSP) requirements

**Q Where can I find the PowerPoint presentation from the April 8, 2010, DFSP kick off?**

**A** A copy of the presentation is available in the DFSP description at: <http://www.ohiobwc.com/employer/programs/dfspinfo/dfspdescription.asp>.

**Q How will sun setting work for current Drug-Free Workplace (DFWP) and Drug-Free EZ (DF-EZ) participants?**

**A** We have sent correspondence and an *Application for Drug-Free Safety Program (U-140)* to employers participating in the July 1, 2009, DFWP/DF-EZ program year indicating that they should submit a new application by June 30 to enroll in DFSP effective July 1, 2010. Those participating in the Jan. 1, 2010, DFWP/DF-EZ program year will receive similar information in lieu of their renewal letter and a U-140 to complete.

Employers in the Jan. 1, 2010, program year may choose to apply for the July 1, 2010, DFSP program. However, if they do so, they will not receive the discount for Jan. 1 through Dec. 31, 2010. In addition, they will not be eligible for the DF-EZ bonus. We anticipate that only those Jan. 1 employers not receiving a discount would be likely to consider moving from the Jan. 1, 2010, DFWP/DF-EZ participation program year to the July 1, 2010, DFSP program year. Thus, BWC chose the above approach.

**July 1, 2009, participants: Employee education/supervisor training**

We will permit employers completing the July 2009 program year and applying for DFSP for July 1, 2010, to count refresher education and training conducted toward the end of the July 2009 program year to meet July 1, 2010, DFSP first-year requirements. They will still have to meet the accident-analysis training requirement, which is 30 days from the start of the program year for current supervisors.

**Jan. 1, 2010, participants**

We will honor the commitment made by employers participating in the Jan. 1, 2010, program year by allowing a full year of savings for employers who maintain their DFWP/DF-EZ for the full program year and who document substantive compliance. If an employer is in DFWP and applies for the DFSP program year beginning Jan. 1, 2011, employees and supervisors must take one hour of refresher training. In addition, supervisors who have had initial supervisor training of at least two hours must take one hour of training. We will require the employer to satisfy the safety requirements. These include the accident-analysis training, safety review and, for advanced level, an action plan based on the safety review.

**Jan. 1, 2010, participants reporting requirements**

We will formally inform Jan. 1, 2010, participants in August 2010 about the new DFSP when we send them the reminder to timely complete the *DFWP/DF-EZ Self-Assessment Progress Report (U-142)*. We will include a copy of the U-140 with this correspondence to facilitate enrollment in the Jan. 1, 2011, DFSP program year. These employers will receive the old U-142 to complete rather than the new *Drug-Free Safety Program Annual Report – Basic & Advanced Levels (DFSP-3)* and *Drug-Free Safety Program Self-Assessment Progress Report – Comparable Program Only (DFSP-4)*. We will assume employers participating in the Jan. 1, 2010, DFWP/DF-EZ program year will want to continue their full program year through Dec. 31, 2010, to receive the Level 1, Level 2 or Level 3 discount for the entire program year unless they otherwise inform us.

**Key aspects of eligibility for DFSP**

DFSP has the same basic eligibility requirements as all other BWC rating programs [active status, current on monies due BWC, limited number of days of lapsed coverage (40) over the past 12 months, state-fund employer]. Current and previous DFWP/DF-EZ employers are eligible, regardless

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of last drug-free status (completed five years, disqualified, etc.). We will enroll those eligible employers who apply on the revised U-140 application by the June 30, 2010, deadline in the July 1, 2010 DFSP program year. Regardless of their ability to get a DFSP discount, they may be eligible for drug-free grants.

Eligibility for the DFSP is not the same as eligibility for a DFSP discount. The ability to stack a DFSP discount may be determined by an employer's concurrent participation in another BWC rating program. A compatibility chart is available on [ohiobwc.com](http://ohiobwc.com). The list of compatible programs allowing stacking of a DFSP discount is also on the DFSP application.

### Application deadlines

The established deadline for the initial DFSP program year, July 1, 2010, is set as the last business day in June. The deadline for subsequent July program years will be the last business day in April, and for the Jan. 1 program year, the last business day in October. Private employers have two program years from which to choose while public employers have the January year.

### Withdrawal from DSFP

As with DFWP/DF-EZ, we will allow employers to withdraw from DFSP at any time with one stipulation. We will bill back discounts to employers who withdraw from the program before meeting all requirements for an entire program year.

### Group-experience-rated employers and DFSP basic

Employers participating in group-experience rating already have safety requirements as part of their group participation. Participating at the DFSP Basic level does not have an actuarial justification to merit an additional discount on top of the group credit. Stepping up to the DFSP Advanced level involves additional safety and testing requirements that merit a 3-percent discount.

### BWC DFSP information and publications

We have updated both our current Web pages to reflect information about DFSP. Employers should click on the DFSP banner that mentions our new drug-free program. Information about the DFWP and DF-EZ programs that are being sun set will no longer be available.

There are several documents describing DFSP that are available to employers and other interested parties. These include a one-page marketing flyer, a two-page summary description of DFSP (including a listing of pertinent program deadlines as part of a marketing publication) and a document showing compatibility of DFSP in relationship to other BWC rating programs.



### What is the status of the DFSP guide and self-implementation workbook?



We are reviewing these publications. A manual for comparable program state construction employers who participate in the DFSP without a discount so they can bid and/or work on state of Ohio public improvement/construction projects will follow. We will encourage employers to go online at [ohiobwc.com](http://ohiobwc.com) to get access to these publications.



### What are the discounts for this program?



DFSP discounts are: Basic – 4 percent and Advanced – 7 percent. Group-experience-rated employers who implement the advanced level will receive the difference between the 2 or 3 percent. These discounts are more actuarially sound and reflect the findings of the Deloitte Consulting study of our programs as compared to the discount offered to employers in other states. Employers who receive unlimited years of discount at 4 percent or 7 percent would see a greater overall savings in premium versus savings being limited to five years, as is the current state with DFWP. It is important to remember that we will evaluate the program in coming years. We will address changes to the discount levels if warranted.

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**Q Do 4-percent and 7-percent discounts create a disincentive by not providing sufficient motivation for employers to join DFSP?**

**A** We do not intend DFSP discounts to provide employers with the incentive to doing the right thing to protect their work forces. Rather, they reward those that see the value in doing the right thing with unlimited years of discount and with start-up grant support.

**Q What programs are compatible with DFSP?**

**A** The definition of compatibility as used with BWC programs pertains to receiving a discount for participating in more than one BWC rating program. Employers may join DFSP, but they will only receive the discount if they meet compatibility review criteria that is charted in depth at [ohiobwc.com](http://www.ohiobwc.com) at <http://www.ohiobwc.com/downloads/blankpdf/EmpProgCompatibility.pdf>.

We will not apply a DFSP discount if the employer chooses to pay salary continuation on claims with a date of injury on or after Jan. 1, 2011. The reason for this is that we need to be aware of all costs associated with claims to properly price programs. Therefore, any employer opting to pay salary continuation directly will not receive the DFSP discount for claims that occur as of Jan. 1, 2011. In terms of the \$15,000 Medical-Only Program, again, we need to be aware of all costs associated with claims to properly price programs. Thus, any employer participating in this program will not receive a DFSP discount.

Non-occupational short-term disability has no applicability to DFSP. These types of short-term disabilities are not applicable because we would care only about an allowed workers' compensation claim. When short-term disability relates to injuries that are not work related, we would not prevent an employer from receiving a discount solely based on a disability of this nature.

**Q How will online application and reporting occur for employers without computer access?**

**A** Initially, employers cannot apply online. In addition, some employers will not have the ability to report annual progress using the online process BWC staff members are designing. If an employer cannot complete the annual report online, we will offer support to ensure we place the data online. This will help us facilitate the transfer of data fields to a database to house information. This database will allow us to analyze this data and use it for reporting, trend analysis and sharing with all employers at an aggregate level regarding positive substance tests (for each positive test, alcohol or which drugs, gender and age range of users), trending, regional information, etc.

**Q Is the June 30 deadline for the initial July 1, 2010, DFSP year set in stone?**

**A** Yes.

**Q Are there changes for state construction contractors?**

**A** There are no changes to the requirements in Sec. 153.03 of the Ohio Revised Code that govern state construction projects. Comparable program employers (formerly referred to as "Level 0") will continue with the same requirements they currently have (see the state construction contractor Web page). If an employer is operating a Comparable program for the July 2009 program period and decides to request renewal at a specific discount level, the employer needs to submit an application for DFSP. They can find this application at the following link: <https://www.ohiobwc.com/bwccommon/forms/BWCForms/nlbwc/EmployerForms.asp>. In the future, employers will be able to request a switch from a Comparable program to the Basic or Advanced level of DFSP on their annual reports.

**Written DFSP policy**

We will provide an outline of questions to ask in designing a fair and effective policy in accordance with program requirements. We will include these questions in the *DFSP Self-Implementation Workbook*. We will no longer provide a sample written drug-free policy since many employers simply put their name on the policy instead of tailoring it to meet their operational needs as well as vendors charging for a copy of BWC's sample policy. We will provide a link to a policy-development Web site operated by U.S. Department of Labor. This will include DFSP comments about the limitations of such an approach to policy development. Regardless, written DFSP policies also require written procedures

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to ensure supervisors know what we expect of them and the ability to apply policies even handedly/consistently. We request employers submit their written policies one time only for DFSP when they submit their first annual progress report. If there is a break in participation, employers only submit their policy if they changed their policy.

### **Employee education and supervisor training**

DFSP requires less of an hourly commitment from the employer (matching current DF-EZ program requirements). However, employers should understand the hourly requirement is just a minimum. We advise employers to take as long as is required to ensure they share needed information with the employees and supervisors. Employee education and supervisor training requirements are the same as current DFWP and DF-EZ requirements in terms of requiring the involvement of a qualified person in development and/or delivery, with train the trainer for supervisors discouraged for the initial DFSP year but acceptable in meeting program requirements. We will outline required class criteria minimums as well as required train-the-trainer criteria for the employee education classes.

We will offer free accident-analysis training (one time) for supervisors on our Web site. It is required in addition to supervisor skill-building classes. Nothing prevents the same trainer who delivers the DFSP and supervisor training from delivering accident-analysis training. However, the trainer must be knowledgeable and his/her content must meet BWC's stated requirements. This includes teaching an employer how to fill out the required accident report on [ohiobwc.com](http://ohiobwc.com). However, for employers who have not operated a BWC DFWP or DF-EZ program, the timing of employee education/supervisor training will not match the timing for accident-analysis training.

If an employer is participating in DFWP/DF-EZ, he/she may meet the refresher employee education and refresher supervisor training requirements, which include one hour of education for all employees, and supervisors and one hour of training for all supervisors who have already had at least two hours of initial supervisor training.

If an employer is participating in DFWP/DF-EZ and is planning his/her education and training sessions to comply with DFSP, there is a date by which he/she must complete these sessions. The employer has until the annual report is due to complete this requirement. This will allow the employer to submit a complete report with all the required information and documentation. For supervisor training, employers should provide each supervisor with initial face-to-face training offered by a qualified substance trainer. This ensures supervisors receive the help they need to support the employers DFSP policy while avoiding personal and company liability. Subsequent training can be by a variety of modalities, including on line and train the trainer.

**Q**

**How long must a train-the-trainer class be for employee education?**

**A**

No fewer than three hours.

**Q**

**How long must a train the trainer class be for supervisor training?**

**A**

No fewer than six hours.

**Q**

**What are employers who just completed their employee education and/or supervisor training to do in relationship to DFSP education/training requirements?**

**A**

We will not require employers in the July 2009 or January 2010 DFWP/DF-EZ program years to:

- Do their DFSP education/training within the first three to four months;
- Do the two-hour initial supervisor training for any supervisors who have already received the initial supervisor training.

We will allow employers to retain their established education/training time frames with one stipulation. If an employers typically ensured education/training at the VERY end of the program year, they must move it forward so they complete sessions PRIOR to the due date for the annual report of progress. However, these employers are required to ensure online accident-analysis training for all supervisors within 30 days of the start of the program year.

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**Q Will supervisor skill building training ever be online (not referring to accident-analysis training)?**

**A** We will not accept initial supervisor training with its need to include small group process and role play. However, this is an option for refresher training for supervisors who've had at least two hours of supervisor training.

**Q Are there changes to alcohol and other drug testing and when?**

**A** Beginning Oct. 1, 2010, federal testing requirements specified by the U.S. Department of Health and Human Services (HHS) will move to a six-panel drug screen. HHS has added ecstasy (MDMA) to the five drugs already tested for to meet federal requirements: amphetamines, cocaine, marijuana, opiates and PCP/angel dust. In addition, the agency is lowering cut-off levels to attempt to address cocaine and amphetamine usage, and the "6-AM" test for heroin is also required. DFWP/DF-EZ employers participating in the Jan. 1, 2010, program year will continue the current five-panel drug screen until collection sites and the Substance Abuse and Mental Health Services Administration (SAMHSA)-certified laboratories adopt these changes. This should occur once the U.S. Department of Transportation (DOT) approves them. For DFSP employers, drug screens will change to the six-panel once DOT approves the changes and the protocols and services followed by both collection sites and the laboratories certified to perform urine drug analysis by the SAMHSA have changed.

DFSP employers with employees subject to federal testing requirements (e.g., CDLs – holders of a commercial motor vehicle license pursuant to federal regulations) should continue to meet the federal testing requirements as set by the Office of Drug and Alcohol Policy and Compliance of the DOT. At the time DOT indicates it will move from the five-panel drug screen to the six-panel along with the modified cut-off levels, then these employers will do so because the collection sites and laboratories are unlikely to offer a dual option.

**Q May an employer in DFSP use a consortium to meet BWC's random drug testing requirements?**

**A** Yes. Like DFWP/DF-EZ employers, DFSP participants may use a consortium's third-party services to meet BWC's random drug-testing requirement. We will require employers to provide documentation proving consortium membership for the program year of participation.

**Q Will BWC gather, compile and use testing results?**

**A** Yes. We are adding testing information to our annual report to better capture trending in what drugs (and/or alcohol) employees test positive for, by gender and age ranges. The information should be helpful in alerting employers by industry type and region in terms of the findings.

**Q Are there changes to rebuttable presumption?**

**A** No. There are no changes that we are aware of in terms of rebuttable presumption.

**Q Do employers at the Advanced level pay the full cost for a substance assessment?**

**A** Philosophically, BWC considers Advanced-level employers responsible for arranging for and paying the basic costs for an assessment for employees that test positive for the first test. This is especially true where there were no other employment issues involved that might merit firing on a first positive and not specifically for testing positive for alcohol and/or other drugs. There are possible circumstances related to a collective bargaining agreement or provision of a cafeteria-style series of health benefit options where an employee could pay for a portion of a substance assessment.

**Q What is the role of the professional doing the assessment in follow-up testing?**

**A** Typically, the employee assistance professional doing the assessment reports to the employer regarding whether the employee is attending sessions and cooperating. The professional will also inform the employee and employer when the employee is ready to go back to work with the ability to

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pass a return-to-duty test, assuming no further use by the employee. Follow-up testing comes after the return-to-duty test. The professional may suggest the frequency of testing based on what he/she learns in the assessment process.

### **Q What does pre-arranged relationship means in the context of requiring advanced DFSP employers to have a pre-arranged relationship with employee assistance professional?**

- A** We expect Advanced-level employers to offer a second chance to employees who have a first positive test for alcohol or other tested drugs. As part of the second-chance agreement, the employer is to refer such an employee to receive a substance assessment by a qualified substance professional (such as a certified employee assistance professional). The assessment would focus on determining the nature of the employee's problem that resulted in the referral and the most appropriate intervention. For this to occur, we expect the employee to attend:
- As many sessions as the employee assistance professional indicates are merited;
  - Cooperate and to be able to return to duty based on the report of the employee assistance professional;
  - Test negative, which assumes no additional substance use.

Because an employer never knows when an employee will test positive, it helps to pre-arrange a working relationship with a professional in the area of the employer's business to whom he/she could refer an employee. The employer and the medical professional would have already agreed upon an hourly rate and a process supporting a three-way communication among the employee, employee assistance professional and employers in a way that doesn't compromise the professional ethics.

## Safety Questions

### **Accident analysis and reporting**

We are looking for real-time accident reporting (within 30 days from date of injury or the employer finding out that a workers' compensation claim was filed and is in approved status). This will help get employers more fully involved in analyzing their accidents/injuries and taking prevention measures.

### **Q What are the safety reporting requirements for DFSP?**

- A** We will require the online safety review within the first 30 days of the program start date, and we will receive the action plan for Advanced-level participants within 60 days of the program start date.

Accident-analysis training is required within the first 30 days of joining the program, with new supervisors receiving this training within 60 days of becoming a supervisor. We will require online accident reporting within 30 days of the employer becoming aware of the accident or the filing of the *First Report of an Injury, Occupational Disease or Death* (FROI). Other current requirements associated with DFSP do not change from the way we administered the DFSP. These include ensuring first-year employers complete employee education and supervisor training within the first four months of the initial DFSP participation year and completing refresher classes within the next 12 months of each year following so the employer may submit proof with the annual progress report at the nine-month mark each program year.

We will implement full online services, beginning with the safety review, accident-analysis training and accident reporting with the ability to apply online soon as well as submit the safety action plan online. We require participants to enter data on our Web site so that it feeds into the reporting databases for assignment to the proper area for review, program measurements and tracking of the meeting of eligibility requirements. Therefore, if an employer does not have access to the Internet, BWC representatives will receive and enter the information for the employer.

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**Q**

### **Do online safety reviews require an action plan?**

**A**

Only Advanced-level DFSP employers must follow their safety reviews with an action plan that shows how they will address the safety gaps identified in the review during the program year. However, we encourage all DFSP employers to do such planning, regardless of whether it is required or not, because it moves the employer toward improved safety, better risk management and better protection of the well-being of employees.

**Q**

### **What kind of information will BWC include on the initial safety review?**

**A**

This is a tool for employers to self-evaluate key aspects of their safety process. The review asks questions related to accident analysis, management commitment, accountability, hazard control, safety education, employee participation, and safety culture. Each category has five questions. We offer assistance if the employer has difficulty in completing the review.

**Q**

### **Will more than one person within the employer organization be asked to fill out this safety review?**

**A**

More than one person can answer the questions. The human resources manager, safety coordinator and plant manager could all be involved depending on the organizational structure. This is a required component of the DFSP to complete and submit a review. Additionally, at the Advanced level, the employer is required to submit an action plan.

**Q**

### **How will the safety review be used as a tool for both the employer and BWC?**

**A**

The tool is mainly for the employer to review where he/she can improve but, if the employer requests personal BWC assistance, the BWC safety consultant can review the completed form for a better understanding of the company situation. The value added is in safety improvement. Improvements to safety can positively impact accident prevention, claims costs, production, quality, employee morale, and other business operations.

**Q**

### **What will be the content and length of accident-analysis training, and how will supervisors benefit from this?**

**A**

The content includes defining what an accident analysis is, the primary causal factors of accidents, the essential elements of an effective accident analysis, and what should be in a written program. This training is available online and will typically take one hour to complete.

There are options for fulfilling this training requirement.

- 1) Supervisors can take online training. This can be done individually or as a group.
- 2) A designated accident-analysis coordinator can complete the online training. This person can then train the supervisors using the accident-analysis PowerPoint presentation from the online training program.
- 3) An outside party can provide the training provided they use the BWC online accident-analysis training materials.

The benefit is in learning what caused or contributed to past accidents and making needed safety improvements that prevent future accidents.

**Q**

### **May a vendor provide online accident-analysis training and may this occur in conjunction with DFSP supervisor skill-building training?**

**A**

If a DFSP employer wants to pay a vendor for something BWC offers for free, the employer is free to do so. However, the employer must still register with BWC's online accident-analysis training system with at least one supervisor/manager taking the class. In addition, the training of the remaining supervisors must occur within 30 days of the employer's program start date. The issue of whether the online accident-analysis training may occur in conjunction with DFSP supervisor skill-building training is a timing issue. As long as the skill-building training occurs within 30 days of the program start date, there would appear to be no timing issues. However, the standard timing for completing supervisor skill-building training is four months for initial supervisor training and up to the time the annual report is due for refresher training.

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**Q**

**A**

**Does BWC anticipate confusion with the FROI and the accident report?**

The FROI and the accident report are completely separate documents and have separate purposes. There are no changes to the FROI filing method. BWC is working to minimize any information on the accident report that already appears on the FROI. We give 30 days to complete an accident report because it may require that time to investigate the accident, collect evidence and witness statements, analyze the facts, determine root causes and implement effective corrective actions.

**Help available from BWC safety consultants**

A variety of safety services, including on-site consultation, are available to employers at no cost. These services can assist an employer with meeting the safety requirements of the DFSP as well as other safety and health issues with which they may need help. For more details about these safety services, please check [ohiobwc.com](http://ohiobwc.com) or contact BWC at 1-800-OHIOBWC.

**Q**

**A**

**When will online applications and other forms be available (U-140, safety review, accident report, accident- analysis training, safety action plan, annual reporting)?**

The U-140 will not be available as an online form until late in 2010. The annual report does not have to be available online until March 2011. Accident-analysis training will be available in July 2010. We are hopeful that the accident report and the safety review will be available online in July 2010. The safety action plan form will be available as pdf/hard copy in July, and will be available online later in the year. BWC will adjust required dates of completion for the first program year based on online reporting availability for each requirement.

**DFSP grant program**

We are reviewing what grants to cover and rates of reimbursement.