Drug-Free EZ Program

Technical Assistance Manual

Ohio | Bureau of Workers' Compensation

Table of Contents

Table of Contents 2
List of Supplemental Materials Available Upon Request 3
Small Employers and Drug-Free EZ 4
How to Use This Manual 7
Implementing a Drug-Free EZ Program 8
Developing a Written Substance Policy 11
Employee Education 19
Supervisor Training 22
Drug and Alcohol Testing 27
Employee Assistance 42
10-Step Business Plan for Level 2 and Level 3 Participants 45
Glossary of Acronyms Used in This Manual 56
Drug and Alcohol Testing Terminology 57
Resources 59
Sample Forms 61-68

List of Supplemental Materials Available Upon Request

Answers to Commonly Asked Questions (Frequently Asked Questions/FAQ)
Background for Small Employers Choosing to Go Drug-Free
Consortium – Low- Cost Administration of Your Drug-Free EZ Program
Definition of Terms Used in DF-EZ Rule
Drug-Free EZ Rule – 4123-17-58.1 of the Ohio Administrative Code
Employers Subject to Federal (DOT/FMCSA) Testing Requirements
How to Renew Participation in DF-EZ
Labor Concerns for Employers with Unions
Listing of Federally-Certified Labs
Maintaining DF-EZ Program Eligibility
More about Alcohol and Drug Testing
More about EAPs – Employee Assistance Programs
More about Substance Use
Plus Bonus – How Does It Work?
Provider Directory List of Vendors Interested in Helping Employers Meet DF-EZ Requirements, County-by-County Listing
Recordkeeping and Reporting
Role of the DHHS-Certified Lab, Collection Site and Medical Review Officer (MRO) in the Testing Process
Temporary and Other Contract Employees
When to Use the DF-EZ Procedural Guide
Workers Support a Drug-Free Workplace

Small Employers and Drug-Free EZ

Small companies make up the greatest portion of Ohio workplaces and are critical to our communities and the economy. Small employers are also considered at greater risk than other employers based on having a more limited awareness of substance problems that affect the workplace. Overall, small employers have become victims of a trickle-down from larger companies that have implemented a drug-free workplace program. This is because substance-using employees tend to leave larger companies or may be barred from employment due to front-end and other types of testing. Larger companies are more likely to put substantial drug-free workplace programs into place, while smaller companies typically have limited resources available to deal with substance problems and may unknowingly hire "castoffs" from other (typically larger) employers.

In response to the acknowledged national problem of substance use/misuse that affects workplace safety and especially smaller employers, the Ohio Bureau of Workers' Compensation developed this new program to encourage **small employers** to take action to deter, detect and take corrective action regarding substance use affecting the workplace. The objective was to challenge employers to tackle this issue and improve workplace safety. In light of the above reality, you've made the right decision for your company and for your employees by joining Drug-Free EZ.

DF-EZ is designed to give you the flexibility to select the level of program that best suits your business, to develop a substance-free work environment with technical assistance and support, and to both buffer your liabilities while incorporating acknowledged protections for your employees.

The general approach of DF-EZ is to provide up-front funding through premium discounts to motivate and enable small employers to develop and implement a substance-free environment. Discounts on your workers' compensation premiums are available for four or five years and then cease. After that point, your return-on-investment for continuing to operate substance-free will come in the form of savings realized from operating a safer, healthier, more productive workplace. If you develop and operate an effective DF-EZ program, you should see an improved claims experience based on reduced accidents, less severe injuries, etc., and should therefore benefit from reduced workers' compensation costs long-term, even after your drug-free discount ceases.

Employers have the right to reasonable expectations of their employees and should be concerned for the safety of everyone in the workplace as well as protection of company property, timely attendance, employee job knowledge, and productive work behaviors. Employee use of alcohol and other drugs is a very costly yet preventable problem that may undercut these expectations. Substance users do not leave their unproductive and dangerous behaviors at home when they enter the workplace, and their use of alcohol and other drugs may jeopardize the safety and health of co-workers and the general public as well as themselves. Statistically, inappropriate substance use is associated with a higher level of absenteeism, greater use of medical benefits, higher incidence and greater severity of workplace accidents, higher number of workers' compensation claims, greater involvement in theft and loss, and lower productivity than for employees who do not use substances inappropriately. Overall, then, substance use is a serious threat to workplace safety **and** every employer's "bottom line."

Statistics show that:

- 47% of serious workplace accidents and 40 percent of workplace accidents resulting in fatalities have drug and/or alcohol involvement. *(Occupational Medicine)*

- 38 to 50% of all workers' compensation claims are related to the use of alcohol or drugs in the workplace. *(National Council on Compensation Insurance)*

- More than 90% of alcoholics and 74% of drug addicts (up 7% since 1992) are employed. [*(National Institute on Drug Abuse, Department of Health & Human Services (DHHS)*]

- 15% to 17% of employees in the average U.S. company affect their workplaces through substance use. *(Bureau of Labor Statistics)*

- On average, employees with inappropriate substance use cost their employers $7,000 annually. *(Small Business Administration)*

Beyond these identifiable costs, U.S. employers have been held responsible by courts and by the public in recent years for substance use on the part of their employees. For example, the Exxon Valdez incident cost $16 billion, and Carroll Heating & Air cost the employer $850,000. In North Carolina, more than $5 million was awarded in just two cases. So, no employer is immune from the failure to take into account the reality of substance use/misuse in the workplace, and the impact of substance use can literally put a company out of business.

Hopefully, your experience as a small employer will be to put into place an effective drug-free workplace program that will help deter and detect use and/or possible problems, and put procedures in place to take corrective action to deal with workplace-related substance problems. At the same time, a program of this type can protect you from operational losses attributable to substance using/misusing employees, while "buffering" your company from legal liability for the damage these employees can cause. A well-designed program may also enable you to take advantage of discounts and other savings not just in terms of costs associated with workers' compensation but also with health insurance, commercial general liability insurance and commercial automobile insurance. Employers with drug-free workplace programs typically realize a broad range of benefits, making the workplace safer while protecting their bottom lines. In reality, though, the greatest cost savings to employers from DF-EZ tend to be seen in the long run rather than through discounts.

Worker Support for a Drug-Free Program

If properly informed, employers and their employees will both come to value a quality drug-free workplace program where employees with substance use/misuse problems are encouraged to get help (voluntary self-referral) or may be forced to get help (after a positive drug or alcohol test). Equally important, the large majority of employees – those without a substance problem – are protected from some of the unnecessary accidents and also from performance problems that stem from employees who have a substance problem. A properly designed and implemented program is a "win-win" proposition that will help to save employees from unnecessary accidents/injuries and also affect the company's product quality, time and profitability. For these reasons, workers as well as employers say they're willing to support such a program, if it is implemented appropriately and explained clearly to everyone in the workplace.

The Drug-Free EZ Program:

- Is voluntary.
- Makes technical assistance available to employers.
- Provides discounts to qualifying state-fund employers.
- Provides discounts based on program level and other eligibility factors.
- Provides safety grants that support program operation (as long as funding is continued).

The objectives of DF-EZ are to:

- Improve safety and health in the workplace through deterring, detecting and taking corrective action against substance use that affects the workplace.
- Buffer employers from legal liability while protecting employees' rights.
- Reduce workers' compensation costs.
- Save money overall for employers from reduced health care costs, theft and other forms of loss, etc.
- Educate the workforce to become more knowledgeable about substance use, the resources available when help is needed, and how to apply this knowledge to helping their families.

Components of BWC's Drug-Free EZ Program

A comprehensive drug-free workplace program has five components, all of which are required for every level of DF-EZ:

- Written substance policy.
- Employee educational awareness.
- Supervisor/manager skill-building training.
- Drug and alcohol testing.
- Employee assistance.

In addition, BWC has added a sixth program component requiring employers who implement and receive a discount for Level 2 and Level 3 of DF-EZ. This program component ties to an employer's overall safety efforts and requires the implementation of three selected steps of the Bureau's 10-Step Business Plan.

Three Program Levels from Which to Choose

As noted previously, flexibility comes from having three levels from which an employer may choose, each having its own minimum program requirements that the employer agrees to meet. Each program level has requirements in the five areas that comprise a typical drug-free workplace program, with each level having increasing requirements that correlate with increasing premium discounts for employers.

Progressively, each DF-EZ program level has increasingly greater requirements which are tied to the percentage of premium discount employers may receive. Although an employer may receive only the discount level associated with its approved DF-EZ program by meeting the minimum requirements of that level, the employer is free to exceed minimum program requirements at any level. For example, an employer not qualified for a Level 2 discount is free to implement random testing of 10% of the work force (a form and rate of testing that's required for Level 2).

Thank you for taking a step to improve workplace safety and protect your most valuable resource – your employees!

How to Use This Manual

The Table of Contents to this Manual serves as an index to the information you need to find. In addition, there are "Supplemental Materials" that you may obtain through your BWC account representative or from BWC's website. To find the needed information, simply go on line at www.ohiobwc.com and click on the link to Drug-Free made EZ. You will find a link to the list of available supplemental materials that can be accessed, downloaded or requested from your account representative. Available Supplemental Materials are listed on back of the Table of Contents.

When to Use the Drug-Free EZ Procedural Guide Instead of This Manual

Much of the material that quickly explains the Drug-Free EZ Program and its requirements is available by looking in the DF-EZ Procedural Guide, which is the 20-page booklet that should already be in your possession. This is frequently the quickest way to look up needed resource or basic reference information.

When to Use the Drug-Free EZ Technical Assistance Manual

Use this Manual for more detailed guidance than that contained in the DF-EZ Procedural Guide. Each section of this Manual offers detailed guidance. For example, the second section is entitled "Small Employers and Drug-Free EZ" and explains the general benefits of DF-EZ and contains information to help explain the employer's choice of going drug-free to employees and others. The third section is entitled "Implementing a Drug-Free EZ Program" and offers a detailed approach on how to set up your program and get it running. The fourth section is entitled "Developing a Written Substance Policy" and contains in-depth information on how to approach a policy and operational procedures. So use the Manual much as you would an encyclopedia or dictionary to find specific information that is more in depth, and use the index to identify to guide your search!

Implementing a Drug-Free EZ Program

Basic information about Drug-Free EZ is available in the DF-EZ Procedural Guide. If you did not receive a Procedural Guide, please contact your BWC account representative. In this section of the Manual, each program component is explained more fully to help provide you with information you need to implement this program and to present issues that need to be considered and addressed. This document is intended for use as a reference guide as needed, and your BWC account representative will discuss with you the most effective way to utilize this Manual.

In developing your DF-EZ Program, policy and procedures, BWC strongly recommends that you obtain legal review to ensure protection of employees' rights and buffer your own liabilities.

Developing and Becoming a Drug-Free Workplace

To put into place a well-thought-out, successful drug-free workplace, there are two basic phases an employer typically goes through, even a small employer. The first phase involves developing your program. You take the basic requirements and structure of DF-EZ and make decisions that define what your program will do and how it will work. Then, you take these decisions and share them with all employees in the written DF-EZ policy, other program documents and operating guidelines. In developing your DF-EZ, you need to look at the following:

- Issues related to implementing a drug-free workplace program (e.g., legal concerns or labor considerations if you have any collective bargaining agreements).
- Any regulatory authorities under whose rules your company must operate and the guidelines/mandates with which you have to comply. These could include federal laws, such as the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), U.S. Department of Transportation (DOT)/Federal Motor Carrier Safety Administration (FMCSA) regulatory mandates that address employee education, supervisor training and especially testing, any constraints that come from whether your company is public or private, union involvement; and the particular states (if you operate in other states in addition to Ohio) in which you have business operations.

The success of your program relates directly to getting your hands around potential impact issues and ensuring compliance with regulations and mandates. For example, consider a situation involving an employer that has never done drug/alcohol testing and wants to implement DF-EZ. The employer rushes to implement a drug and alcohol testing program and quickly writes a policy. By hurriedly implementing this program without a lot of thought and without adequate preparation, the employer will probably not improve its accident record and claims experience. In fact, the employer may be more likely to lose employee support possibly violate state and/or federal laws by not considering these in developing its program. So, prior to actually firming up your policy, here are some basic considerations.

Look to see if there are constraints on your operations and possibly on your DF-EZ program based on whether your company is public or private and which states (in addition to Ohio) you operate your business. Under some circumstances you may be limited in doing random testing (Level 2 or Level 3) in terms of what the consequences you put into your policy for employees test positive for drugs/alcohol. This may frame how you write your policy.

Beyond that, it is important to analyze how your program will work and to assess how your operations relate logistically to each DF-EZ program component. For example, mistakes or lack of attention to confidentiality (sloppy security) may affect the testing process and could compromise an employee's right to privacy and/or lead to charges that an employee has been defamed. Consider how you will set up each piece of your DF-EZ program in relationship to how your company actually operates.

The second phase involves program roll-out and on-going implementation:

- You determine vendor relationships for support services such as drug testing, employee education and supervisor training.
- Your employees are informed and educated about your DF-EZ policy, program, issues and available resources.
- Your supervisors are trained to perform their expected role/responsibilities within your program.
- You need to decide how to ensure all new supervisors/managers and employees are brought up to speed about your program (orientation, providing copy of policy and other information).

Getting Started in Implementing Your DF-EZ Program

Your specific work setting, your work culture, and any past experience with any part of a substance-free workplace may all affect the order in which the following steps are implemented:

1. Finalize your written substance policy and operational procedures:
   - Get input from employees, if possible, to get their buy-in and support.
   - Partner with labor representatives if you have a collective bargaining agreement.
   - Run your policy by a few representative staff.
   - Ensure review by legal counsel that is experienced in employment/labor law and knowledgeable about the changing field of drug-free workplace program case law.
   - Have legal counsel that is familiar with your company review your policy and procedures to ensure consistency with your other personnel policies and practices.

2. Establish recordkeeping practices to track and maintain program information to make it easy to report on the Progress Report (due at the 9-month mark of each program year).

3. Finalize testing arrangements:
   - Select vendor(s), which may entail interviewing providers of service to see if they can actually do what they say they can do.
   - Ensure everything is in place to allow you to do any drug/alcohol testing required under DF-EZ. This includes ensuring there's a Certified Medical Review Officer (MRO) in place to evaluate positive laboratory drug test results; a collection site that mirrors federal testing procedures, ensures split specimen is used, and sends specimens using established chain-of-custody procedures to a laboratory certified by the U.S. Department of Health and Human Services (DHHS); and determining which cut-off levels will be used for each drug and for alcohol.

4. Finalize employee assistance plan:
   - Select plan of action.
   - Get together a list of available local community resources with the help of your BWC account representative.
   - Let your employees know what help is available if they come forward voluntarily and how you will deal with a positive test.
   - Train supervisors about how to offer assistance.
5. Employee education:

- Select implementation date for your program.
- Make preliminary announcement of your DF-EZ program.
- Identify and contract with qualified educator to put together a curriculum and materials or make arrangement for a staff member to receive training from a training-for-trainers program.
- Plan timing of initial session to describe your DF-EZ to all current employees.
- Conduct initial session about your program.
- Plan how you will educate new employees such as providing information at orientation.
- Keep employee signatures showing they received a copy of your written DF-EZ policy.

6. Supervisor training
   - Identify and contract with qualified trainers.
   - Identify who will be considered a supervisor for purposes of this training.
   - Administer supervisor training.
   - Develop a plan to train new supervisors.

An employer's situation and potential constraints on its DF-EZ Program depend upon whether the employer is public or private and which states in addition to Ohio the employer operates its business. Under some circumstances the employer may be limited in doing random testing in terms of what the consequences to an employee may be from a positive drug or alcohol test, thereby directing a course of development which the employer needs to follow in putting together its DF-EZ program.

Developing a Written Substance Policy

Every Drug-Free EZ starts with the development of a written substance use policy, **which is the critical document for implementing your program**. A written substance policy should entail full and fair disclosure that should cover every important aspect of the program you are implementing. This should include outlining responsibilities of you, the employer, and your employees. For example, your policy should describe how you will deal with employees with substance problems while, at the same time, protect the rights of all employees and provide a safe work environment. It also helps if you express support for rehabilitation of employees who come forward voluntarily to admit to a substance problem and detail how you'll handle an employee who tests positive on a drug or alcohol test. After all, you hope that putting consequences in place for violating work rules (your policy) deters employees from using. The model policy in your Drug-Free Workplace Self-Implementation Workbook provides a structure you can utilize but you still have to flesh it out with your own business realities and then be sure to have it checked by competent legal counsel **before** you implement it!

A written policy is the cornerstone of your DF-EZ program and really serves as a summary of how your program will work. You still need to put operational procedures into place that support the policy being carried out the way you want. Remember that it helps to make efforts to have this program accepted by your employees. Getting employee buy-in certainly helps to create a more effective program. So, if you can get input from employees, your program will have greater credibility, and employees will be more likely to see the benefits of the program and support it.

You also need to make sure you clearly convey that the purpose of your DF-EZ program is to create a safer workplace, to support employees who may have a substance problem but to hold them reasonably accountable and to protect the large majority of employees who don't have a problem. The tone of your policy and procedures is very important and should stress the fact that you care for the well being of all your employees. Make sure that you convey that the program applies to all employees, including management.

If applicable, your policy should be developed in concert with any existing collective bargaining agreements. These agreements may address what type of testing is allowed or not allowed and what disciplinary steps may be available.

Remember that your supervisors need detailed guidelines to follow in order to appropriately support your program. These guidelines should cover such questions as how to transport an employee for a test (important when there is reasonable cause), whether an employee should be allowed to return to duty after a test, who will determine the consequences of a positive test, whether an employee will be off-duty and, if so, for how long, etc. Again, please consult competent, experienced legal counsel in reviewing your written policy to ensure compliance with all applicable legal requirements.

Also, remember that your written policy is directly tied to the DF-EZ program level at which you're participating. The policy for a Level 1 DF-EZ would differ somewhat from a Level 2 or 3 program such as in terms of random drug testing. Regardless of what level of program you've implemented, your written policy should cover all aspects of the program you're implementing.

Summary of Written Policy Program Requirements

Every DF-EZ written policy should:

- Cover all program components (employee education, supervisor training, drug and alcohol testing, and employee assistance).
- State your company's reason for creating a substance-free workplace, namely a concern for employee safety and health, productivity, accident prevention and loss control, and a commitment to helping employees who come forward with a problem.
- Be presented to all current employees prior to being implemented at an employee education session attended by employees and supervisors.
- Clearly state that your program applies to all employees, including management.
- Be in compliance with all pertinent federal and state laws or regulations.
- Include a discussion of confidentiality of the program records to ensure the privacy rights of employees.
- Contain appropriate references to collective bargaining agreements, and show how the program works in concert with these agreements to promote a safer workplace.
- Identify a person employees can come to with questions.
- Address the use of alcohol, prescription medications, over-the-counter medications and illegal drugs, including:
    - which drug or alcohol tests will be used.
    - what cutoff levels mean.
    - what testing procedures will be followed.
    - a clear statement that supervisors will be trained regarding testing responsibilities <u>prior to</u> the implementation of any testing associated with this program.
- Reference the help available to employees with substance problems.
- Describe how referrals may be made for testing, assessment and employee assistance.
- State what is prohibited and the consequences of a violation of the policy for employees.
- State the consequences, if any, for refusal to submit to a drug or alcohol test as required by the employer's program.
- State the consequences for any employee attempting to manipulate the drug/alcohol testing process, such as trying to adulterate a specimen or substitute a specimen.

Level Specific Requirements

The above requirements are to be a part of the written policy for Level 1, Level 2 and Level 3 programs. The employer must ensure that its written policy is reflective of whichever level program the employer is implementing but may exceed these requirements.

Reporting and Documentation Requirements

There is one reporting requirement, to completely fill out a Progress Report due at the 9-month mark of each program year. Failure to do so will result in all discounts for participating in that program year being taken back. In addition, a DF-EZ employer is expected to maintain some types of information/documents on site at its workplace. The employer's written policy should be in place by the end of the first quarter of the first program year.

The employer should maintain at its workplace:

- A copy of its written policy.
- Copies of acknowledgment forms signed by each employee at the point of receipt of the written policy.

Establishing Your Drug-Free EZ Policy/Program: Two Stages

There are two stages that an employer typically travels through to establish a drug-free workplace program. The first step is to develop a policy that covers every important piece of the program you plan to implement. This goes beyond just sharing the specifics of drug testing and employee assistance. The second phase involves rolling out your program and on-going management of the program. Remember that a drug-free workplace program is only as good as its foundation – your written policy and operational procedures. If you implement a policy and/or operations that have not been designed to match the realities of your work environment, it may not help address substance problems and you could put your company at risk. Once your DF-EZ policy is adopted, you should enforce the policy consistently; taking the same action for all employees unless logical, non-discriminatory, discretionary examples are clearly explained in your policy.

Importance of Thinking through the Program

What is it you want your program to do? Defining your objectives helps you to put together your program and policy. These will define much of your written policy, any program documents/forms you're putting together and your program operating guidelines or procedures. And, remember to get legal counsel involved in reviewing your policy. This can be very helpful, especially if your attorney is familiar with your business operations and knowledgeable in employment law, including drug-free workplace case law. There are court decisions on substance testing and employee rights that you need to be aware of. Competent legal counsel should offer appropriate consultation on the topics of substance use/testing which tend to be emotional topics.

Also, remember that – to be effective – your operational procedures need to be developed and expressed in a user-friendly document or documents. All the details need to be spelled out clearly so that everyone in the workplace knows the "rules." This is especially important in helping employees become comfortable with the program. And remember again the importance of considering other factors in developing your program such as constraints related to having union agreements that may prevent or limit what you do regarding random drug testing and/or what you may do when there's a positive test. This could affect how the program is designed. And, if you're a small public agency, random testing is limited to safety-sensitive positions.

Confidentiality

Employers should operate their DF-EZ programs with maximum concern for confidentiality. You should ensure that certain types of information are shared on a need-to-know basis only (such as a referral or results of a test or an assessment, and the outcome of treatment). Discussing confidentiality of program records at your employee education session can ensure everyone is aware of your commitment to the privacy rights of individuals. It's important to stress that this does not negate a responsibility to report an employee's violation under your DF-EZ policy to law enforcement officials where required by a regulatory body or by criminal law provisions. It does, however, clearly frame your responsibility for establishing confidentiality procedures and maintaining confidentiality of testing results and program records. Confidentiality implications need to be thought through carefully.

Words/Terms to Avoid

Make sure to avoid certain wording in your policy and operational guidelines. It makes sense to avoid such terminology as "fit for duty," "impairment," "under the influence," and "intoxication" and, instead, focus on systems presence testing. Performance standards are subject to interpretation, and using these words to describe an employee's behavior or capacity to perform may be a quick road to litigation.

Your written policy should clearly state standards that prohibit specific drugs or alcohol from being in an employee's body/system at or above a specified level while at work. In addition, you should put into your operational procedures a provision that employees being sent for a **reasonable suspicion or post-accident (for cause) test** should not be allowed to drive themselves to the collection site or home. An employee being sent for a drug or alcohol test should be transported in a safe manner, even if it means calling a cab.

You have a choice in terms of whether to have a policy that is separate from your operational procedures or whether to merge them into a single document. Procedures provide guidance for everyone by offering appropriate, planned ways to handle various situations that could occur in the workplace. So, you should determine how such situations should be handled and then provide guidance to staff in how to respond to each type of situation. This should be part of the process of drafting operational guidelines. Employees need to know under what circumstances they will be tested. They also need reassurances, in writing, that any supervisor/manager with the authority to refer someone for a test has had appropriate training in evaluating why, how and when to refer someone for reasonable suspicion testing (see Supervisor Training section of this Manual). This is not only for employee protection but to assure employees that supervisors will receive training so they know what they're doing in observing and evaluating behavior and, for example, will follow company guidelines in referring someone for testing based on reasonable suspicion. You also need to consider a mechanism related to a co-worker reporting information leading to reasonable suspicion and also how to refer a supervisor who may possibly be violating your policy. To be effective, your DF-EZ must apply to supervisors/managers, not just line staff.

Your Written Policy Serves As an Operational Handbook

When done correctly, you will have put together an effective document that can be used to guide program implementation; hopefully all contingencies will already have been considered when/if an incident occurs that has to be addressed without delay. It is also helpful to have a procedure to guide supervisors as needed so that their actions are not affected by emotion, and all staff need to be aware how a situation should be handled. Operating "by the book" and following the written policy allows everyone to be dealt with on an objective, uniform basis, without necessarily negating compassion and consideration.

Sample Written Policy to Review in Developing Your DF-EZ Policy

In the Sample Policy section of the Drug-Free Workplace Self-Implementation Workbook sent to all participating employers, there is a model designed to help a DF-EZ employer develop its written policy. This model is not intended for an employer to just copy verbatim but rather to offer some boilerplate language for a policy, a format and basic content of a good DF-EZ program that would meet BWC's requirements. This should serve as a tool which you may use to structure your policy, show at least a neutral if not a positive tone to the information and also provide possible wording. Remember the importance of creating your own company-specific policy and written procedural guidelines since, in order to be effective, a written policy should be individualized to the employer's specific workforce situation.

Also, some employers are told to minimize what is put in writing, BWC expects full and fair disclosure in the written policy. Copying another employer's program and/or minimizing the content of its own programs are unlikely to result in an effective DF-EZ policy and program. Minimizing the program may also cause distrust among employees in terms of what the program really involves. Employees are much more likely to respect and support a policy that is shared openly and explained fully and clearly. Rather than minimizing your liabilities, the failure to fully share how the program is designed to operate may create additional liabilities and may undercut your efforts to create a substance-free workplace.

Legal Requirements That May Affect Your Program and Policy

There are some critical legal issues for employers to be aware of as they develop their DF-EZ programs. Below are references to some of the legal requirements that may apply to an employer's DF-EZ program and which, therefore, are basic compliance considerations for any employer. You should consult competent legal counsel regarding the implications of any of these legal requirements as they relate to the development of your DF-EZ program.

The Drug-Free Workplace Act of 1988

Federal contractors (defined as those with at least $25,000 in federal performance contracts) and federal grant recipients (no dollar and no territorial limits) must comply with the Drug-Free Workplace Act of 1988. Only the primary contractors and grant recipients (not subcontractors) are covered under this Act. This Act does not require drug testing and does not mention alcohol but focuses on drug awareness education. Compliance must be implemented in good faith. Employers must comply with the spirit of the Act and make a good faith effort to continue to maintain a drug-free workplace. Overall, the Drug-Free Workplace Act requires recipients of federal dollars identified above to do the following:

- Adopt a policy that is distributed to all covered employees (those directly working on the pertinent contract or grant project). The company's policy must prohibit "the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance." Furthermore, the company's policy must inform employees of the action to be taken for violations of the policy. Employees must receive their own copies of the policy.
- Establish and maintain an on-going drug-free awareness program that emphasizes drug education for employees. The awareness program may include workshops, brochures, handouts, videotape showings, lectures and posters, and should be documented to demonstrate compliance. The drug awareness program must inform employees of:
  - The dangers of drug use in the workplace.
  - The company's policy and the penalties for violating this policy.
  - Community resources and available employee assistance programs and drug rehabilitation opportunities (however, an employer is not required to provide a comprehensive Employee Assistance Program).
  - Required sanctioning of employees with adverse employment actions up to and including termination, or the requirement that they successfully complete rehabilitation.

All employees must be made aware of a requirement of notification in relation to drug convictions. Everyone needs to know that employees who – while working – violate any criminal drug statute <u>and are convicted</u> are required to notify their employer within five days of the conviction. The employer must, in turn, notify the contracting agency or grantor within the subsequent ten days.

Violations of the Act by employers may result in the federal government withholding payments, terminating a contract/grant, or suspending the company from doing business with the federal government, or contract disbarment. It is noteworthy that suspension/disbarment can be for five years, not three years as is normal for federal contracts.

<u>DF-EZ employers should have no difficulty meeting BWC's program requirements while complying with the requirements of the Drug-Free Workplace Act of 1988.</u>

DOT Omnibus Transportation Workers Testing Act of 1991

Based on overwhelming evidence of the impact of substance use nationally, the federal government chose to legislate preventive/interventive strategies and activities in areas where it is responsible for the safety regulations of workers and the general public. There are six divisions under the U.S. Department of Transportation (DOT) umbrella which have alcohol and drug program requirements: Federal Motor Carrier Safety Administration (FMCSA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Research and Special Programs Administration (RASP – Office of Pipeline Safety) and the United States Coast Guard (USCG).

- The FMCSA impacts the greatest number of employers and workers, requiring compliance for those employers who employ drivers mandated to have commercial driver's licenses (CDL) and who operate a vehicle that meets one or more of the following:
  - designed to carry 16 or more passengers, including the driver.
  - in excess of 26,000 pounds Gross Vehicle Weight Rating.
  - of any size that is used in the transportation of hazardous material that, by amount, must carry a "hazardous materials" placard.

The Drug-Free Workplace Act of 1988 and the DOT Omnibus Transportation Testing Act of 1991 have co-jurisdiction and, together, they require an employer subject to their regulation to have a five-component substance-free workplace program:

- Written substance use policy - covering all employees.
- Employee awareness and education - related to DOT objectives.
- Supervisor training - minimum of 60 minutes on alcohol, 60 minutes on drugs.
- Employee assistance - to refer (not necessarily pay for) an employee to a qualified substance professional for assessment/treatment.
- Drug Testing [an enzyme multiplied immunoassay technique (EMIT) screen and confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) on a urine specimen]:
  - Pre-employment.
  - Post-accident (defined specifically).
  - Reasonable suspicion (defined specifically).
  - Random (50 percent of CDL driver pool).
  - Return to work.
  - Follow-up to treatment.
- Alcohol Testing — National Highway Traffic Safety Administration (NHTSA)-approved breath, saliva screens with NHTSA-qualifying evidentiary breath test (EBT) confirmatory test):
  - Post-accident (defined specifically).
  - Reasonable suspicion (defined specifically).
  - Random (10% of CDL driver pool now required by DOT/FMCSA).
  - Return to work.
  - Follow-up to treatment.

There are also strict procedural guidelines and record keeping required by the federal government. Violations of the Act by employers can result in both employers and drivers who violate these rules being subjected to civil penalties up to $10,000, among other consequences.

How an Employer with CDLs Should Approach Developing a Written Policy

If you have employees required by federal regulation to hold a commercial motor vehicle license (CDL), your DF-EZ policy should be written in a way that fully explains this to employees. You should develop a single generic written policy which details the requirements under each program component that apply to all employees and should also include a subsection under each program component that details additional requirements for CDLs subject to DOT/FMCSA regulations. There are additional requirements for CDL employees in terms of employee education, supervisor training, and employee assistance. Within your written policy, a section needs to be included under drug and alcohol testing in which you clarify how testing is to occur for all employees other than CDLs, followed by a separate entry that details how testing will occur for CDLs.

DOT/FMCSA and the DF-EZ Program

There are no inherent conflicts for employers who are subject to federal requirements under DOT/FMCSA and who are participating in DF-EZ. This is because BWC has clarified that employers who have employees required to hold a commercial drivers' (motor vehicle) license (CDL) pursuant to federal regulations of DOT/FMCSA can participate in DF-EZ at any program level without being in conflict with federal mandates. However, such employers must ensure that all DF-EZ program components are applied to all of their employees with the exception of drug and alcohol testing for CDLs. If you have CDLs under federal testing mandates, please refer to the supplemental document entitled "Employers Subject to Federal (DOT/FMCSA) Testing Requirements." In summary, the one exception involving DF-EZ program requirements versus DOT/FMCSA requirements relates to drug and alcohol testing. Simply put, an employer should follow federal testing requirements for all testing related to CDLs if the activity in question involves a safety-sensitive function but, if testing is done pursuant to DF-EZ requirements **only**, the employer should follow our DF-EZ. If in doubt, you should follow the federal requirements.

Employers should also be aware that random drug testing pools can't co-mingle employees covered under federal regulations with those who are not covered. The employer will therefore need to contract to establish separate pools if they are at Level 2 or 3 and have CDL and non-CDL employees. Requirements associated with the other basic DF-EZ Program components (i.e., written policy, employee education, supervisor training, employee assistance and, for Level 2 programs, BWC's 10-Step Business Plan) fall under the "broad umbrella approach" and must apply to all employees.

How a CDL Employer Should Approach Developing a Written Policy

The DF-EZ policy should be written in a way that fully explains the employer's program to all employees. The employer needs to develop a single **generic written policy** which details the requirements under each DF-EZ Program component that apply to all employees, and should also include a subsection under each program component that details the additional requirements for CDLs subject to DOT/FMCSA regulations. There are additional DOT/FMCSA requirements for CDL employees in terms of employee education, supervisor training, and employee assistance. Within the employer's policy, a section needs to be included under drug and alcohol testing in which the employer clarifies how testing is to occur for all employees other than CDLs, followed by a separate entry that details how testing will occur for CDLs. Again, the broad umbrella of program requirements applies to all employees, except as specified in terms of the testing category.

Other Federal Legal Concerns That Employers Should Be Knowledgeable About:

- Family Medical Leave Act of 1993 (for employers with 50 or more employees).
- Americans with Disabilities Act of 1990.
- Department of Defense's Drug-Free Work Force Rule.
- National Labor Relations Act (NLRA).
- The United States Constitution (for public sector and governmental employers).
- Civil Rights Act of 1991.

State Law Concerns

There are concerns tied to the common law which employers should be aware of. An employer should seek legal review of its written policy to protect against these liabilities, which include torts such as defamation; infliction of emotional distress; invasion of privacy; negligent testing; false imprisonment, etc. Since it is legal in Ohio for an employer to do substance testing (with some restrictions on public employers), the main legal liability issue tends to surround how the testing process is carried out. In addition, there are some exceptions to Ohio's employment-at-will doctrine that employers need to take into account through consultation with legal counsel.

Related Statutes and Decisions Which Can Have an Effect on Your Operations

There are a variety of other areas of concern regarding which employers should consult with legal counsel. These involve other statutes not mentioned above and related court cases, and such issues as access to medical reports by employees and former employees; workers' compensation eligibility; unemployment compensation; Social Host liability; and handicap discrimination.

Again, be sure to consult competent legal counsel on all of the above matters – someone with a legal background in employment law and knowledge of drug-free workplace case law!

Employee Education

In implementing any level DF-EZ program, an employer is responsible for developing an employee education component which is intended to provide all employees with information about the employer's DF-EZ and how it operates. Employees should be informed about the specifics of the employer's policy which should reflect the requirements for the particular program level being implemented. Prior to implementing its program, the employer should hold an educational session at which the program is announced and information shared with the entire work force. Since the intent is to communicate about the program, each employee should be given a hard copy of the written policy and acknowledge receipt (see Sample Forms section). The employer is not required to involve a qualified substance professional to discuss the company's substance policy with employees but may choose to do so.

Employee awareness education is a critical part of your DF-EZ program. It's a good time to stress your commitment to the program and to ensure that all employees are informed about it, especially the content of the written policy itself, everyone's responsibilities for supporting the program, the consequences of violating your policy and who to turn to for further information. Employee education is the time to give information and to explain clearly and completely how the program will operate; employees should come away with an understanding of the circumstances under which testing will occur, the protections built into the program to ensure fairness to all and how the program helps create a safer workplace. It's also a time to win employees' buy-in. Employees need to hear that the program applies to all employees from the boss on down. Employees need to be able to get their questions answered, and they need to feel that time and attention is set aside to respond to their concerns. Listening and responding to concerns may help avoid a possible negative reaction where employees could perceive the program as an intrusion or inconvenience rather than a possible benefit to the work force.

Employee Education Program Requirements

To receive a discount for implementing and operating a DF-EZ Program at any of the three program levels, an employer must meet the following employee education requirements:

- Provide at least one hour of educational awareness initially on substance issues for all employees, and one hour annually thereafter while you're participating in DF-EZ.
- Ensure that new employees receive information about the program and some educational materials in addition to the policy within the first six weeks of employment.
- Inform employees about the content of the program and discuss your written policy, distributing a hard copy of policy and obtaining signed acknowledgment of receipt from each employee that he/she has received a copy of the policy and has had the opportunity to ask questions.
- Include information regarding basics about alcohol and other drugs, including the disease model; signs and symptoms associated with substance use, and the effects and dangers of commonly used drugs on the workplace.
- Share a list of helping resources in community that employees can turn to for themselves or their families for a professional substance assessment and for treatment.

- Other than the explanation of your program, substance educational awareness should be presented by a qualified educator or a person supervised by a qualified educator, defined as holding one of the following credentials:
    - Substance Abuse Professional (SAP).
    - Certified Employee Assistance Professional (CEAP).
    - Certified Chemical Dependency Counselor (CCDCIII).
    - Ohio Certified Prevention Specialist (OCPS) 1 and 2.
    - Other comparable credential.
    - Experience with providing these services during the past three years.
    - An in-house person who attended a training-for-trainers course to provide substance educational awareness.

Reporting and Documentation Requirements

Once an employer's DF-EZ program has been implemented, there are a few reporting requirements to be met. In addition, an employer is expected to maintain some information/documents on site at its workplace. With regard to employee education, the employer is required to report some information on a yearly Progress Report and to maintain a copy of its written policy and who attended employee education sessions.

The employer is to include the following information in its progress report:

- Number of employees educated.
- Names and phone numbers of qualified educators who conducted or provided general supervision for educational sessions.

In addition, the employer is to maintain at its workplace:

- Copy of written policy (which describes the content of employee education).
- Original attendance sheets signed by each attending employee at each education session.

Recommended Approach to Implementing Employee Education

There are two basic stages to establish a drug-free workplace program. In the first phase, the employer develops a written policy that articulates <u>every</u> element of the program. Employee education generally falls within the first phase. The second phase involves program roll-out and on-going implementation, and this is where vendors can assist the employer.

Phase One steps include:

- Determining general content to cover in an employee education session.
- Identifying and contracting with a qualified educator to help design the curriculum and educational awareness materials or a training-for-trainers class to prepare one of your employees to provide this information.
- Developing a plan to ensure all new employees are educated.
- Selecting the program implementation date and the date for your first session.
- Establishing a routine mechanism to ensure that all new hires receive the hard copy of the policy and educational information, as well as signing and turning in an acknowledgment of receipt form.

Phase Two steps include:

- Administering the employee education program and informing/educating employees about the policy, program, issues and available resources.
- Arranging to obtain and maintain education session rosters.
- Obtaining and maintaining signatures showing receipt of the written DF-EZ policy for all employees.
- Maintaining a process that ensures all new hires receive the policy, attend education sessions and sign and turn in acknowledgment of receipt of policy.

Employee Education Sessions

Consider whether to inform all supervisors/managers about their responsibilities for supporting the program prior to the time employees hear about the program. This will help since supervisors may be asked questions by employees. Supervisors attend the first employee education session and then bring the knowledge of the questions and concerns raised by the employees to their skill-building training sessions. Much of the information of the employee education session is basic and includes why the company decided to go drug-free. It helps make employees more comfortable if the program is presented in a comfortable, open setting with pre-determined answers for anticipated questions and concerns. At this first session, the employer has the opportunity to demonstrate to employees that the DF-EZ Program was implemented for everyone's benefit, including the protection of the company's business. Whenever the qualified educator (or person supervised by the qualified educator) is involved, this person needs to be armed with the answers to both informational questions about substance use. Answers to operational questions about how the program is to be implemented typically come from you, the employers. In any case, those involved in the initial education session need to be ready for potentially strong reactions, interactions, and even possible sharing of a personal problem by an employee.

Suggested Logistics

The first employee education session for employees should be held before the DF-EZ Program is implemented. Ideally, it should be conducted at least 30 to 60 days before the implementation of drug testing to give employees fair notice and allow them to self-refer or clean up their acts. New employees should receive a copy of the policy at orientation and any written information from the last employee education session. Ideally, your first educational session would also include information for employees about:

- The major problem represented by substance use in the workplace.
- What constitutes substance use and misuse as defined in your written policy.
- The disease model for alcohol and other drugs.
- The signs and symptoms of substance use.
- The effects of commonly used drugs in the workplace.
- What the consequences are for violating the policy.
- What assistance (community resources) employees can receive if they or their family members have a substance problem.

Supervisor Training

In implementing its DF-EZ program, an employer is responsible for developing supervisor training that is designed to provide skill building for all supervisors in terms of their responsibilities for supporting the program. Supervisors need to be trained about the impact of alcohol and drugs on the workplace; their responsibilities in relationship to the program, policy and procedures; how to recognize, document and confront a possible substance use problem; and how to initiate reasonable suspicion testing. They also need to know how to refer an employee to available resources; how to follow up with employees re-entering the work setting after a positive drug test; and how to handle program responsibilities in a manner that is consistent with the applicable parts of any current collective bargaining agreements. Supervisors are the link to the employer's work force and they are the key to successful implementation of the policy and program. Not only will poor training (or the lack of training) decrease the chances that the policy will be implemented appropriately, having untrained or under-trained supervisors could also jeopardize an employer's legal protections.

At a level between employees and upper management, direct supervisors face a challenging role. They serve as the eyes, voice and arm of management, yet they may be accustomed to socially imbibing with other employees, including those whom they supervise. The employer and the trainer must help supervisors become comfortable with a safety-on-the-job focus for the DF-EZ program. It is critical to show supervisors that they have your backing for doing what is right in administering the program and that they will not be left hanging out there alone. Supervisors need to know that their program responsibilities are considered an important part of their overall supervisory duties, and the employer's expectations should be should be made clear.

Supervisor Training Program Requirements

To receive a discount for implementing and operating any level DF-EZ program, an employer must meet supervisor training requirements and ensure that:

- All supervisors receive at least two hours of initial skill-building and information-sharing sessions.
- In subsequent years, supervisors who have already received two hours of initial training receive one hour of refresher training.
- New supervisors receive two hours of initial training, with at least one hour of training occurring within six weeks of a current employee becoming a supervisor or from the date of hire of a supervisor.
- Supervisor training is in addition to the annual hour of employee education.
- The training be presented by a qualified trainer, or by a person who is supervised by a qualified trainer, holding one of the following substance use credentials:
    - Substance Abuse Professional (SAP).
    - Certified Employee Assistance Professional (CEAP).
    - Certified Chemical Dependency Counselor (CCDCIII).
    - Ohio Certified Prevention Specialist (OCPS) 1 and 2.
    - Other comparable credential.
    - Experience with providing these services during the past three years.

Level 2 and Level 3 Requirements

Employers with a Level 2 or Level 3 program are required to meet the same supervisor training requirements as for Level 1. The only differences are that, for a Level 2 or Level 3 program, supervisors will need to receive additional training in terms of how random testing is administered, and the employer's implementation of three steps of the Bureau's 10-Step Business Plan.

Reporting and Documentation Requirements

Once the employer's DF-EZ Program has been implemented, there are various reporting requirements that an employer must follow. In addition, an employer is expected to maintain specified information/documents at its workplace for purposes of BWC review. The employer is required to report its progress in terms of supervisor training as well as to maintain various statistics and other documents. These requirements are also covered in the Recordkeeping and Reporting section.

The employer is to include the following information in its progress report:

- Summary of activities related to supervisor training.
- Planned improvements in supervisor training for the following program year.
- Brief course description of topics covered under supervisor training.
- Number of supervisors trained.
- Names and phone numbers of trainers who conducted sessions.

In addition, the employer is to maintain at its workplace:

- Copy of written policy describing supervisor training program.
- The names, qualifications and credentials of trainers or of person(s) supervising the persons conducting these training sessions.
- Original attendance sheets signed by each attending supervisor at each training session.

Recommended Approach to Implementing Supervisor Training

As previously noted, the DF-EZ Program planning process has two basic stages. In the first phase, the employer develops its descriptive written policy, and the second phase involves implementation. Developing a general approach to supervisor training falls within the first phase whereas the second phase involves implementing supervisor training.

In the **first phase**, the employer should:

- Determine general content to cover in supervisor training sessions.
- Identify and contract with qualified trainers.
- Plan the content of refresher training for supervisors who have received the initial training.
- Select a DF-EZ program implementation date and the date for the first training session, determining whether to do any supervisor training regarding the program prior to meeting with all employees to announce the program.
- Establish a routine mechanism to ensure that all new supervisors receive the required hours of supervisor training within appropriate time frames.

In the **second phase**, the employer should:

- Administer the supervisor training program.
- Arrange to obtain and maintain supervisor training attendance rosters.
- Maintain a summary of topics covered in training sessions.
- Ensure that new supervisors timely receive the required training.

Content of Training

As the employer considers the basic content of its supervisor training, it should recognize that the following topics are critical focal points that cover supervisory responsibilities in relationship to the employer's DF-EZ Program:

- How to recognize a possible alcohol/drug problem.
- How to document behaviors that demonstrate an alcohol/drug problem.
- How to confront employees with the problem from observed behaviors.
- How to initiate reasonable suspicion and post-accident testing.
- How to handle the procedures associated with random testing (Level 2 and Level 3).
- How to make an appropriate referral for assessment or assistance.
- How to follow up with employees returning to work after a positive drug test.
- How to handle DF-EZ Program responsibilities in a manner that is consistent with the applicable sections of any pertinent collective bargaining agreements.

Supervisor Training Sessions

Even with the most clear and comprehensive DF-EZ policy, supervisors still need to be challenged regarding their roles and responsibilities in implementation of the DF-EZ Program. Some supervisors may be hesitant to address alcohol or other drug issues, while others may resent having to do so. Still others may feel overly aggressive or overly confident about determining reasonable suspicion. None of these approaches is particularly helpful in leading toward objective handling of situations that may occur. Effective supervisor training can address all of these issues and increase the skill level of supervisors, even beyond the DF-EZ Program, since these are skills (recognition/observation, documentation, confrontation, referral, etc.) that tend to be universal skills for supervisors.

The employer needs to consider whether supervisors should receive their initial training before or after all employees attend the employee education sessions. If the employer thinks that employees will direct a lot of questions or concerns to their supervisors after their initial education session at which the DF-EZ Program is presented, then it might make sense to train supervisors ahead of time so they will be better informed and able to answer the questions. If the employer wants to maximize its training time, supervisors can receive initial information about the DF-EZ Program in the first employee education session and can later supplement this with their own training about how to carry out their responsibilities within the policy. Regardless, the employer should be certain that supervisors receive the information outlined for both education and training sessions. Whatever the order of education/training, the employer should consider giving supervisors a copy of the policy and procedures several days prior to their training. Supervisors need to review these documents prior to training and to bring forward any questions or concerns they might have.

If supervisor training occurs after employee education where a lot of program basics are discussed with the supervisors also present, a greater amount of time in the supervisor training can be spent in supervisory skill building activities. In any case, supervisors are also expected to attend employee education sessions to continue to learn about substance use in the workplace and to hear the concerns raised by employees at the employee education sessions.

Suggested Logistics

Making the time for supervisor training is critical for employers, and the logistics and approach for this training may be more challenging than those for employee education. Supervisors not only need to learn the basics of the DF-EZ Program, they also need to be motivated and armed with practiced skills. This involves spending time with supervisors during each session to build their understandings and buy in, offering individual attention, and having a skilled, experienced trainer.

The amount of time to dedicate for each session may vary, but each should be at least two hours. There should be a speaker/trainer, utilizing small group exercises and discussion, with appropriate films on the topic or topics to be covered. Sessions should be limited to 15 staff, if possible, and the training site should be large enough to comfortably accommodate the number of supervisors; an off-site location may have some advantages. There should be tables to write on and ample space for the supervisors to work in small groups. Copies of the policy, procedures, selected educational materials, an agenda and an evaluation form should be made available to participants. Food or other incentives can enhance the session and create a positive atmosphere for learning.

Ideally, because the objective of supervisor training is to build and practice skills (e.g., recognition, documentation, confrontation, etc.), there should be fewer participants per session than the employer might prefer (from a cost standpoint). Fewer numbers allow for more participant involvement and interaction. The trainer should use small group exercises and/or role-play activities with the supervisors. Supervisors will be more effective in using their newly gained skills in preventing accidents if they have received training in which they walk through the procedures. The trainer should bring forth real-life examples and exceptions to the rules and procedures. Supervisors should be able to expand their base knowledge about the issues involved, such as the impact of alcohol and drugs, drug testing, treatment, employee assistance. They should be made to confront their own attitudes about the policy and problem. They should come to see that these new tools can be used to prevent accidents and losses. Video-tapes can be used to supplement training.

Training Objectives

Upon completion of the initial supervisor training, supervisors should:

- Understand the specific elements of the DF-EZ policy and procedures, and the program as a whole.
- Understand their roles and responsibilities in implementing the DF-EZ Program.
- Be aware of the role that their attitudes play in policy implementation.
- Be aware of the supervisor skills that are critical to policy implementation (e.g., recognition, documentation, confrontation, etc.).
- Understand the process of referring an employee to drug/alcohol testing based on reasonable suspicion or post-accident.

For employers with Level 2 or Level 3 programs, supervisors will need to be trained additionally in their responsibilities in the administration of random testing. There are real challenges that need to be supported by training exercises and development/sharing of clear procedures associated with the timing and notification for employees who are randomly selected to be sent for testing. There are also important confidentiality concerns to be dealt with where an employee's test comes back positive, so training also needs to focus on this issue.

As noted, supervisors are the key within the workplace to recognizing if an employee needs help. Supervisors are also very likely to use emotional defenses to avoid dealing with potential alcohol or drug problems. Here are some helpful pointers for supervisors:

1. Recognize that enabling behaviors are occurring and explore the issues behind those behaviors.

What is it that causes a supervisor to ignore the issues or to not allow the employee to experience the negative consequences of his/her use?

2. Become educated on the issues of alcoholism and drug addiction.

Understand the signs and symptoms, the progression and the overall dynamics of the disease. Without this knowledge, people will make assumptions about employees experiencing substance use problems, including alcoholism/addiction and their "situations" that may not be true.

3. Become well informed about the employer's guidelines for dealing with substance use issues.

Don't forget collective bargaining agreements, agency/business policies and procedures, and state/federal governing bodies. Be aware of *legal* responsibilities.

4. If in doubt about how to proceed, consult with an appropriate staff person.

Remember that these are very sensitive issues that should only be discussed with certain, designated persons.

5. Give the situation time.

It is much more natural to enable than to let someone experience negative consequences of their behaviors. It takes practice to become part of a process to help another person get healthy.

6. Avoid confronting possible users or drug traffickers in a one-on-one situation.

Employees in general, and supervisors and managers in particular, should be instructed not to attempt to take action alone against someone suspected of dealing or using drugs, since to do so may be physically dangerous. In addition, there is substantial value in having reliable witnesses, especially in case of a legal challenge.

The Importance of On-Going Training

Hopefully, employers will not need to use reasonable suspicion or post-accident testing frequently. In all likelihood, this part of an employer's policy may be dormant for some time. For this reason, supervisors need to receive on-going refresher training, especially in terms of referring someone to reasonable suspicion or post-accident testing. The employer should seize every opportunity to "arm" its supervisors with the knowledge and skills they will need to effectively implement the DF-EZ policy, and they should be sure there is a plan in place to train new supervisors. An employer's supervisors are always key players. Preparing them for the challenging task of handling the substance-abusing employee through sound, effective and comprehensive training makes sense. See the "Sample Forms" section for some checklists that may be helpful to your supervisors in identifying behaviors that need attention and might result in ordering a reasonable suspicion test.

Drug and Alcohol Testing

The heart of every Drug-Free Workplace Program is drug and alcohol testing. In implementing any level of the BWC DF-EZ Program, an employer is responsible for developing testing that is intended to detect and deter substance use in the workplace. The employer's written DF-EZ policy must clearly spell out all aspects of how drug and alcohol testing will be conducted, sharing the meaning of having specified cut-off levels for each tested drug and alcohol, and the procedures or protocols, such as chain-of-custody that define the testing process. Securing support from all levels of employees is important, and employers are encouraged to involve their employees in helping to develop and offer input into the written DF-EZ policy, which includes the testing policy and related procedures. For all program levels, the employer is required to pay the costs of testing, if receiving a DF-EZ Program discount from BWC. Only if an employee requests a re-test should the cost be charged to the employee, and if the test result is negative the employer should reimburse the employee. Re-tests very, very seldom come back negative.

An employer should develop and adopt detailed procedures for every aspect of the testing process, and there are numerous decisions to be made, such as who will be tested, what drugs will be tested for, at what cut-off levels, under what protocols, conducted by what laboratory, etc. The DF-EZ Program makes some decisions for an employer, such as requiring a 5-panel drug test with the five drugs specified. However, an employer is free to exceed the minimum program level requirements in its testing program by testing for additional drugs, and there are numerous other decisions to be made. Legal counsel should be consulted throughout the developmental process, especially as to cut-off levels for drug and alcohol testing and operational procedures associated with testing.

Drug and Alcohol Testing Program Requirements

The forms of testing to be used for the DF-EZ Program will be urinalysis [EMIT screen, also referred to as a drug screen, plus a Gas Chromatography/Mass Spectrometry (GC/MS) confirmatory test] for a panel of 5 drugs, and breath or saliva with a confirmatory Evidentiary Breath Test (EBT) for alcohol. To ensure the integrity of testing and for the protection of employees, participating employers must adopt the procedures and chain-of-custody guidelines recommended by DHHS and required by the U.S. Department of Transportation (DOT)/ Federal Motor Carrier Safety Administration (FMCSA).

Employers are responsible for ensuring that laboratories certified by DHHS (known as SAMHSA-certified labs) process the test results and that a qualified Certified Medical Review Officer (MRO) is responsible for evaluating test results. These assurances serve as a protection for both the employer and employees. The drug/alcohol testing used in the DF-EZ program is also known as systems presence testing, which is the only scientific, objective evidence that a certain level of substance exists within an employee's system.

To receive a discount for implementing and operating a DF-EZ Program at any level, an employer is required to fully implement, at a minimum, the following drug and alcohol testing requirements by the applicable dates:

1) Put into place a testing program that includes a minimum of these four categories of testing:

- Pre-employment and/or new hire.
- Reasonable suspicion.
- Post accident.
- Follow-up to assessment or treatment testing.

2) Develop and maintain a written policy that clearly states all the protections being put into place to ensure integrity and accuracy of the testing process:

- Clearly spell out cut-off levels for every drug tested and for alcohol.
- Use DHHS/SAMHSA-certified labs, protocols, collection and chain-of-custody procedures.
- Establish re-testing process for an employee to appeal a test result.
- Full details of the testing process.

3) Develop and adopt:

- Procedures to follow for sending a person to be tested.
- Practices for bringing tested employees back to work.
- Rules about compensation for time spent awaiting test results.
- Documentation guidelines.
- Guidelines for security of records and confidentiality assurances.

4) Train supervisors regarding their responsibilities related to various types of testing prior to implementation of testing.

5) Pay for the cost of the tests (except for re-testing requested by an employee where the testing reaffirms a positive result; split specimen testing is mandated to allow reasonable re-testing).

6) Maintain aggregate drug/alcohol testing records and provide BWC with requested testing information on the ***Progress Report***, and maintain specified information and documents associated with drug/alcohol testing on site for BWC audit purposes (see section entitled Record-Keeping and Recording Requirements.)

As noted above, for all program levels, the employer is required to do four categories of testing, each of which is described in the Drug/Alcohol Testing Requirements chart, along with the required percentages of employees to be tested, where applicable.

Level 2 and Level 3 Requirements

Employers with a Level 2 or Level 3 program are required to meet the testing requirements associated with each of the four testing categories. In addition, employers with a Level 2 program must include random drug testing of 10 percent of the employer's total (average annual) work force over the course of the program year. For public employers, **random** drug testing applies only to a designated safety-sensitive position or function (see Definition of Terms for the DF-EZ Program Rule in the back of this Manual), as you have delineated in your written policy.

Supervisors will need to receive additional training in terms of how random testing is to be administered, and all employees will need to be educated about how this testing will be implemented and the protections that are in place to ensure the process is appropriate.

An employer with a Level 3 program must include random drug testing of 25% of the employer's total (average annual) work force over the course of the program year. For public employers, random drug testing again applies only to safety-sensitive positions or functions, as defined by the employer in its DF-EZ policy and the DF-EZ rule.

Drug and Alcohol Testing Requirements for DF-EZ Program

Type of Test Required	Explanation
Pre-employment (Drug test only) **and/or**	Required within so many hours (defined by employer) after a conditional offer of employment and before the employee begins any work activity with the employer. **and/or**
New hire evaluation (Drug test only) 100 percent of employees will have been tested through either pre-employment or new hire testing within the first 90 days of employment.	May be done as unannounced test that occurs at any time during an employee's designated probation period, not to exceed 90 days.
Reasonable suspicion (Drug and/or alcohol test) Reasonable suspicion testing will be based on observation and documentation.	Required when there is evidence that an employee is using drugs or alcohol in violation of the company's DF-EZ policy, drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. Such facts and inferences may be based on, but are not limited to, any of the following: a) Observable phenomena, such as direct observation of drug or alcohol use, possession or distribution, or the physical symptoms of being under the influence of drugs or alcohol, such as but not limited to slurred speech, dilated pupils, odor of alcohol or marijuana, changes in affect, dynamic mood swings, etc. b) A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance (e.g., frequent absenteeism, excessive tardiness, recurrent accidents) which appears to be related to substance use and does not appear to be attributable to other factors. c) The identification of an employee as the focus of a criminal investigation into unauthorized drug possession, use, or trafficking. d) A report of alcohol or other drug use provided by a reliable and credible source. e) Repeated or flagrant violations of the company's safety or work rules, which are determined by a supervisor to pose a substantial risk of physical injury or property damage and which appear to be related to substance use or substance use that may violate the employer's DF-EZ policy, and do not appear attributable to other factors.

Type of Test Required	Explanation
Post-accident (Drug and alcohol test) All employees who may have caused or contributed to an on-the-job accident, as defined in this rule, shall submit to a drug or alcohol test. This test will be administered as soon as possible after necessary medical attention is received, or within eight hours for alcohol and within 32 hours for other drugs. There are specified conditions in which a test need not be conducted. These are identified elsewhere in this section under post-accident testing.	Required immediately following an on-the-job accident, as defined by Rule 4123-17-58. Accident means an unplanned, unexpected, or unintended event which occurs on the employer's property, during the conduct of the employer's business, or during working hours, or which involves employer-supplied motor vehicles or motor vehicles used in conducting the employer's business, or within the scope of employment, and which results in any of the following: (a) A fatality of anyone involved in the accident. (b) Bodily injury requiring off-site medical attention away from the employer's place of employment. (c) Vehicular damage in apparent excess of a dollar amount stipulated in the employer's DF-EZ policy, or (d) Non-vehicular damage in apparent excess of a dollar amount stipulated in the employer's DF-EZ policy. As used in this rule, accident does not have the same meaning as provided in Division (C) of section 4123.01 of the Revised Code, and the definition of this rule is not intended to modify the definition of a compensable injury under the workers' compensation law. Also, this definition of accident does not match the one used by DOT/FMCSA.
Random (Drug Test only) 10 percent of total work force required for Level 2 DF-EZ. 25 percent of total work force required for Level 3 DF-EZ. Only safety sensitive positions are required to be tested for eligible public employers.	An unannounced test that occurs at a pre-determined frequency among randomly selected employees. Equal probability of selection each time testing occurs**.** Unannounced test of <u>all</u> employees, or all those in a classified group (e.g., safety sensitive, etc.). (see definition of Random Selection in Appendix)
Follow-up to treatment or assessment (Drug and/or alcohol test: negotiated with input by the clinician) Other than the employee passing a return-to-duty test (if the employee allowed to retain employment), there is no requirement for any additional follow-up testing. This becomes the employer's choice.	Unannounced testing that occurs when an employee who has been referred to assessment/treatment for substance use returns to work. Occurs during treatment and/or for a period of time following treatment. The first follow-up test will serve as a "return-to-duty" test and occurs before the employee resumes work activities and following a leave associated with a policy violation.

Further Information about the Various Testing Categories

The application of **pre-employment** and/or **new hire** drug testing means that an employer may do one form of testing or the other or, if circumstances warrant, both. The primary distinction is whether the employee has started actually working for the employer. In either case, 100 percent testing is required but, if new hire testing is used with temporary employees, for example, some may not be around to be tested. The employer is making a serious business decision in doing new hire testing since the temporary employee may cause an accident that would have been prevented by a pre-employment test. Nevertheless, this is an employer's business decision. Again, an employer might choose to do either form of testing, and could do both, as long as 100 percent of employees to be hired or newly hired are tested. Where a union contract specifies a probationary period of less than 90 days, the employer using new hire testing should ensure that testing occurs before the probationary period ends, or before the employee officially becomes a union member, when practical. Otherwise, the employer has up to 90 days to complete this testing.

Reasonable suspicion drug or alcohol testing has its own special challenges, especially associated with the quality of training of supervisors to handle the observations, possible confrontations, documentation and communication when certain employee behaviors occur that suggest possible use/misuse of substances in violation of the employer's written policy. Reasonable suspicion testing is considered "for cause" testing. Possible alcohol use in violation of the employer's written policy is most frequently identified through reasonable suspicion testing. This is why the DF-EZ Program doesn't require random alcohol testing.

Post-accident drug or alcohol testing is administered to <u>all</u> employees who may have caused or contributed to an on-the-job accident (see definition of "accident" in section on DF-EZ Program terms in the back of this manual and/or chart on page 49). The timing of the testing is important, as noted in the chart. Post-accident testing also is linked directly to BWC's claims determination process where a positive test result related to the person filing the workers' compensation claim is typically communicated to BWC by the employer for use in determining the claim. The employer may choose not to do a post-accident test even where off-site medical attention is required IF the following all apply: the employee did not violate a work or safety rule; the accident/injury was not considered serious; the employee's injury was normal for the particular job function being performed; AND there was no reasonable suspicion of substance use in violation of the employer's written policy.

Random drug testing is not required at Level 1, but an employer is free to exceed the minimum requirements and include this form of testing. Many substance use experts consider random testing to be the most effective form of testing with the greatest deterrent capacity. All employees, from the company owner or CEO to line staff, are to be put into the random testing pool from which there is equal probability of selection each time the testing occurs. It should be noted that <u>the random selection pool for the DF-EZ Program is separate from any DOT/FMCSA pool for random testing</u>.

The key characteristics of random testing are that it is as completely a neutral and impartial process as possible, that there is equal probability of selection for each employee each time the testing occurs, that it is based on objective, non-discretionary computer software operated and maintained by an outside contractor, and that employees stay in the selection pool, even if previously selected for testing. Names of employees are not included in the database, merely some indicator such as employee number.

It is critical to educate the entire work force regarding how random testing works, especially since it is frequently misunderstood and/or mistrusted. As the above information indicates, BWC put substantial effort into ensuring employee protections so random testing would not be used against specific individuals for harassment or other inappropriate purposes. BWC expects employers to administer random testing in the spirit of the process described above and employers who violate the above testing provisions may be disqualified from the discount program.

Follow-up drug or alcohol testing involves a follow-up from assessment and/or treatment for any employee who has had a positive test and returns to work, or who self refers for an assessment and/or treatment. It typically begins with a return-to-duty test as first in a series of unannounced tests prior to the employee's return to work. The employer is free under DF-EZ to determine whether to have additional unannounced tests over whatever time period the employer chooses.

Government-required drug and alcohol testing – while not part of the DF-EZ program – always needs to be taken into account. This includes testing required by DOT/FMCSA and other regulatory branches of the DOT such as the Federal Aviation Administration, Federal Railroad Administration, Federal Transit Administration, Research and Special Programs Administration (which includes the Office of Pipeline Safety) and United States Coast Guard. How to conduct testing that is subject to the regulatory authority of one or more of the above agencies is addressed in the written policy section.

Overall, the testing described above is intended to detect and deter substance use that affects the workplace and, through corrective action, to create a safer work environment for all employees.

Important Note
Employers are not prohibited from terminating the employment of an employee based on a first positive test. They are, however, encouraged to look carefully to determine whether the employee could be rehabilitated and to avoid losing their investment in a valued human resource. As long as the employer clearly spells out the options for dealing with an employee who tests positive and consistently applies its own written policy, the employer should be free to differentiate among employees based upon length and quality of service, etc. Thus, the employer may choose to administer discipline to a long-term employee while terminating the employment of someone who has been with the company for a short time. The key is to fully articulate the employer's position in the written policy to ensure that the entire work force clearly understands the rules and they are administered consistently.

Reporting and Documentation Requirements

Once the employer's DF-EZ Program has been implemented, there are various reporting requirements that an employer must follow. In addition, an employer is expected to maintain various information/documents at its workplace for purposes of BWC review. The employer is required to report its progress in terms of drug and alcohol testing as well as to maintain various statistics and other documents.

On its annual ***Progress Report***, the employer is to include:

- Drug and alcohol testing statistics to help BWC evaluate effectiveness of the various categories of testing.

Recommended Approach to Implementing Drug and Alcohol Testing

The DF-EZ Program planning process has two basic stages. Developing a general approach to drug and alcohol testing falls within the first phase. The second phase involves program rollout and on-going implementation. The employer should:

- Plan how to present the purpose of testing and the process of testing to employees at the initial employee education session, and plan to announce the date testing will commence.
- Plan how to present this information to supervisors at the first supervisor training session along with a discussion of the supervisor's role in the testing process.
- Determine particular skill-building approach for supervisors, linked to the testing part of the employer's DF-EZ program.
- Identify and contract with a collection site, qualified MRO and a laboratory certified by the U.S. Department of Health and Human Services (SAMHSA-certified lab).
- Administer the testing program, assigning lead responsibility to the DF-EZ program administrator.
- Establish confidentiality guidelines, especially for record keeping and reporting of test results.
- Ensure the company's legal counsel reviews every aspect of the drug and alcohol testing policy and procedures.
- Include split specimen as a standard collection procedure to allow accurate re-testing, when required. Split specimen testing allows appropriate re-testing. There is no good reason not to contract for this service, which is available at no additional cost, and BWC requires such testing as an employee protection.

There are many decisions an employer must make before the first employee is tested. It is critical that the employer take the time to establish a solid foundation for its testing program. An employer should not forget that testing may be considered by some employees to be a form of search and seizure and that there are sensibilities that need to be observed in developing the testing program to attempt to ensure support from the work force. Legal counsel can offer guidance on this issue.

The employer needs to become well versed in drug and alcohol testing to avoid possible pitfalls and establish an efficient/effective testing program. The information about testing in this manual is a good start. In addition, an employer can become knowledgeable about testing by having labs explain their services and why the employer should contract with them. The employer's occupational health provider is another resource, and an employer might ask its selected managed care organization (MCO) for assistance. The employer is well advised to work with its DF-EZ Program task force to think through every conceivable scenario about testing an employee. All of the information obtained through this research and learning process can be used to build procedures to accommodate the specific testing program. The employer also should establish back-up systems in case something unusual occurs in the testing process. It helps to know in advance whom to call for assistance or advice.

There are several challenges for the employer beginning employee drug and alcohol testing. They include:

- Negotiating the lowest testing price with no hidden costs and staying on top of billing.
- Controlling the confidential receipt of test results and maintaining confidentiality.
- Establishing and maintaining return-to-work policy when an employee is tested for cause.

- Assuring that testing occurs consistently and fairly, including:
    - Follow-up to testing/assessment, including initial return to duty.
    - Remembering to do pre-employment testing before an employee starts work as well as new hire testing within the probationary period or 90 days (whichever occurs earlier).
    - Doing post-accident testing even when there is no reasonable suspicion.
    - Not being tempted to call it a random test when it's really a reasonable suspicion test.
- Identifying that there may be the occasional situation that makes a test difficult such as that involving situations where the Medical Review Officer may need to offer guidance on whether a test is possible such as where an employee has emphysema (unable to give a breath sample) or "shy bladder" or complicated medical condition that may make it difficult to procure a urine specimen. In such situations, the employer should document the reason that a test was not conducted, including information from the MRO evaluating the particular circumstances.

Controlling Confidential Receipt of Test Results and Maintaining Confidentiality

The employer needs to establish a foolproof, confidential mechanism with the lab/MRO to receive test results. Typically, this can be done with a telephone call followed by hard copy in the mail, downloading results from a computer, or over a secured facsimile line. To protect the privacy and confidentiality of tested employees, the employer should select a reporting option that fits its particular workplace. It is imperative that the company designate a primary recipient of the test results and a back up to be contacted only in his or her absence. Employers need to work with their selected lab to find the method best suited for their workplaces.

An employer has to look at overall office logistics to ensure confidentiality. If an employer's fax machine is not private to the person who is receiving the test results, the employer has to decide whether to choose another method to receive results, or have the lab/MRO call ahead and alert the employer's designated person to await receipt as the fax is being transmitted. Even mail can pose a problem if the person opening the mail may not be the employer's designated person; this method of receiving test results would violate confidentiality.

Establishing and Maintaining the Return-to-Work Policy When an Employee Is Tested for Cause

The average amount of time to get negative test results back is 24 to 48 hours from the time the lab receives the specimen. The average to get positive test results back is 72 hours, due to the additional confirmatory step and the intervention of the MRO.

If an employee is sent for a new hire or random test, the form of testing is called suspicion-less while reasonable suspicion or post-accident tests are termed for cause tests. In most cases, when an employee is sent for a reasonable suspicion or post-accident test, he/she should not return to work (and should never be returned to safety-sensitive duty) until after the test results are known. However, this means that an employee may be off duty for one or more days. An employer must determine its practice regarding compensation for those days, must be consistent in its practices, must fight the temptation to bring the employee back to duty prematurely, and should communicate this practice in its written policy. For example, an employer's policy may say that time off will be compensated unless the test result is positive. As long as employees are aware of this policy and it is applied fairly and consistently across the entire work force, then the employer should experience fewer problems with its use.

Assuring that Testing Is Done Consistently/Fairly

It may be obvious that credibility of the testing process in particular is tied to consistent application of clearly articulated procedures and overall fairness of operation. An employer needs to ensure that personality-based decisions do not determine who is tested and how, but that procedures are adhered to.

Drug and Alcohol Testing Practices

It is critical that the employer understand and incorporate into its written DF-EZ policy the parameters of testing, including the specifics of both drug testing and alcohol testing, both of which have very specific practices associated with how they are to be administered. It is clear from the complexity associated with the above practices that considerable thought must go into developing the employer's testing program.

Drug testing practices are to include testing for – at minimum – the 5 drugs identified below and:

- Urinalysis.
- Use of a DHHS/SAMHSA-certified laboratory and adherence to the following:
    - DHHS-approved protocol.
    - DHHS-approved chain-of-custody.
    - DHHS-approved collection sites.
    - EMIT drug screen (preliminary test).
    - GC/MS (confirmatory test).
    - MRO review, interview and ruling on any positive test.
    - Split specimen.

Alcohol testing practices will include:

- Breath or saliva initial screen using:
    - NHTSA-approved resources and technical machinery.
    - At .02 percent blood alcohol content (BAC) on the initial screen, it is required that a confirmatory test be done.
- Confirmatory test shall be conducted under the following conditions:
    - Using a federally approved and qualifying evidentiary breath test (EBT).
    - Administered by a qualifying breath alcohol technician (BAT).
    - If the confirmatory EBT testing machine is not available or reasonably accessible, a blood test should be an option made available to the employee to determine the presence of alcohol.
    - The employer is required to document and maintain on file the reason the EBT was not administered.

NOTE: BWC recommends that an alcohol test confirming at .04 percent BAC be considered a positive test under an employer's DF-EZ policy. This cut-off level is consistent with established practices of the DOT/FMCSA. However, the employer should consult with its legal counsel regarding all cut-off levels.

Specifics of Drug Testing

To protect the integrity and accuracy of the testing, employers are required to use a SAMHSA-certified laboratory and must test for drugs using urinalysis. BWC requires a test for five drugs. Employers are free to test for additional drugs such as the four additional drugs in the 9-panel test below.

5-Panel Drug Test (these are the drugs to be tested by DOT/FMCSA):

1. Cocaine (and its derivatives, including crack cocaine).
2. Cannabinoids (THC/marijuana, hash).
3. Opiates (heroin, codeine, etc.).
4. Amphetamine (including Methamphetamine - central nervous system stimulants).
5. Phencyclidine (PCP).

9-Panel Drug Test (the first five listed below are the required DOT/FMCSA 5-panel):

- Cocaine (and its derivatives, including crack cocaine).
- Cannabinoids (THC/marijuana, hash).
- Opiates (heroin, codeine, etc.).
- Amphetamines (central nervous system stimulants).
- Phencyclidine (PCP).
- Barbiturates (central nervous system depressants).
- Propoxyphene (Darvon).
- Methadone.
- Benzodiazepines (Valium, Librium, etc.).

NOTE: Sometimes testing involves a CDL employee who is subject to a DF-EZ test for more than a five-panel **and the testing does not occur pursuant to DOT regulations** (i.e., does not involve a safety-sensitive mandated test). The voiding is subject to split specimen and the paperwork to be utilized by the collection site should be the non-federal chain of custody form.

Specifics of Drug Testing Process

Employers using a DHHS-certified laboratory and an MRO in their drug testing programs need to have very little concern about accuracy. Many protections are built in to ensure the employee's right to accurate results. The integrity of the testing process should be everyone's concern.

DHHS/SAMHSA-Certified Laboratories

DHHS/SAMHSA-Certified Laboratories

The federal Department of Health and Human Services (DHHS) certifies laboratories to do substance testing. DHHS-certified laboratories are referred to under the name of the department that oversees testing, SAMHSA, the Substance Abuse and Mental Health Services Administration. A SAMHSA-certified drug-testing laboratory must meet very stringent standards. Trained technicians follow standardized procedures, which detail the process from specimen collection and packaging to shipping and analysis. The government closely regulates the laboratory procedures and audits performance, using blind sample testing and even facility reviews to ensure the highest of standards are attained and maintained. SAMHSA-certified labs automatically test for adulterants in a specimen by measuring such things as the pH balance, specific gravity and creatinine. This deals with an employee attempting to adulterate a specimen by adding a foreign substance or extra water.

Currently, there are about 50 SAMHSA-certified labs around the country. To obtain a list of current SAMHSA-certified labs, an employer may call CSAP's Drug-Free Workplace Helpline at

(1-800-843-4971) for a copy by mail and the Division of Workplace Programs (301-443-6014) for a copy by fax, or the employer may consult the Federal Register at a local library.

Preliminary and Confirmatory Testing

At the laboratory, an EMIT preliminary screening test that is 92 – 98% accurate is performed. When the preliminary drug screen is positive, a GC/MS test is administered on a portion of the same specimen to confirm the positive result. This confirmatory test has been found to be virtually 100 percent accurate. This highly advanced technology is akin to taking a fingerprint of the drug. SAMHSA-certified test results have been upheld in the courts for more than 20 years.

Certified Medical Review Officer (MRO)

A Certified Medical Review Officer (MRO) is a physician specially trained in substance use disorders. If the GC/MS test is positive, an MRO gives the donor a chance to provide a legitimate medical explanation, such as a legal prescription for the positive result. If the explanation and subsequent proof satisfy the MRO, the MRO reports a negative drug test result to the employer. The employer only receives a positive test result after the MRO has exhausted all legitimate reasons for a positive test result.

Protocol and Chain-of-Custody

A scientifically accurate test can still be flawed by human error. To minimize this error, the technicians are trained to follow strict DHHS protocols that apply to all stages of the testing procedure. A few examples of the extensive guidelines include:

- √ Picture identification is required before giving the specimen.
- √ The absence of running water in the restroom and a bluing agent added the toilet water prevent the possibility of diluting the specimen.
- √ The temperature of the specimen is taken within four minutes to ensure that it came from the donor.
- √ The specimen is clearly sealed in tamper-resistant packaging and prepared for shipping in front of the donor.

The chain-of-custody paperwork assures that the donor and specimen are correctly matched. The donor, collector, and all other individuals involved in the entire process sign off on the paperwork.

Re-test

As an additional employee protection, the DF-EZ requires an employer to allow an employee to appeal test results through a re-test of the original specimen. As a protocol, SAMHSA-certified labs save part of each specimen for an extended period of time. The employee may have the original specimen re-tested by another SAMHSA-certified lab, which is chosen by the MRO. BWC requires split specimen be used to facilitate a request for a re-test on the initial specimen.

Specifics of Alcohol Testing

A breath test is the most widely used test for the presence of alcohol is, but the preliminary screening test can be done with a qualifying breath or a saliva test. DF-EZ and DOT/FMCSA require that initial and confirmatory breath or saliva tests be performed with resources and technical machinery authorized by NHTSA. The confirmatory test must be performed on a qualifying EBT device, which provides a printout. The DF-EZ Program and DOT/FMCSA both require a BAT who has received the required NHTSA authorized training to administer the test.

Specifics of Alcohol Testing Process

Specific standardized protocol is followed at the collection facility to safeguard against human error occurring during the testing process. Measures are taken to ensure that the instruments are calibrated correctly and routinely. The time between the preliminary screen and the confirmatory screen cannot exceed 30 minutes.

Developing Procedures for Sending an Employee for a Drug or Alcohol Test

After a decision has been made to send an employee for a drug test, measures need to be taken to ensure a smooth, fair and consistent test. Remember to always consult the employer's policy for specifics about testing practices. In general, however, the employer should follow these steps:

STEP 1: Prepare for the test.

- Where appropriate, pull the employee away from safety-sensitive activity.
- When appropriate, complete documentation.
- Determine which test(s) to order.
- Gather necessary paperwork and supplies to give the employee.
- Call collection site.
- Arrange for transportation.

STEP 2: Gain appropriate concurrence and/or arrange for presence of appropriate persons to be present (e.g., union representative).

STEP 3: Inform employee of the need to test.

- Have the employee sign any necessary forms.
- Give necessary forms and supplies to employee.
- Inform employee that he/she must show photo identification.
- Be prepared to answer questions.

STEP 4: Send employee for the test.

- For reasonable suspicion or post-accident testing, direct the employee to proceed immediately to the collection facility.
- For all other types of testing, inform the employee whether or not to return to the work site.

STEP 5: Follow up on the test.

- Ensure that the test was completed.
- Monitor the confidential transmission of test results.
- Document any problems and proceed according to policy guidelines.

Drug and Alcohol Testing: Management of Logistics Chart

The chart below may be helpful to employers in thinking through the logistics associated with managing drug and alcohol testing as it relates to the timing of both routine and for cause tests, transportation issues, employee compensation for time spent in the testing process, and reinstatement to job duties. **Note: Seeking any necessary medical treatment for an injured employee takes priority over administering a drug and/or alcohol test.**

ISSUE	ROUTINE TEST	FOR CAUSE TEST*
Timing of the Test	Test should occur within a pre-determined period of time (e.g., within 24 hours from time of offer of employment).	Drug test should occur as soon as possible, not to exceed 32 hours. Alcohol test should occur as soon as possible, not to exceed 8 hours.
Transportation to collection site	Employee may transport self to collection site	Employee must be transported to collection facility and then home, preferably by a neutral third party (e.g., taxi).
Compensation	Employee typically is compensated while away from the job being tested unless the test result is positive.	Employee typically is not compensated while away from the job being tested or while awaiting test results unless the test result is negative.
Reinstatement to job duties	Employee will return directly to job following the test.	Employee should not resume safety-sensitive duties until test result is received. If the result is positive, he or she should not resume safety-sensitive duties until a negative, return-to-duty test is obtained.

**based on reasonable suspicion or after an accident*

Alcohol Testing

BWC recommends that an alcohol test confirming at .04 percent BAC be considered a positive test under an employer's DF-EZ policy. This cut-off level is consistent with established practices of the Federal DOT in that it mirrors the federal cut-off level for a positive alcohol test. Employers are free to choose a different cut-off level for alcohol and are advised to consult with knowledgeable legal counsel for review and advice regarding cut-off levels.

Employers with CDLs (Meeting DOT/FMCSA Mandates and DF-EZ Requirements)

Employers that are implementing a program to satisfy the DF-EZ Program requirements and must also satisfy DOT testing requirements should carefully think through their operational procedures. There are some differences that an employer needs to be aware of. Employers with CDLs should review the supplemental materials for DF-EZ employers also subject to DOT requirements. Employers may contact their BWC account representatives for additional information.

BWC requires employers to test for the following drugs (the same five drugs also tested for under DOT: amphetamines, cannabinoids, cocaine, opiates and phencyclidine (PCP). BWC requires the use of cut-off levels that have been established by DHHS, shown in the chart that follows. These cut-off levels have stood the test of time and court challenges. However, the 5-panel drug test requirement is a minimum and does not prevent employers from choosing to test for additional drugs (such as barbiturates, benzodiazepines, methadone and propoxyphene; club drugs; and designer drugs) in an effort to address additional workplace concerns. The cut-off levels to be followed for these other drugs should come directly from the DHHS-certified laboratory to which the collection site sends the specimens. DHHS – through SAMHSA – certifies laboratories under very stringent standards. This laboratory review program was formerly conducted under the auspices of NIDA (the National Institute on Drug Abuse), another department within DHHS. These certified labs will offer guidance to employers on the cut-off levels to use for drugs other than the five drugs tested under DOT and the DF-EZ Program, and these cut-off levels will be ones that are fair to employers and employees alike as well as defensible in court.

Drug Testing Cut-Off Levels

A cut-off level is defined as the pre-determined level of drug/metabolite that constitutes whether a tested urine specimen is negative or positive. Cut-off levels are used to establish that an employee has one or more of the drugs in his/her system and, therefore, should be considered as having had a positive test. The purpose of identifying cut-off levels (as opposed to saying that any amount of drug/metabolite in the system constitutes a positive test) is to safeguard against a false positive test. In other words, someone who passively inhales marijuana smoke or eats a poppy seed roll (remembering that heroin is a derivative of the poppy plant) will not test positive if appropriate cut-off levels are used. Cut-off levels are measured in nanograms (one billionth of a gram) per milliliter of urine. An initial test is first used to verify the presence of the drug in the individual's system. The confirmatory test, which is 100,000 times more powerful, measures the genetic "fingerprint" of the specific drug, and is considered 100% accurate. Based on the chart that follow, a Gas Chromatography/Mass Spectrometry (GC/MS) confirmatory test indicating 500 ng/ml or more of amphetamines in a urine specimen would constitute a positive test. Cut-off levels offer protection to both employees and the employer. BWC is concerned about ensuring testing at levels that show conclusively the presence of a drug in an individual's system but without establishing so high a cut-off level as to be meaningless in maintaining a substance-free workplace. That's why our program is based on standards set by DHHS, which has set cut-off levels that are used in testing that occurs to meet federal requirements.

DHHS Cut-Off Levels for the 5-Panel of Drugs Below

Drug	EMIT Screen (ng/ml)	GC/MS Confirmation (ng/ml)
Amphetamines	1000	500
Cannabinoids (Marijuana/THC)	50	15
Cocaine	300	150
Opiates	2,000	2,000
Phencyclidine (PCP)	25	25

Cut-Off Levels for 4 Other Drugs Below

Drug	EMIT Screen (ng/ml)	GC/MS Confirmation (ng/ml)

Barbiturates	300 (typically used)	Consult your DHHS-certified lab
Benzodiazepines (Valium, Librium, etc.)	300 (typically used)	Consult your DHHS-certified lab
Methadone	300 (typically used)	Consult your DHHS-certified lab
Propoxyphene (Darvon, Darvocet, etc.)	300 (typically used)	Consult your DHHS-certified lab

Reminder: Consult with your SAMHSA-certified lab for the cut-off levels that will be used for drugs other than the "DOT 5" (amphetamines, cannabinoids, cocaine, opiates and PCP), which are already set in accordance with DHHS standards.

Employee Assistance

Employee assistance is a cornerstone of any drug-free program. Offering help to employees is a way of showing them they are a valued company resource. For some employers, employee assistance may be a new concept. Others are already taking proactive steps to provide employees with help to resolve personal problems including substance use before these problems impact job performance, thus saving money, building loyalty and preventing problems that affect workplace safety. Employees who believe their employer cares about them are typically more productive.

DF-EZ encourages employers to offer the highest level of employee assistance possible. DF-EZ employers should have an employee assistance plan which – at minimum – consists of providing employees with a list of local community resources to contact to get an assessment by a substance professional and/or treatment. This list will be compiled by BWC staff for employers to give to their employees who are in need of possible assistance.

Having an employee assistance plan in no way implies that you will provide treatment for an employee with a substance program. However, identifying resources for employees who seek help on their own, who are referred by management for a possible problem with alcohol/drugs, or who have a positive alcohol/drug test is a good starting point for showing your employees that you value them. Overall, your plan of action simply addresses how you want to respond to employees who need help.

Interested employers may want to be aware of the different types of employee assistance services that could be offered to their employees. What are the options from which you can choose? The minimum required employee assistance for DF-EZ employers is the list of resources mentioned above. This list consists of assessment and treatment services for employees who are having substance problems, offered by a credentialed professional with a scope of practice in alcohol and other drugs. While you are free to terminate employment for any employee testing positive or attempting to manipulate the testing process, you should still call the employee into a private meeting and attempt to emphasize the importance of the employee getting a professional assessment of the problem that resulted in violating your policy. Obviously, there's a problem since the employee's substance use may already have cost this employee his or her job. You are providing an important service to this employee by emphasizing the value of getting a substance assessment and giving the person a list of places to turn to for help. An assessment by a substance professional can identify the extent of the employee's problem, get it out in the open, identify what to do to address it and start the employee down the road to more responsible and healthier behavior – regardless of whether you allow the person to retain employment.

Other options include establishing a relationship with a local employee assistance provider to whom you can refer an employee for an assessment. You are not required to offer this service nor pay for it. However, it would allow you the choice of making a referral if you chose to keep an employee rather than terminating employment. Yet another option is offering as a benefit employee health care coverage that includes chemical dependency counseling. This is a step up since the employer and employee typically share the expense for services that are utilized.

The top of the assistance "chain" is generally acknowledged to be an Employee Assistance Program (EAP). You are not required by DF-EZ to have an EAP, which differs dramatically from an employee assistance plan but may choose this "gold standard" of assistance services which typically can result in a return on your investment dollar.

An EAP is a highly developed set of broad-ranging services that complies with established professional standards and employs certified staff (known as Certified Employee Assistance Professionals or CEAPs). In the long run, an EAP can be a cost-effective, comprehensive option for an employer to help its employees deal with problems affecting their work performance. An EAP can identify and help resolve problems by applying short-term counseling, referral and follow-up services. In addition, the EAP can provide such services as management training and consultation, prevention and education programs, crisis intervention, benefits analysis and organizational development. Again, DF-EZ does not require any employers to put an EAP in place but does want employers to be aware that there may be some value to you in considering such an option.

Regardless of which employee assistance option you choose at or above the minimum requirement, your written DF-EZ policy should clearly show a commitment to helping employees with substance problems even if you choose to terminate on a first positive test and will offer help (beyond sharing the list) to only those employees who come forward voluntarily with a problem before there's a substance test being required or a positive test result.

BWC encourages DF-EZ employers to become familiar with employee assistance services that tax dollars already support to learn what's available for their employees. To learn about the local community service network of service providers, you can call your local Alcohol, Drug Addiction, and Mental Health (ADAMH) Board, or Alcohol and Drug Addiction Service (ADAS) Board. Another resource is the Ohio Department of Alcohol & Drug Addiction Services (ODADAS). You can call ODADAS at 1-614-466-3445 if unable to find the number for your local Board or can call the Ohio Prevention and Education Resource Center (OPERC) toll free at 1-800-788-7254 to receive written information and other resources on dealing with substance use. "Saving" an employee through providing quality employee assistance services not only saves you money in terms of preserving your investment in the employee, it also has a very positive effect on the person's family and capability of affecting family dysfunction.

Become aware of the low-cost and free services available in your communities that employees can benefit from. Ohio has an excellent community services network subsidized by tax dollars, with services available for everyone regardless of ability to pay. One of the benefits of DF-EZ is that you are educating your employees and providing information to them about available help. Your company is part of a community, and your adult employees are not just workers; they are parents, taxpayers, voters and consumers. They are often so busy that they don't find the time to learn the basics about substance use or slow down long enough to become aware that they or someone close to them may be developing a problem with alcohol or other drugs. Once your program begins to expose employees to the facts and impact of substance use, you'll be happy that you have a plan with "the next step" for those who want more information or assistance.

If you do choose to retain employees with substance problems after a first positive test, remember to work out the following procedures in advance:

- How to refer an employee to professional substance services for assessment and/or treatment, when appropriate.
- How you will handle re-entry and reintegration of employees coming back to duty after an assessment and/or treatment (if you allow a treatment option).
- How to protect confidentiality for employees who voluntarily seek or are referred for assessment and/or treatment, including protection of employee records.
- Guidelines regarding compensation or employment status for an employee's time away from work for assessment and/or treatment, as applicable.

As for an employee who tests positive – if you choose to retain the employee – remember to detail the consequences for a subsequent positive test for violating your "second chance" or "last

chance" agreement. And decide how you want to handle anyone attempting to adulterate a specimen, substitute a specimen or refuse to be tested.

Summary of Employee Assistance Requirements (applies to all Levels 1, 2 and 3 of DF-EZ)
As a DF-EZ employer, you are free to choose termination on a first positive if this is what your written policy says. Regardless, you should share the list containing names, addresses and phone numbers of assessment and treatment resources in your local community, a list that will be provided by BWC staff. In any case, the specifics of how employees who test positive will be dealt with (discipline, probation, termination) should be clearly addressed in your written policy. For any level DF-EZ Program, upon an employee's first positive drug or alcohol test, in addition to any corrective action, you should explain to the employee the importance of a professional assessment. You should encourage the employee to get this assessment even if you are choosing to terminate employment.

10-Step Business Plan for Level 2 and Level 3 Participants

The 10-Step Business Plan is the core of all BWC safety discount programs. While not mandatory for employers approved for Level 1, it is recommended as a safety program that provides structure and cohesiveness to an employer's overall safety efforts. The intent in incorporating the 10-Step Business Plan for employers implementing a Level 2 or Level 3 program is to stress the importance of integrating substance-free workplace efforts with employers' overall safety and health efforts.

To be eligible for a discount in a Level 2 program, an employer must implement three selected steps the 10-Step Business Plan during its first year at Level 2. An employer at Level 3 must also complete these three steps to be eligible for the Level 3 discount. The three steps detailed below are Steps 1 (Visible, Active Senior Management Leadership), 2 (Employee Involvement and Recognition) and 8 (Written and Communicated Safe Work Practices). These required three steps are bolded below.

The ten steps are summarized in this section. For additional information, please request the brochure entitled "**10-Step Business Plan: A Guide for Developing Organizational Excellence in Safety and Health Management**," which is available from your BWC account representative.

1. Visible, Active Senior Management Leadership

Well-managed businesses establish safety and health as a core value of their organizations. Senior management staff, including the top executive on site, must be the role models for how they want all other employees to act in creating a safe work environment. Active leadership shall include, at a minimum, the following:

- **Authorizing the necessary resources for accident prevention.**
- **Discussing safety processes and improvements regularly during staff or employee meetings.**
- **Ensuring that all members of management are held accountable for accident prevention activities, and for managing accident prevention processes.**
- **Annually assessing the success of the safety process by utilizing perceptions surveys, personal interviews and behavior sampling strategies.**
- **Encouraging employees to take an active part in maintaining a safe workplace.**

2. Employee Involvement and Recognition

Both management and employees need to actively participate in the safety and health management process for it to be effective. Employee participation opportunities include:

- **Safety and health involvement teams, focus groups, and safety and health committees.**
- **Accident investigations.**
- **Safety and health audits.**
- **Instructing safety and health training programs.**

A program is to be established to identify and formally recognize employees for excellence in accident prevention. Recognition opportunities could include:

- Consistently high contribution to safety and health.
- Contribution to continuous improvement through participation in problem-solving, decision making or perception surveys.
- Suggestions for safety and health improvements, or employees who could complete special safety and health projects.

3. Medical Treatment and Return-to Work Practices

Employers are to establish a post-injury or disability management policy and procedure consistent with the Health Partnership Plan (HPP) to help injured or ill employees obtain quality medical care and return to work. The disability management procedure shall include, at a minimum:

- Employers informing their employees of the selected MCO.
- Informing employees of procedures identifying where medical treatment can be obtained.
- Providing employees with other supporting information or materials.
- Immediate reporting of accidents and illnesses to a supervisor.
- Regular supervisory communications with off-work employees during convalescence.
- Investigation of all accidents within 24 hours to identify system or process improvements so corrective measures can be taken.
- When not prohibited by labor agreement, a modified duty or transitional work program that allows employees to return to work in a productive capacity during the recuperative period.

4. **Communications**

The employer is to include regular verbal and written communication on matters affecting employee safety and health in the organization's approach to managing safety and health. Communications shall include:

- Quarterly written and/or verbal feedback to all employees on their accident prevention performance.
- A process for upward communication as well as downward and throughout the organization.
- Tools for communication could include memos, bulletin boards, staff and general meetings.
- Feedback should include the organization's overall safety and health performance.

5. **Timely Notification of Claims**

As of March 1, 1997, an employer must report claims immediately to its MCOs, which reports the claim to BWC within 24 hours. Employers must follow up with their MCOs to ensure all cases involving lost time of more than seven days are reported to BWC within 14 days of the date of injury, or one week of being notified of the incident by the employee. The employer will comply with all requirements for reporting claims to the employer's MCO as specified under the HPP Rules.

6. **Safety and Health Process Coordination and Employer Education**

The employer is required to designate an individual as the accident prevention coordinator, give that person responsibility and authority to facilitate organizational safety systems and processes, and ensure he or she develops the knowledge and skills for creating a safer working environment. Responsibilities shall include:

- Helping management and employees identify accident prevention and safety and health training needs (possibly through perception surveys, interviews, behavior sampling or other methods).
- Helping supervisors make changes or develop strategies that improve safety and health.
- Identifying and communicating new safety and health requirements.
- Compiling accident- or illness-related records.
- Tracking progress on safety and health-related projects.
- Working with employees to optimize safe work practices.

An employer may choose to delegate these functions to more than one person. A small company owner may assume these duties or delegate them to a manager. In either case, the accident prevention coordinator(s) should consider attending a safety and health management seminar

each year. BWC's Division of Safety & Hygiene's Ohio Center for Occupational Safety & Health provides numerous seminars to employer representatives at no additional cost. For a listing, employers may call 1-800-OHIOBWC (1-800-644-6292) select option 22.

7. **A Written Orientation and Employee Training Plan**

Each organization will identify and respond to the specific training needs of its employees, including supervisors, managers and team leaders. Employers will develop a written safety and health training program that documents specific training objectives and instruction processes. Orientation is to include:

- Company safety and health policy.
- Employee responsibilities.
- Medical procedures such as how and when to report injuries or illnesses.
- Actions to take in case of emergencies.
- How to report unsafe practices or conditions.
- Return-to-work procedures.

Safety and health training shall include:

- Hazard communication.
- Bloodborne pathogens, if applicable.
- Specific job/task safe work practices and hazard recognition.

At a minimum, training is to cover procedures for the safe and efficient use of machinery and tools, and ergonomic risk factors, including the prevention of cumulative trauma disorders. Training should also focus on chemical hazards and how to prevent contact or exposure and, if appropriate, procedures for lockout/tagout, hot work permits, and confined space entry. All training must be documented to include the date, topics covered, instructor's name, and the names of employees attending the training session. Each employee in attendance should sign the documentation form on the day of completion of training.

8. Written and Communicated Safe Work Practices

Guidance for employees in the form of written safe work practices is important for a clear understanding of job requirements and responsibilities. The employer is to identify, document and make available to all employees both the general and job-specific safe work practices. All employees are to sign a statement to indicate they have read, understood and will follow the safe work practices. Examples of the knowledge of general safe work practices that are expected of most employees include:

- **Good housekeeping.**
- **Personal protective equipment.**
- **First-aid procedures.**
- **Ergonomic principles.**
- **Respiratory protection.**
- **Lockout/tagout procedures.**
- **Confined-space entry.**
- **Hazard communication.**
- **Bloodborne pathogens, if applicable.**

Job-specific safe-work practices apply to operations and tasks that involve recognized hazards and risks associated with those specific tasks. These work practices are to be posted or made readily available in each work area.

9. **Written Safety and Health Statement**

The employer's top executive is required to sign a safety and health policy document to be given to all new hires. The employer will communicate the policy to all employees, then review it with them on an annual basis. The statement/document shall include:

- Management's, supervisors' and employees' responsibilities with regard to the organization's commitment to workplace safety and health.
- The commitment to returning injured or ill employees to work at the earliest opportunity.

10. **Recordkeeping and Data Analysis**

Organizations must compile occupational accident- and illness-related data to:

- Identify safety and health process problems.
- Help manage the compensation process.
- Provide information necessary for developing solutions to problems.

10-Step Business Plan of Action

No formal ***Plan of Action*** is required for DF-EZ employers who are expected to work cooperatively with their BWC account representative to implement Steps 1, 2 and 8 at Level 2 or Level 3. Your BWC representative will determine what paperwork/documentation will be required of you and will evaluate your progress in implementing the three required steps.

The Process of Choosing/Contracting with Vendors

There is no one central organization that can ensure the ability of professionals and/or verify their level of knowledge about various aspects of drug-free workplace programs. Therefore, employers have to be the ones to evaluate credentials and experience. Employers should seek references by asking for the names of previous clients of anyone whom they are considering contracting with. They should then contact these clients to verify level of competence and satisfaction. Since past performance tends to be the best indicator of future performance, this tends to be a reasonable way to evaluate a consultant's ability. In this section, we've attempted to provide some helpful hints for employers regarding dealing with vendors. Included are how to "qualify" professionals to determine whether they have the needed credentials, experience and expertise to offer the employer competent help.

Tips on How to Evaluate ("Qualify") the Assistance Offered by Vendors

In determining what resources to use to develop its DF-EZ Program/policy, an employer needs to consider its individual work environment. Environments tend to differ based on the nature of the work being performed, the logistics of managing each employer's operation and the individuals that comprise the work force. Thus, it makes sense to obtain assistance from competent professionals who are both knowledgeable in the field of drug-free workplace programs and in adapting a policy to specific demographics of a given employer's work/operations.

Organizational and human resource consultants, attorneys, drug testing/lab services, employee assistance providers, and treatment centers may consult with employers to establish a drug-free workplace. It is very important for an employer to accurately assess the expertise of each of these professionals. Employers have various liabilities, and it is critical that the professionals chosen by the employer are competent in offering services to create a functional DF-EZ Program. For example, it's important that a consultant have knowledge of the legal issues that impact drug-free workplace programs and also have practical experience working with employers to implement a program. Otherwise, an employer may put itself at risk. The burden is on the employer to evaluate the qualifications of <u>all</u> potential consultants or providers from whom employers may accept assistance in the development of policy and program guidelines. And, an employer should have <u>legal counsel review</u> the policy and operational guidelines <u>before</u> implementing its program.

Written Policy and Program Development Services

An employer may also obtain assistance in finding knowledgeable legal counsel by contacting the local Bar Association for referral to a selection of attorneys that specialize in employment law and also have expertise in drug-free workplace policy development. Assessing the experience and skills of attorneys and others who may help design and write the employer's policy and procedures is an important initial step in attempting to implement a DF-EZ Program. The employer should consider consulting legal counsel throughout the written policy development process and have its DF-EZ Program reviewed in its entirety to ensure compliance with all applicable federal, state and local statutes and to assure there are no conflicts among the various jurisdictions. Also, legal counsel can verify that all employer and employee protections are in place. A DF-EZ Program that an employer establishes to deal with substance use must be sensitive to, and conform to:

- Federal statutes.
- Any related state laws.
- Any local ordinances that may apply to its written policy and/or the operational practices of its program.

These boundaries may be specifically labeled as drug and alcohol legislation, but they often fall into the category of employment law. Even among employment law specialists, there may by only a limited number who stay current on evolving developments. Clearly, it is in the employer's interest to consult with the most knowledgeable experts in developing their DF-EZ Program. The attention to developing the employer's DF-EZ Program that is paid up-front will bear significant dividends down the road, and will be cost-effective in the long run.

Attorneys

An employer implementing a DF-EZ Program may want to consider some of the following qualifications when shopping for an attorney:

- experienced in drug-free workplace policy and program development.
- able to provide names of satisfied clients for whom the attorney has previously done this type of consultation.
- reviews legislation and the body of case law that has an impact on drug-free workplace programs.
- able to discuss in layman's terms the practical issues associated with operating a DF-EZ Program.
- knowledgeable in employment and labor law.

Development Consultants

In developing and implementing its DF-EZ Program, an employer is likely to deal with a number of professions. If a consultant is used to develop policy and operational procedures, the employer should choose a consultant with an established record including a comprehensive knowledge of issues and with experience in the process of drug testing employees. One option is to consult with a consultant organization that works with employers to develop a DF-EZ Program. The employer is looking for a vendor that specializes in this type of service since it clearly takes a considerable amount of research and attention to stay current on all the issues at the federal and state level. The employer may need the vendor to customize program specifics, and to ensure all liabilities are reviewed. This is an important reason employers should be choose carefully in selecting this type of consultant.

As noted above, the people who are capable of helping an employer develop its DF-EZ policy and program operations are not found within a single profession. It is the employer's responsibility to identify and qualify candidates who might provide this service. To assist in this process, the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) maintains a list of providers [http://www.odadas.state.oh.us/dfwp/dfwp.asp]offering to assist employers with developing their DF-EZ Programs. The current directory of vendors includes those who have expressed interest in offering services and who (for Employee Education and Supervisor Training) meet the criteria spelled out in the DF-EZ Program Rule. Again, from a "buyer-beware" legal principle, an employer always needs to verify the level of experience and expertise possessed by any consultant.

Typically, an employer would look for a DWFP program development consultant that:

- Can demonstrate experience in drug-free workplace policy and program development.
- Has up-to-date knowledge regarding legislation and the body of case law that has an impact on drug-free workplace programs.
- Provides references.

- Verifies the ability to go beyond just writing a policy statement by knowledge that:
    - Reflects the most current federal and state legislation.
    - Integrates management and labor concerns.
    - Takes the greatest advantage of workers' compensation, employee benefits and health-care opportunities.
    - Balances the costs including tax considerations and benefits.
    - Balances managerial and legal issues.

Employee Education Services

The employer must work in tandem with some type of substance use professional (or someone supervised by a credentialed professional) to deliver employee education sessions. The employer may choose to have this person involved in the planning portion as well as service delivery. A designated representative of the employer, such as the DF-EZ Program Administrator, might be a good person to present the details about the employer's policy and program operation, while the qualified outside presenter focuses on alcohol, drug treatment and services information. For additional resources, an employer may turn to its own Employee Assistance Program (EAP) or employee assistance provider, local community services agencies, or local treatment centers, hospitals, colleges and universities. Many high schools also will have qualifying substance use professionals who can help with employee education.

An employer should shop for someone with knowledge of alcohol and other drugs, the disease model associated with alcoholism and drug addiction, and local support resources and systems for troubled individuals. It's helpful, too, if the vendor is willing and able to develop knowledge of the employer's DF-EZ policy, program procedures and overall business operations. To comply with the BWC's DF-EZ Program, the educator must hold (or be supervised by someone who holds) one of the approved credentials (SAP, CEAP, CCDCIII, OCPC or OCPS). An employer will still need to evaluate these professionals to determine whether they have the experience/expertise to offer competent help and not miss key aspects of the educational awareness process. The employer should ask for names of previous clients of each professional being considered and confer with some of these clients to verify the level of competence and level of satisfaction.

Supervisor Training Services

The employer needs to think carefully about who will conduct its supervisor training. Obviously, the trainer needs to understand the policy thoroughly and also needs to have a clear understanding of the mission and intent of the employer's program as well as knowledge of good supervisory practices. The trainer's ability to handle difficult questions, to diffuse participant resistance and/or challenge supervisors about their role will play a critical role in how effective the training is.

If planning to use a qualified, credentialed person within its own organization to do supervisor training, the employer should consider the person's ability to present the information in a positive manner, reputation among other supervisors and ability to answer questions directly/honestly. If the person whom the employer wants to do the supervisor training does not hold one of the approved credentials, this person must be supervised by someone who does. When using an outside trainer, the employer needs to ensure that the contractor knows the company's DF-EZ policy, company culture, substance-free workplace issues (e.g., legal issues, drug testing, etc.), drug and alcohol issues (e.g., addiction, treatment, specific drug information, etc.) and effective management practices (e.g., documentation, coaching and confrontation, etc.).

Many treatment professionals and/or facilities have experience in training supervisors about alcohol and other drug issues. The selected trainer needs to know substance use and drug-free workplace issue, and to understand the DF-EZ policy, both from a theoretical and a practical standpoint. Because the employer wants its supervisors to become engaged in building skills, it makes sense to shop for a trainer who not only knows the issues but also has the reputation (from referral or references) for getting training participants fully involved. An employer's representative (typically the DF-EZ Program Administrator) can work in tandem with a qualified trainer to present details about the company's policy and program operation, while the outside trainer focuses on alcohol, drug, treatment and services information and skill building. This can help give the sessions some variety.

The employer may choose to look for the following qualifications in selecting a trainer:

- Expertise in alcohol and other drugs.
- Documented training experience and skills.
- Knowledge of local and national support resources for the employer and employees.
- Willingness to learn the employer's DF-EZ policy and program procedures.

As with employee education, the employer may work with a substance use professional in planning as well as delivering a supervisor training program. The required, qualified trainer should focus on skill-building exercises designed to help supervisors overcome possible reluctance to deal with the sensitive, emotion-charged issue of alcohol and drug use, and how to become a helper who observes behavior objectively, confronts employees when appropriate, deals appropriately with behaviors that violate the DF-EZ policy, and offers support to employees in terms of available resources. An employer may turn to its own employee assistance provider or EAP, local community services agencies, or local treatment centers, hospitals, colleges and universities for additional resources. Many high schools also will have qualifying substance abuse professionals who can help with supervisor training.

Drug and Alcohol Testing Services, including Laboratories, Collection Sites (Collectors) and MROs

An employer can shop separately for every element of the drug-testing process. However, there are advantages to negotiating directly with a representative from the laboratory. It is the lab that has the greatest responsibility to make sure all protocols are followed; therefore, the lab is typically capable of referring an employer or setting up such additional components as collection site, the MRO, billing, etc.

Where an employer has a pre-existing relationship with an occupational health clinic, third party administrator or other organization for occupational testing, or the employer is already doing mandated DOT/FMCSA testing, then this might be a good place to begin the shopping process. These relationships are familiar to the employer, and these organizations should be informed about DHHS-compliant testing of employees (although they may not actually be involved in the process).

Drug and Alcohol Testing Vendors

Employers participating in BWC's DF-EZ program are required to use substance testing that incorporates the greatest protections available. Incorporating these protections means spending more time, effort and sometimes more money in shopping, setting up and administering a program. However, it assures a testing process that has greater integrity, is more likely to be accepted by employees, and is less likely to be vulnerable to legal challenges. The key to testing employees the right way is the use of DHHS/SAMHSA-certified laboratories to analyze urine and blood specimens, and federally authorized (NHTSA) resources for saliva and breath specimens. A list of these laboratories and resources is available through the Federal Registry as well as in the Resources section at the back of this manual.

The federal government has established protocols and chain-of-custody guidelines for specimen collection, transportation of the specimen from the collection site to the laboratory, screening and confirmatory testing, medical review of test results, reporting of those results to the employer, random selection and re-testing. The fees for these elements can be bundled or split apart. If bundled, the employer will not only need to ask what is specifically included in the quoted price but, very importantly, what is missing and not included in the package.

An employer can negotiate directly with the laboratory which will, in turn, recommend vendors and/or will arrange for each additional element of the process needed beyond the laboratory testing. This is a standard practice, and there are strict governmental guidelines for the various disciplines involved to prevent any conflict of interest. Or, the employer can assemble its own configuration of separate entities each carrying out one of the steps in the process (collection, transportation of the specimen, MRO, etc.). In either case, employers will be assured of greater quality and lower cost if they are critical in their shopping.

Negotiating Price

An employer can become confused in obtaining pricing quotes from laboratories. Employers should ask for detailed itemization of what the costs will be, especially if there will be <u>any</u> charges per test beyond what has been quoted or projected. Employers can sometimes find that the price they understood for a complete test does not include the charge for services of a MRO, or of the collection supplies, forms, etc. Ideally, employers should establish a relationship with a lab from which they can walk away if dissatisfied. It is important that employers pay attention on an on-going basis to the number of tests performed and the billings. This will help to avoid surprises.

When shopping for drug testing, it is recommended that the employer solicit multiple bids or quotes. This effort can not only help to assure the best pricing; it can offer an important learning experience for the employer that may make the employer a better price negotiator. The employer should make certain that the issue of indemnification of false positive test results is discussed and resolved when shopping for drug testing. This is an important bottom line issue. It is important for the employer to remain aware of all costs associated with conducting testing. By carefully reviewing billing statements from the laboratory and other parties to the testing process, the employer can appropriately assess one of the major costs of operating the DF-EZ Program.

Checklist for Negotiating Contract with a Lab

The following is a working checklist to assist representatives of the employer in gathering information when preparing to negotiate a contract with a laboratory for drug and alcohol testing.

Credentials, Facilities, Resources

___ Lab certifications/accreditation (beyond DHHS/NIDA-certified)
___ Certificate of insurance
___ Number of DHHS-certified labs
___ Client list
___ Number of collection sites within ___ of miles of company locations, hours of operation
___ Collection sites (24-hours)
___ On-site collection
___ Courier system (company-owned or other, frequency, flexibility)
___ Reporting mechanism options

Testing procedures

___ Negatives and positives — turn around time from specimen collection
___ Reporting system (courier, FAX, mail, electronic, etc.)
___ Random selection service available
___ Post-accident arrangements

Type of testing conducted and costs

___	DOT/FMCSA, DHHS/NIDA-5	Bundled vs. split fees
___	9-drug profile	Bundled vs. split fees
___	GC/MS	Bundled vs. split fees
___	Specifically requested, additional drug(s)	
___	Alcohol screen: saliva, breath	
___	Alcohol test, blood	
___	EBT: screen and confirm	

Negotiable service charges

___ Personalized requisitions
___ Collection fee
___ MRO
___ Post-accident/remote customer service
___ 1-800 customer service
___ Charges for supplies, kits, shipping or handling
___ Random selection service
___ Expert witness and court testimony

Specific to alcohol testing

___ Certificate of insurance
___ NHTSA: EBT and blood collection sites within ___ of miles of employer locations, hours of operation
___ Client list
___ EBT, blood collection sites (24 hours) and on-site collection
___ Certified BAT, STT training (technical assistance, manuals, wall charts, videos)
___ Negatives and positives - turnaround time from specimen collection
___ Post-accident arrangements
___ Random selection service
___ Costs: Alcohol test, blood test
NHTSA alcohol screen: saliva, breath
NHTSA EBT: screen and confirm

Employee Assistance Services

Employers need to be careful in shopping for employee assistance services or contracting with an EAP. There is no central professional body that licenses a quality EAP service. Often the phrase "Employee Assistance Program" is used generically rather than to a full-blown program of coordinated services. It may be used incorrectly to refer to a hotline or an insurance company that assesses employee need and makes a referral for the lowest level of service needed.

A good EAP serves two masters: the employees as individuals and the employer. Generally, contracts will provide for the EAP to be just a phone call or visit away, and able to offer support and recommendations for challenging managerial decisions, and dealing with confrontations and/or unusual situations which arise. Contracts with an EAP often involve an employer paying for the service up-front so it is available and waiting to be used. Employers need to ensure that they get their money's worth. They should require utilization reports (national rate is 5% to 8% utilization) and take advantage of additional no-cost services offered by the EAP, such as education seminars, EAP promotions, newsletters, payroll stuffers, videotape libraries, etc.

If an employer spends the time to build a solid relationship with a qualified substance use professional, services are likely to be substantially improved. The time spent in building these relationships can make the difference regardless of whether the issue is to get an assessment done expediently or to run interference with an insurance company, and whether the professional is from the local community service or is under contract with the employer's company.

Professional Associations

There is a professional employee assistance organization in Ohio that has regional and local chapters and can offer additional information. Employers can call the Employee Assistance Professionals Association (EAPA) (see Resources section at back of this manual) for information on how to evaluate and select EAPs, their value, how they operate and how to find quality national, regional, and local providers.

Substance Abuse Professional

One type of professional available to assist an employee with a drug and/or alcohol problem is known as a Substance Abuse Professional or "SAP." A SAP is qualified under DF-EZ to administer an assessment of an employee after a positive alcohol or drug test or upon a self-referral. A SAP must be a licensed physician (medical doctor or doctor of osteopathic medicine) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders. A licensed or certified psychologist, social worker, CEAP, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) who meets these criteria also may be a SAP. Employers must assess these as possible resources the same as with any other professional whose services are being considered; the professional degree possessed by the person or title alone does not provide sufficient information for an employer to determine quality of services.

Glossary of Acronyms Used in This Manual

ADA	Americans with Disabilities Act
ADAMH	Alcohol, Drug Addiction and Mental Health Services Board (county boards)
ADAS	Alcohol and Drug Addiction Services Board (county boards)
AOD	Alcohol and Other Drugs
BAC	Blood Alcohol Content
BWC	(Ohio) Bureau of Workers' Compensation
CADCA	Community Anti-Drug Coalition of America
CAP	College of American Pathologists
CCDCIII	Certified Chemical Dependency Counselor
CEAP	Certified Employee Assistance Professional
DHHS	U.S. Department of Health and Human Services
DOT	U.S. Department of Transportation
EAP	Employee Assistance Program
FMCSA	Federal Motor Carrier Safety Administration
5-Panel	A drug test covering five drugs (required by D0T/FMCSA)
GC/MS	Gas Chromatography/Mass Spectrometry (confirmatory drug test)
MCO	Managed Care Organization
MRO	Medical Review Officer
NCADI	National Clearinghouse of Alcohol and Drug Information
NHTSA	National Highway Traffic Safety Administration
NIDA	National Institute on Drug Abuse (predecessor to SAMHSA)
OCPS 1 and 2	Ohio Certified Prevention Specialist
ODADAS	Ohio Department of Alcohol and Drug Addiction Services
OTC	Over-the-counter medications
SAMHSA	Substance Abuse and Mental Health Services Administration
SAP	Substance Abuse Professional
9-Panel	A drug test covering nine drugs
TPA	Third Party Administrator

Drug and Alcohol Testing Terminology

Air blanks – A quality assurance test administered on an EBT to ensure that the machine is testing accurately.

Alcohol concentration – The amount of alcohol in an individual's breath, measured in grams per 210 liters of breath.

Breath alcohol technician (BAT) – The only technician who can conduct a breath alcohol test for the Bureau's DF-EZ Program. To be classified a BAT, an individual is required to complete training and proficiency requirements outlined by the federal government.

Chain of custody – The protocol followed when submitting specimens for drug testing. It assures that there is no opportunity for contamination or switching of samples. Elements include signed and witnessed forms, sealed and initialed containers, and couriers requiring a receipt.

Collection site – A place where individuals provide specimens of their urine to be analyzed for the presence of drugs, or breath, saliva or (on rare occasion) blood to be analyzed for the presence of alcohol. This site may or may not be owned and/or operated by the laboratory that actually analyzes the specimen.

Confirmatory test – When testing for drugs, this is the second analytical procedure to confirm the presence of a specific drug/metabolite in a urine specimen. This procedure uses a more sophisticated technique (e.g., GC/MS, EBT) to ensure reliability and accuracy. With breath testing for alcohol, the confirmatory test is conducted on an EBT which has the capability to print out the results, date and time, a sequential test number, and the name and serial number of the testing device.

Cut-off level – A pre-determined amount of drug metabolite, measured in nanograms (ng) per milliliter (ml) of urine, which constitutes whether a tested specimen is negative or positive. For example, a test would be declared positive if the amount of drug/metabolite were equal to or above the cut-off level. Employers typically choose levels that have been adopted and tested by a recognized authority such as the Department of Health and Human Services (DHHS) or, for drugs other than the "DOT 5," are recommended by their DHHS-certified laboratory.

Drug metabolite – The specific substance produced when the body breaks down a given drug as it passes through the body and is excreted in the urine.

Evidentiary breath testing devices (EBT) – Instruments used to measure the amount of alcohol in an individual's system. In DOT/FMCSA-mandated alcohol testing, these instruments are approved by the federal government and operated by trained and certified technicians. The DF-EZ Program is modeled on the federal programs in terms of procedures.

Enzyme multiplied immunoassay technique (EMIT) – A preliminary screening test performed on a urine specimen to identify the presence of a drug/metabolite in an individual's system. The accuracy of this screen ranges between 92% to 98%. If this test is positive, a second and more sophisticated analysis is conducted to confirm which drug/metabolites are present and in what quantity.

Gas Chromatography/Mass Spectrometry (GC/MS) – A state-of-the-art test used to confirm the presence and amount of an identified drug/metabolite in a urine specimen. This test ensures

that over-the-counter drugs are not reported as positive results and is virtually 100% accurate from a scientific standpoint.

Laboratory – Facility where a urine specimen is analyzed for the presence of drugs/metabolites. The specimen is typically not collected at this facility, but rather at a designated collection site that then ensures timely transport of the specimen to the laboratory.

Medical Review Officer (MRO) – A licensed physician responsible for receiving laboratory results and determining if there is a medical explanation for the presence of drugs/metabolites in the donor's urine. This physician must have knowledge of substance use disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history and any other relevant medical information. MROs follow extensive guidelines that have been published by the federal Department of Health & Human Services.

Re-test – A second opinion analysis of a urine specimen originally deemed positive for drugs/metabolites. This test is usually requested by the donor and performed at a laboratory meeting the same standards as the lab conducting the first analysis. Re-tests should be done on a split specimen in order to be effective.

SAMHSA-certified (also referred to as DHHS-certified) laboratory– A drug testing facility which is certified and closely monitored by the DHHS/SAMHSA. To obtain and maintain certification, a laboratory must undergo extensive performance testing and on-site inspections.

Substance Abuse Professional (SAP) – A professional who is qualified by the federal government to perform DOT/FMCSA-required alcohol/drug assessments. Qualified professionals include licensed physicians, licensed/certified psychologists, social workers, employee assistance professionals and certified addiction counselors with knowledge of and clinical experience in the diagnosis and treatment of alcohol/drug-related disorders.

Screening test technician (STT) – A technician who is qualified to use the saliva testing mechanism to screen for alcohol.

Resources

The following resources may help the employer to establish a drug-free workplace policy and program. Many of these services are free. Use of these resources will help the employer to implement a drug-free workplace program at minimal costs. Other resources are also available. When calling the numbers below, feel free to ask for additional resources.

Local Resources

Ohio Bureau of Workers' Compensation .....…….1-800-OHIOBWC
BWC has business consultants, the Division of Safety and Hygiene and personnel in several field offices who can offer technical assistance and answer questions regarding eligibility for the DF-EZ Program and the development of your drug-free workplace program. After calling the 1-800 number, select option 24.

Ohio Department of Alcohol and Drug Addiction Services.....……1-614-466-3445
Each county in the state of Ohio has an office that is called either an Alcohol and Drug (Addiction) and Mental Health (ADAMH) Board or an Alcohol and Drug Addiction Services (ADAS) Board which coordinates the pass-through of federal and state funds for the operation of community drug and alcohol services. These local boards can identify the support, assessment and treatment providers in the area.

Ohio Prevention & Education Resource Center .....……1-800-788-7254
OPERC offers a resource directory and assistance in identifying alcohol and drug prevention, education, treatment and drug-free workplace resources in your local community.

National Resources

Community Anti-Drug Coalitions of America….....……..1-703-706-0560
DDW represents a network of coalitions operating around the United States and offering support to employers operating drug-free workplaces.

Drug-Free Workplace Helpline .....….....1-800-967-5752
The Center for Substance Abuse Prevention (CSAP) offers telephone consultation to business owners, managers and union leaders on the development/implementation of a comprehensive drug-free workplace program. This CSAP Helpline will also serve as a resource for networking with local, state federal or national contacts. This number may roll over shortly to another number or provide additional information.

Employee Assistance Professionals Association (EAPA) 1-703-522-6272
This organization provides information on how to qualify and select EAPs, their value, how they operate and how to find quality national, regional, and local providers.

National Clearinghouse for Alcohol and Drug Information (NCADI).....…….1-800-729-6686
The NCADI – an operational unit of SAMHSA, the Substance Abuse and Mental Health Services Administration, and part of the U.S. Department of Health and Human Services – provides information on all aspects of substance use, such as videos, prevention materials, specific program descriptions, and resources in Ohio and latest research results. Many publications and educational materials are free. All publications are in the public domain allowing you to reprint them under your logo without permission. Call NCADI for a catalog of resources.

Office of the Secretary of Transportation (DOT) .....……...1-202-366-3784
Drug Enforcement and Program Compliance, Room 9404
400 Seventh St., S.W.
Washington, D.C. 20590

Ohio Credentialing Board for Chemical Dependency Professionals……1-614-469-1110

Ohio Parents for Drug-Free Youth.....….....1-614-540-9985

Ohio State Bar Association .....…….,,,1-614-487-2050
This office (or the local Bar Association) can help the employer to identify and network with the legal resources in the community that can help with development of a written policy as well as with operating a DF-EZ Program.

Substance Abuse Program Administrators Association.....……1-800-672-7229
This organization can help with a variety of information including guidelines and networking to third party administrators of testing, collection sites and substance abuse professionals (SAPs).

U.S. Department of Health & Human Services - For the most updated list of DHHS-certified labs, employers may call the National Laboratory Certification Program.....1-301-443-6014
List of Certified Labs (attached as part of ODADAS Provider Directory)

U. S. Department of Transportation's (DOT) Office of Drug and Alcohol Policy and Compliance Information Line..……...…...1-800-225-3784
You may request DOT/FMCSA materials by sent to you regarding transportation industry regulations.

Sample Forms

Included in this section are the BWC DF-EZ Program forms and several sample forms for employers to refer to as they create the appropriate forms for their company policy and program.

Observed Behavior - Reasonable Cause Record

A Checklist for Supervisors

Checklist: Recognizing Job Performance Problems

Reasonable Suspicion Checklist

Observed Behavior - Reasonable Cause Record, Page 1

Employee Name _____
Identification Number: _____

Observation: Date _____ Time: (_____ a.m./p.m. to _____ a.m./p.m.)

Location: _____
(Street Address) (City) (State) (ZIP Code)

CAUSE FOR SUSPICION

1. Presence of Drugs and/or Drug Paraphernalia (specify):
_____

2. Appearance:
- ❑ Normal
- ❑ Disheveled
- ❑ Dilated/constricted pupils
- ❑ Dry-mouth symptoms
- ❑ Flushed
- ❑ Bloodshot eyes
- ❑ Profuse sweating
- ❑ Runny nose
- ❑ Nose sores
- ❑ Puncture marks
- ❑ Inappropriate wearing of sunglasses
- ❑ Tremors
- ❑ Other (describe) _____

3. Behavior:
(Speech):
- ❑ Normal
- ❑ Confused
- ❑ Incoherent
- ❑ Slowed
- ❑ Slurred
- ❑ Silent
- ❑ Whispering
- ❑ Other (describe) _____

(Awareness):
- ❑ Normal
- ❑ Lethargic
- ❑ Confused
- ❑ Lack of coordination
- ❑ Mood swings
- ❑ Paranoid
- ❑ Euphoric
- ❑ Disoriented
- ❑ Other (describe) _____

Observed Behavior - Reasonable Cause Record, Page 2

4. Motor Skills:

(Balance):

- ❑ Normal
- ❑ Swaying
- ❑ Falling
- ❑ Staggering
- ❑ Other (describe) _____

(Walking and Turning):

- ❑ Normal
- ❑ Stumbling
- ❑ Swaying
- ❑ Falling
- ❑ Arms raised for balance
- ❑ Reaching for support
- ❑ Other (describe) _____

5. Other Observed Actions or Behavior (specify):

_____

_____

_____

_____

_____

_____

_____

_____

Witnessed by:

_____	_____	_____a.m./p.m.
(Signature)	(Title)	(Time)
_____	_____	_____a.m./p.m.
(Signature)	(Title)	(Time)

This document should be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results are released, whichever is earlier.

Checklist: Recognizing Job Performance Problems, Page 1

Are the performance problems:

- Persistent and on going?
- Affecting work efficiency and productivity?
- A change from the employee's usual behavior?

Absenteeism

___ Multiple instances of unauthorized leave.
___ Excessive use of sick leave.
___ Frequent Monday/Friday absences.
___ Excessive tardiness, especially on Monday mornings or after lunch.
___ Leaving work early.
___ Peculiar and increasingly unbelievable excuses for absences.
___ Higher absence rate for medical problems such as colds, influenza, stomach problems.
___ Frequent, unscheduled short-term absences.

On-the-Job Absenteeism

___ Continued absences from work site.
___ Long coffee breaks.
___ Physical illness on the job.
___ Frequent trips to the bathroom.
___ Sleeping or dozing off on the job.

High Accident Rate

___ Accidents on the job and more accident claims than the "norm."
___ Near accidents on the job.
___ Accidents off the job.
___ Failure to wear safety gear.
___ Complaints from co-workers regarding disregard of safety standards.

Difficulty Concentrating

___ Work requires greater effort.
___ Job takes more time.

Confusion

___ Trouble recalling instructions, details, etc.
___ Increasing difficulty handling complex assignments.
___ Trouble recalling his/her own mistakes.
___ Gives conflicting information or instructions.
___ Has trouble coordinating schedules.

Checklist: Recognizing Job Performance Problems, Page 2

Inconsistent Work Patterns

___ Alternate periods of high and low productivity.
___ Submission of incomplete reports and data.

Reporting Unfit for Work

___ Comes to work in an obviously unfit condition (glazed eyes, yawning, slurred speech, unsteady gait, sleepiness).

Changes in Personal Habits

___ Different behavior after lunch than before.
___ Decreased attention to appearance or personal hygiene.

Erratic Behavior

___ Withdrawn or improperly talkative.
___ Argumentative.
___ Displays violent behavior.
___ Has exaggerated sense of self-importance.
___ Spends excessive amount of time on the telephone.
___ Irritable.
___ Depressed or highly emotional.

Motivation

___ Less commitment to the job.
___ Unconcerned about quality or quantity of output.
___ Frequently says he or she is dissatisfied.
___ Does not initiate change or request work or challenges.

Lower Job Quality/Performance

___ Misses deadlines.
___ Mistakes due to inattention.
___ Increased errors.
___ Fails to follow procedures.
___ Wastes material.
___ Doesn’t take time to do the job right.
___ Makes poor decisions.
___ Co-workers or customers complain.
___ Improbable excuses for poor job performance.
___ Mismanages budget.
___ Co-workers cover for his or her work responsibilities.

Checklist: Recognizing Job Performance Problems, Page 3

Lower Quantity/Productivity

___ Inconsistent work pace.
___ Overwhelmed by realistic workload.
___ Consistently falls behind in work.
___ Doesn't keep commitments.
___ Unavailable for extra work.
___ Takes longer and longer to do the same job.

Reduced Job Knowledge/Technical Skill

___ Doesn't know work tasks.
___ Unable to work independently.
___ Frequently needs instruction.
___ Doesn't use equipment properly.

Poor Relationships on the Job

___ Over-reaction to real or imagined criticism.
___ Wide swings in morale and motivation.
___ Borrowing money from co-workers.
___ Unreasonable resentments.
___ Unable to work with others.
___ Uses employee time and skills inefficiently.
___ Frequent complaints from co-workers.
___ Avoids professional activities or training.

Reasonable Suspicion Checklist, Page 1

Name of Observed Employee _____
Location _____
Time _____ **a.m.** _____ **p.m.** **Date** _____

When there is reasonable suspicion that an employee at work is unfit for duty, the supervisor or manager observing the behavior as well as another supervisor/manager as witness, if possible, must complete the checklist below. Where "Other" is checked, please describe.

Observation Checklist

Walking: ___ Holding on ___ Stumbling ___ Unable to walk
___ Unsteady ___ Staggering ___ Swaying
___ Falling ___ Other _____

Standing: ___ Swaying ___ Feet wide apart ___ Unable to stand
___ Rigid ___ Staggering ___ Sagging at knees
___ Other _____

Speech: ___ Whispering ___ Slurred ___ Shouting
___ Incoherent ___ Slobbering ___ Silent
___ Rambling ___ Mute ___ Slow
___ Other _____

Demeanor: ___ Cooperative ___ Calm ___ Talkative ___ Polite
___ Sarcastic ___ Sleepy ___ Crying ___ Silent
___ Sleeping on job ___ Argumentative ___ Excited
___ Other _____

Actions: ___ Hostile ___ Fighting ___ Profanity ___ Drowsy
___ Threatening ___ Hyperactive ___ Erratic ___ Calm
___ Resisting communication ___ Other _____

Eyes: ___ Bloodshot ___ Watery ___ Droopy ___ Dilated
___ Glassy ___ Closed ___ Other _____

Face: ___ Flushed ___ Pale ___ Sweaty
___ Other _____

Appearance/ Clothing: ___ Neat ___ Unruly ___ Messy ___ Dirty
___ Stains on clothing ___ Having odor ___ Partially dressed
___ Bodily excrement stains ___ Other _____

Breath: ___ No alcoholic odor ___ Faint alcoholic odor
___ Alcoholic odor ___ Sweet/pungent tobacco odor
___ Heavy usage, breath spray ___ Other _____

Reasonable Suspicion Checklist: Page 2

Movements: ___ Fumbling ___ Jerky ___ Nervous
___ Slow ___ Normal ___ Hyperactive
___ Other _____

Eating/ Chewing: ___ Gum ___ Candy ___ Mints
___ Other _____

Miscellaneous: ___ Presence of alcohol and/or drugs in associate's possession or vicinity
___ On-the-job misconduct by employee
___ Employee admission concerning alcohol use and/or drug use or possession
___ If there are witnesses to employee's conduct, list below:
_____
_____
_____

Other Observations: (if accident, provide details)

_____
_____
_____
_____
_____
_____
_____

Employee's Explanation of Reasons for His/Her Conduct:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Once above portion of form has completed by you and a witness, you are now ready to take a position with the employee. Be certain to follow company procedures as outlined in our drug-free policy.

___ Employee has agreed to testing (Check one) ___ Employee has not agreed to testing

_____ _____
Supervisor/Manager Signature Date

_____ _____
Witness Signature Date