

# **DRUG-FREE WORKPLACES**

## **Establishing a Policy and Program**

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This information is provided by the  
Arizona H.I.D.T.A., Demand-Reduction Office  
of Drug-Free Workplaces & Schools

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Second Edition**

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*C. E. Edwards, 2006*

# CONTENTS

<b>Drugs in the workplace</b>	1
Impact of addiction on the workplace	2
Costs of substance abuse	3
Costs of addiction	4
Costs of employee turnover	5
Cost savings and program effectiveness	6
What to do if there are drugs in the workplace	9
<b>Establishing a drug-free workplace program: Steps 1-5</b>	14
Policy	15
Supervisor Training	17
Employee education	19
Employee assistance	20
Drug-testing	21
<b>Employer liability considerations</b>	26
<b>Drug-free workplace policy legal actions</b>	27
<b>Federal regulations</b>	
Drug-Free Workplace Act of 1988	28
Omnibus Transportation Testing Act	30
Department of Transportation regulatory overview	31
<b>Supplement: Drug-testing programs comparison chart</b>	

## DRUGS IN THE WORKPLACE: EXTENT OF THE PROBLEM

Substance abuse now threatens all aspects of society. It affects communities, schools, and workplaces. The impact to national economies each year solely due to substance abuse among members of the workforce is unacceptably high. The working adult, 18 to 44 years of age, is the most likely to be a substance abuser according to the 2003 United States National Survey on Drug Use & Health conducted annually by the Substance Abuse and Mental Health Services Administration. As compared to unaffected workers, employees abusing alcohol and other drugs tend to:

- be absent from the job 16 times more often...
- have nearly 4 times as many accidents...
- have nearly 3 times as many absences of 8 days or more...
- incur 300% higher medical costs...
- file 5 times as many workers' compensation claims.

**FACT:** In America, the costs of alcohol & other drug use falls disproportionately in the 15-to-44 years of age group.

*Source: Institute for Health & Aging*

Costs of substance abuse include working family members who are not users themselves...a *non-alcoholic* member of an alcoholic's family typically uses 10 times as much sick leave as normal.<sup>1</sup> According to a 1995 statistics handbook published by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, the cost of substance abuse

to business and industry has been estimated to cost American businesses roughly 81 billion dollars in lost productivity in just one year—37 billion due to premature death and 44 billion due to illness. Additional costs accrue from higher medical costs, theft, increased workers' compensation claims and legal liability.

It is difficult to attach a cost to low morale and impaired judgment caused by substance abuse - no one knows how much is being lost because of undetected or untreated substance abuse. To merely dismiss such losses as the cost of doing business is to accept a cost drain in business that can be stopped. The health and welfare of the bottom line demands that substance abuse be challenged.

A drug-abuse policy should be developed according to the best available current knowledge about abuse and its consequences as well as the relevant statutory and case law applicable to the business location.

- Expert advice should be obtained when developing the technical aspects of the policy, program, and procedures.
- Drug testing can be an effective tool in the early identification of employees with drug problems and should be considered as a useful technique within the overall program.
- Follow-up procedures should be developed which ensure effective treatment and rehabilitation. However, alternative actions, including dismissal, may be appropriate for those who are unwilling or unable to successfully return to the workplace.

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<sup>1</sup>M Bernstein & JJ Mahoney, "Management Perspectives on Alcoholism: The Employer's Stake in Alcoholism Treatment," *Occupational Medicine*, Vol 4, No. 2, 1989, pp. 223-232

## ADDICTION AND ITS IMPACT ON THE WORKPLACE

Research has helped to dispel the belief that addicted persons *choose* to be that way. Addicts may have shown faulty judgement by experimenting with an illegal drug, or they may have chosen to drink to excess on too many weekends, but once the craving hits and the irrational behaviors start, the individual genuinely needs help to break away from the addiction cycle. The terms "willpower" "character" and "determination" lose their meaning in the face of an addiction that robs the individual of the power to choose.

Employees who become addicted will lie to avoid discovery and steal to support their drug use. In many cases, drug use/abuse can be hidden from management and supervisors. Employees at all levels need to be encouraged to recognize substance use in peers as a safety hazard and a health problem. An employee who sees another employee with a problem should try to get that person to seek help on his or her own from the company's **employee assistance program (EAP), counseling/mental health benefits that may be available through the medical benefits policy, or community agencies**. Such action should absolve the individual from any chance of disciplinary action unless there has been injury or a proven criminal act. In the case of drug dealing (illegal **and** legal drugs), choices are usually dictated by prevailing law. When addressing an alcohol or prescription medication drug problem, adhere to established company policy - alcohol and prescription medications are drugs.

From the standpoint of an **EAP or counseling benefits**, the goal is to encourage participation in voluntary treatment to shorten the time a person hides a problem and is a safety or security risk in the workplace.

Drug use and addiction among employees and job applicants can be especially difficult for employers to address where social and government policies do not dictate that people **abstain totally** from drug use. Where drug use is tolerated, and perhaps supported in the form of "responsible use", thereby facilitating continued use of drugs and addiction (for example: needle-exchange programs, safe drug-use centers, providing drugs to users), it becomes difficult for a company to establish a culture of 'no drug use' by employees, even when there are great safety risks if employees use drugs. Businesses must have a pool of job applicants who are drug-free.

Treatment for drug use and addiction must be available. If employers do not offer EAP or treatment benefits for all employees, they may work within their communities to locate treatment resources that all groups of employees may access. As a minimum, businesses could provide employees with a listing of those resources so that they may get help to stop the drug use and return to the job - a productive, safe and healthy employee - drug free.

## COSTS OF SUBSTANCE ABUSE

*What is substance abuse ON or OFF the job costing YOUR company?*

**FACT:** One American Airlines employee's computer error while under the influence of marijuana cost the company **\$19 million**.

Estimating the cost of substance abuse to a company, and therefore, what savings may be generated by combating it, can be a confusing process. To understand the direct and indirect costs to a company, it helps to be able to categorize or account for specific costs. If the company's accounting system already groups the major personnel costs, an analysis of such costs may be available to managers. The following cost groups may help to establish the necessary records for analysis.

### **Direct Costs:**

1. Cost of medical care for illness, injuries, possibly as a result of substance abuse, but not solely attributable to substance abuse.
2. Cost of Workers' Compensation: is your rating higher than it should be based upon your claim history?
3. Cost of treatment inpatient programs, EAPs, counseling, out-patient treatment.

### **Indirect Costs:**

1. Cost of absenteeism, productivity declines, employee turnover, waste, and accidents.
2. Cost incurred when the company image has suffered, morale and decision-making ability have deteriorated.
3. Cost of supervisory time that has been diverted or is unproductive.
4. Cost of damage to equipment or products.
5. Cost of increased legal liability.

**FACT:** General Motors found that drug-using employees averaged 40 days of sick leave annually as compared with non-drug users' sick leave at 4.5 days annually.

## COSTS OF ADDICTION

**FACT:** The U. S. Postal Service hired applicants who tested positive and tracked their performance for three years. The USPS found that those who tested positive were:

- 77% more likely to be fired
- 2 times as likely to be disciplined
- Had 66% higher absenteeism rates

The USPS found that the savings over five years of screening out test-positive applicants would have been \$105 million.

To calculate how much the cost would be to a small company with 100 employees, use the formula shown below:

$$\begin{aligned} & \text{Average Annual Salary} \\ & \times 0.10(\text{min. \% employees affected}) \\ & \times 0.25(\text{estimated decrease in efficiency}) \\ & \times \text{Number of employees} \\ \hline & \text{TOTAL} = \text{Estimated annual loss due to substance abuse} \end{aligned}$$

Source: *Job Performance & Chemical Dependency*  
Wisconsin State Office of Alcohol and Other Drug Abuse 1989

*Alternative formula using the national average cost estimate of employee substance abuse of \$7,000 per user and national average of number of employees using drugs of 17%.*

$$\begin{aligned} & \text{Number of employees} \\ & \times 17\% \\ & \times \$7,000 \\ \hline & \text{TOTAL} = \text{Annual cost of drug use to your company.} \end{aligned}$$

## **WHAT IS EMPLOYEE-TURNOVER COSTING YOUR COMPANY?**

On average, the annual employee turnover rate for all companies is 12 percent. How does your business compare? To find out, review the listing below to help identify some of the more-common costs associated with employee turnover. Calculate or make a reasonable estimation of the individual item cost, not forgetting to include any staff time broken down by hourly costs. Reduce expenses by any gains realized due to vacant positions to derive an approximation of the company's turnover costs.

### ***Turnover costs may consist of:***

- administrative tasks related to the termination and hiring process
- severance packages
- increases in unemployment insurance premiums
- increases in overtime pay to cover vacant position
- applicant recruitment
- applicant interview time
- applicant drug-testing
- job-training costs (staff time, training materials)
- decreased production capability during learning period
- moving and/or re-location costs
- travel expenses
- providing a new employee handbook

### ***and may be offset by gains in:***

- wages and benefits saved during vacancy period

If the company's costs are too high and it does not already have a program to address drug use by employees, it may be time to consider implementing a drug-free workplace program.



## **CASE STUDIES: COST SAVINGS AND EFFECTIVENESS**

**U. S. Federal Transit Authority Four-year Cost Analysis and Savings** (as reported in the Baltimore Business Journal, April 4, 2003 by Dr. James D. Levy)

- Study conducted 1995-1999
- Study authors estimated a net \$1 billion benefit to employers and society which was 6 ½ times the cost of the program (\$154 million<sup>2</sup>)
- Average cost of each substance abuser was \$19,575 in 1999<sup>3</sup>
- Random positive-test rates were cut by 42% during the four-year study (1995 positive-test rate was 1.73% to 1% in 1999)
- “Second-chance” return-to-duty programs realized a net savings of \$99.8 million<sup>4</sup>

**U.S. Navy 20+ years drug testing: program effective** (as reported in the Honolulu Star-Bulletin August 24, 2003 by Gregg Kakesako)

- In the first year of drug testing (1982) the positive-test rate was 7.21%
- As of April 2003, the positive-test rate was 0.47%
- Monthly random test rate is 19-20% of sailors in a command
- Tested 515,000 sailors in 2002

**The Warner Corporation** (Washington, D.C. USA)

- 280-employee company - plumbing, heating and air conditioning services
- Established DFW program 1985 due to 111 accident claims per year, escalating insurance premiums and a 75% drop-out rate for apprentices
- Program includes drug testing, an EAP, and a company-paid 28-day treatment program
- First year: saved \$385,000 in workers' compensation claims and premiums; vehicle insurance premiums
- At five-years: reduced workers' compensation claims from 111 to 35; apprentices completing training increased from 25% to 75% resulting in an annual savings of \$165,000; a job-opening waiting list of skilled mechanics saving \$20,000 on job-opening advertising annually
- Quality of work has increased; morale is higher, customer satisfaction is heightened

**Chamberlain Contractors** (Laurel, MD USA) (Source: U. S. Department of Labor)

- 75-employee paving contractor company
- Established DFW program 1987 due to 100% increase in workers' compensation and liability insurance premiums 1983-86; increased worker tardiness, absenteeism
- Program includes an EAP and drug testing (preemployment, post-incident, reasonable suspicion/for cause and random)

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<sup>2</sup>Costs include: direct cost of tests, program management, lost productivity when employees sent for testing, third-party administration fees, program oversight

<sup>3</sup>Costs include: health care, premature death, impaired productivity, motor vehicle crashes, crime and social welfare

<sup>4</sup>Based upon reduced potential cost of hiring and training replacement workers

- Savings: \$50,000 in workers' comp and liability costs per year alone
- Health insurance premiums leveled off, incidents involving substance abuse decreased
- Costs of the program as reported by company owner Harold Green are about \$7,500 per year and he estimates the total savings to be in excess of \$120,000 annually in decreased insurance premiums

#### **Georgia Power Company**<sup>5</sup> (A public utility)

- Drug using employees averaged \$1,377 in medical benefits costs, while the control group of employees averaged \$163 and the company average was \$590.
- Drug using employees averaged \$264 in workers compensation insurance claims compared to \$25 for the control group and \$197 for the general workforce.

#### **1990 survey of personnel executives**<sup>6</sup>

- Reported that since implementing drug testing, 77 percent were seeing higher quality applicants, and 63 percent said they had safer workplaces.
- 58% reported a better public image
- 56% saw fewer drug problems
- 54% stated that morale improved
- 43% stated there were productivity gains

#### **Bay Health Medical Group** (Bay County, MI USA)

- 185-employees and 165 residents in the long- and extended-term care facility
- Created DFW program February 2001 containing all five (5) components of DFW programs
- Workers' compensation claims decreased 50% since policy implemented
- When asked if she would recommend the implementation of a drug-free workplace to other businesses, Hawkins responded with an unequivocal, "yes!" The policy is important to the success of her company.

#### **A Hauling & Dumping Company** (Milton, FL USA)

- A 5-employee hauling and dumping company with vehicles and safety concerns
- Created DFW program 1999 containing all five (5) components of DFW programs
- When several long-term employees tested positive for drugs at program start, the company placed those employees in non-safety sensitive (non-driving) positions until treatment completed
- Morale improved as did the company profits
- Company believes it is making a difference in the lives of its employees, their families and their community.

#### **A Drive-Through Restaurant** (Southern Texas USA)

- A 20-employee fast-food restaurant, with most employees being teenagers
- Implemented a DFW policy and program July 2001 as did not want the business to be a place where drugs were introduced to the young employees. The owners also suspected an employee of

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<sup>5</sup> Sheridan and Winkler. "An Evaluation of Drug Testing in the Workplace, Drugs in the Workplace: Research and Evaluation Data" NIDA 1989, p.195-216

<sup>6</sup> Axel, Helen, Corporate Experiences with Drug Testing Programs, Washington, DC: The Conference Board Inc. 1990.

bringing drugs into the workplace to involve others

- DFW program contains all five (5) components
- Educational materials translated into Spanish as the community has a high representation of Hispanic-Latino Americans. Training is also conducted in Spanish
- The pre-employment testing program eliminated drug-using applicants
- Parents are happy that the restaurant is a safe place for their children to work
- Owners state that the program is a morale booster and team builder for employees, their families and the community
- The city's mayor commended the restaurant's DFW program for its contribution to keep young people drug free
- Owners cite a positive work attitude; note that business has increased along with productivity

**Survey of Chief Executive Officers of major companies with DFW programs** consisting of EAPs (95%), job applicant drug testing (65%), and employee drug testing (44%) credit the DFW program with reducing absenteeism, accidents, health costs, and in improving productivity.<sup>7</sup>

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<sup>7</sup>Tysse and Dodge. Winning the War on Drugs: The Role of Workplace Testing. National Foundation for the Study of Employment Policy, 1989. p. 156.

## WHAT CAN BE DONE IF THERE ARE DRUGS IN THE WORKPLACE

An organization consists of employees working together to produce goods and/or services. Each employee has a specific role in accomplishing this task, including participation in developing a drug-free workplace program. Following are possible actions for various segments of the workforce:

**Top Management** should become knowledgeable about alcohol and other drugs by:

- **securing** program/procedural guidance from local alcohol/drug authorities.
- **conferring** with other local employers on means of eliminating substance abuse from the workplace.
- **consulting** with employees on program formation, disciplinary measures, and program participation.
- **initiating** discussions with local health resources providing substance abuse treatment and rehabilitation services, and reviewing employee insurance packages to ensure substance abuse treatment.
- **reviewing** policies, agreements and relevant laws concerning the work force. Identifying and enacting changes to make the workplace drug-free.
- **developing** clear and concise policies and procedures to ensure a safe, secure and healthy work environment. Involve representation from all key work units and a broad range of employees in shaping an alcohol and drug policy.

**Support from top management is essential** to achieve a drug-free work environment. Developing and promoting a strong, consistent policy statement lets employees and the community know that management is genuinely committed to a drug-free environment. Such a policy should:

- **state** emphatically that drug/alcohol use on the job is unacceptable;
- **define** what comprises an alcohol/drug abuse infraction of work policy;
- **explain** that drug/alcohol problems are treatable and outline the availability of treatment or rehabilitation sources;
- **integrate** the concepts of corporate interest and employee well-being. Make clear the company's genuine concern for persons whose addiction has an adverse effect on their families and their co-workers, as well as an effect upon work productivity;

### Top Management (continued):

- **emphasize** that assistance is available either through the company EAP, medical policy benefits, or community resources for all workers with a substance problem. Participation in an EAP will not jeopardize the employee's future with the company, nor will it absolve the employee from disciplinary action for future infractions;
- **outline** (if applicable) the role and relationship of an EAP within the organization;
- **review** the company's rules of conduct regarding substance abuse, and consider if the use of alcohol at company-sponsored functions is appropriate;
- **review** all procedures for supervisors, unions, voluntary referrals, etc., including procedures to ensure confidentiality for workers seeking assistance and;
- **make** provisions for periodic program review, evaluation and revision.

**Establish or contract with an employee assistance program (EAP)** that will work with all elements of the company including employee-representatives, workers, supervisors and managers as a part of implementing your drug-free workplace policy. As in all things, top management must be the prime mover in obtaining EAP services or health insurance counseling benefits. To establish useful employee assistance, top management must:

- **announce** the availability of confidential EAP/counseling to each employee;
- **keep** the EAP/counseling service availability highly visible within your firm;
- **provide** referral training for supervisors and employee representatives;
- **provide** education for the total work force on the benefits of EAP/counseling; and
- **establish** a plan to monitor utilization of EAP benefits

### **Supervisors:**

Supervisors must conduct a corrective interview with any worker whose job performance slips to substandard levels. Correcting job performance problems becomes constructive when the supervisor exercises a caring and firm attitude with an offer of help by referral to EAP or counseling services professionals when that job performance problem is related to substance abuse.

Workplace intervention has been proven as one of the most effective means of helping those abusing substances admit to and accept help with a substance abuse problem.

Supervisors (continued):

In this manner, Supervisors are able to:

- **disseminate** objective job performance standards to document declining job performance;
- **prepare** written memoranda outlining incidents related to the worker and examples of how work performance has deteriorated;
- **conduct** a private meeting with the worker to discuss work performance problems outlined in the memorandum. Endeavor to reach agreement on needed improvements and set time-based goals;
- **advise** the employee on the availability of assistance for personal problems. Explain how this assistance can be used, and encourage use of available resources; and
- **offer** an alternative if efforts fail to raise the worker's performance standards. A supervisor may seek assistance from the EAP at any stage of an employee's deteriorating performance. EAP is a benefit to supervisors as well.

Should discussion fail to change a worker's level of performance the supervisor may:

- **voice** genuine concern to the worker regarding lack of noticeable improvement;
- **explain** clearly why the worker's performance is considered substandard;
- **ensure** the worker knows that if the problem is personal, it is the worker's responsibility to resolve it;
- **ensure** that the worker is aware of how to utilize the EAP or other community resources to help solve any problems; and
- **emphasize** that termination of employment might result if job performance does not improve.

### **Employee/Union Representatives:**

Since labor and management share the goal of a safe, secure and healthy workplace, joint actions and solutions are called for in creating a drug-free workplace. Employee/Union Representatives should:

- **discuss** joint programs with supervisors;

Employee/Union Representatives (continued):

- **propose** development of joint programs aimed at achieving a drug-free workplace as a collective bargaining item;
- **promote** cooperative action in developing substance abuse education and prevention activities; and
- **shape** union activities to reinforce safe, healthful work behaviors and attitudes, and help members become drug-free.

When a union implements an EAP concept for its members it becomes a Member Assistance Program (MAP). A MAP is just as cost-beneficial to a small- or medium-sized union as an EAP is to a company.

Union representatives desiring to seize the initiative in making a workplace drug-free should consider:

- **surveying** membership on health and safety concerns;
- **obtaining** start-up and operational information from other union groups that have experience with EAPs and/or MAPs;
- **developing** an effective method to obtain and distribute materials on drugs and alcohol abuse;
- **maintaining** current information files and library resources to help substance-abusing members;
- **providing** informational programs by local alcohol/drug agencies during meetings;
- **contracting** for prevention and treatment services with a local facility.

#### **Workers:**

Whether or not there is a company or union EAP, **workers have the power to promote and achieve a drug-free workplace.** Often the close ties between co-workers will enable them to discern work performance problems before those problems are seen by management. Thus, substance abuse can be detected and intervention made in the early stages before performance is seriously impaired, and before a worker gets into serious trouble with management - and into serious personal pain.

Workers (continued):

**Workers should:**

- **increase** their knowledge and understanding about drugs and the problems caused by drugs through employer-provided drug education;
- **form** a consensus as to what constitutes unacceptable behavior that risks the health, safety and security of all the employees at the work site;
- **offer** assistance to co-workers to initiate change;
- **become** familiar with local resources for information and treatment;
- **ensure** that all new-hires know that a drug-free workplace is supported by the workers as the desired standard;
- **develop** a variety of workplace reminders that emphasize the importance of a drug-free workplace, such as stickers, magazine and newspaper clips, posters; and
- **support** co-workers recovering from substance abuse with encouragement with recovery efforts.



## **HOW TO ESTABLISH A SUBSTANCE ABUSE PROGRAM**

To protect the company and its employees from those who, through the abuse of drugs, endanger the workplace, all employees' jobs and company profits, **ESTABLISH A SUBSTANCE ABUSE POLICY AND PROGRAM.**

Setting up a substance abuse program that is suited to the needs of the company is a matter of taking **ONE STEP AT A TIME.** No program is set up all at once. And any effort made will begin to send the message that the company is concerned about substance abuse and will not tolerate it in the workplace. Help may also be available through agencies in the community.

Take that first step toward a Drug-Free Workplace - **five basic steps: one step at a time.**

**STEP ONE:** A written substance abuse policy

**STEP TWO:** Supervisory training program

**STEP THREE:** Employee awareness & education

**STEP FOUR:** An Employee Assistance Program

**STEP FIVE:** A drug testing program if appropriate

## **STEP ONE**

**DRAFT a written policy with the help of key staff and union members to include:**

- A statement of the company position on the use of drugs (legal & illegal) in the workplace that applies to **ALL EMPLOYEES** without exception.
- The company position on job performance as it relates to drug use.
- The company position on the safety of the public and employees as it relates to drug use.
- Prohibiting the possession, sale, manufacture, use, conveyance, distribution or attempted possession, sale, conveyance, distribution or manufacture of illegal drugs, intoxicants, or controlled substances in any amount or in any manner. The inappropriate use or abuse of prescription drugs should also be prohibited.
- Prohibit being at work with a detectable presence of illicit drugs or alcohol in the system rather than addressing impairment on the job, use or abuse of hard drugs or on-the-job drug use as proof of such standards may be difficult.
- A statement of employer position on drug testing. If the company chooses to test, establish procedures and types of testing to be done and the consequences of a positive test, refusal to submit to drug or alcohol test, test sample tampering, dilution, adulteration, or substitution. Also address the issue of inability to give a urine specimen whether intentional or for medical reasons..
- A statement that an employee with a drug or alcohol problem has the responsibility to seek and complete treatment.
- A clear statement that participation in an employee assistance program is confidential and will not jeopardize employment or advancement, but that participation will not protect employees from disciplinary action for continued unacceptable job performance or rule violations.
- Reference to law enforcement involvement if criminal activity is occurring.
- A clear outline of the consequences of violating the policy. Carefully consider the punitive actions laid out in the policy to be certain such actions can be enforced at all levels of the company.
- Advise all employees of the policy and when it will take effect.
- Introduce the new policy; include in all employee handbooks; and make reference to the substance abuse policy on job applications.
- Ask each employee to sign and date a 'Receipt of Policy' form and place this in each employee's

personnel file.

- Enforce the policy consistently and fairly.

***RECOMMENDATION:* Have the policy reviewed by an attorney who specializes in labor and employment law.**

## STEP TWO

**TRAIN your supervisors and managers. They are the key to the success of a substance abuse policy.**

- Limit the supervisor's/manager's responsibilities in the event of substance abuse problems.
- Clearly explain these limitations to supervisors and managers.
- Supervisors are **RESPONSIBLE** for:

**FACT:** Companies with testing AND education programs continue to experience much lower “test-positive” rates than those companies that drug-tested without providing other programs.

*Source: American Management Assoc. 1996*

Observing and documenting unsatisfactory work performance or behavior.

Talking to employees about work problems and what needs to be done about those problems.

Understanding the substance abuse policy.

Explaining the policy to employees.

Knowing when to take action.

- Supervisors are **NOT RESPONSIBLE** for:

Diagnosing substance abuse problems.

Treating substance abuse problems.

Supervisors need to know how to look for signs of substance abuse and what to do once they find those signs. The types of information needed by supervisors will vary from workplace to workplace. Supervisors may be called upon to refer employees to local resources or employee assistance programs (EAPs).

**RECOMMENDATION: Develop a Performance Documentation Form for supervisor use to record job-performance problems. Note: test results and incident reports should be kept in confidential files, separate from regular personnel files.**

## WHAT TO LOOK FOR IN A SUPERVISOR TRAINING PROGRAM

A supervisor training program should be designed to help supervisors and managers develop the skills necessary to manage a successful drug-free workplace program while remaining in compliance with Federal and/or state regulations and company policy. By way of example of what topics *should be included* in a *comprehensive* supervisor training program, the below-listed topics make up the agenda for a 4.5 hour supervisor training program provided for the past ten (10) years by Elizabeth Edwards, Arizona HIDTA Demand Reduction Office.

Supervisor training programs may be available through an EAP, community agency, chamber of commerce, or independent contractor, or other provider. In all programs, there should be common elements and the *minimum* length of a supervisor training program should be two (2) hours.

- Objectives and why training is necessary for a successful program
- Types of drugs
- The addiction cycle
- Effects and signs of use
- Supervisor/manager role in drug-free workplace program
- Overview of federal and state requirements
- Recognizing enabling behaviors
- Identifying and documenting job performance problems
- Preparing for and conducting the corrective interview
- Communicating effectively
- Understanding constructive vs. destructive review techniques
- Reviewing an employee with declining work performance
- The referral process
- Role of the supervisor/manager in the early recovery process
- Return to work issues for the supervisor/manager & the employee

## **STEP THREE**

### **EDUCATE employees on the commitment to a drug-free workplace.**

- Explain the workplace substance abuse policy and advise of the consequences of using drugs and alcohol on or off the job.
- Advise on how to get help with alcohol and other drug problems, through the employee assistance program, counseling benefits through the medical benefits policy or community resources.
- Inform of how drugs and alcohol actually affect the company's productivity, product quality, absenteeism, health care costs, or accident rates.
- Offer educational information via literature, films, talks by local experts on rehabilitation, video tapes, and posters.
- Explain testing procedures - if testing is a part of the program- with special attention to the consequences of testing positive, and the procedures for ensuring accuracy and confidentiality.

## STEP FOUR

**CONSIDER** establishing an employee assistance program (EAP). Employees are valuable resources. They are also human beings. That means they will have problems that may affect their performance on the job. These problems may come from any source: substance abuse, family difficulties, financial troubles, emotional upsets. To help employees deal with such problems, many companies provide EAP services. An EAP must operate on a **CONFIDENTIAL** basis.

**FACT:** An effective EAP can reduce medical claims, sick-leave time, workers' comp. incidents, mental health care costs.

*Source: Campbell Soup Co. EAP (Yandrick 1992); Virginia Power Co. EAP; Orange Co. Florida Public Schools EAP.*

### Why consider an employee assistance program?

- Employees are a vital part of any business.
- It may be effective to offer assistance with personal problems rather than to discipline or fire employees.
- Recovering employees become productive and loyal members of the workforce.

**Many companies have found EAPs to be cost-effective because they:**

- **Reduce:** Accidents, Absenteeism
- **Increase:** Productivity

**FACT:** Detection of impaired job performance is the most frequent reason for a supervisor to make a referral.

**EAPs** vary in size and structure depending on the needs of the company, number of employees, and the range of services offered. Some companies hire EAP professionals or contract with outside professionals. Typically employees are referred to the EAP because of job performance problems or because of a positive drug- test result. The problem is evaluated and an appropriate course of action is determined.

**Workers are referred to drug abuse programs 4 principal ways:**

- Self-referral
- Supervisory referral
- Drug testing referral
- Family referral

**Many medical-benefit policies provide limited EAP/mental health coverages.**

## STEP FIVE

**START** a drug-testing program. Each year, more employers, including small businesses, make the decision to start some kind of program. Some employers are required by government regulations to implement a drug testing program due to the nature of the business, while others choose to test because it is the right business decision for them. Companies may use drug testing to send a strong message to applicants, employees, and supervisors alike, that drug use in the workplace will not be tolerated.

**FACT:** Tropicana reduced lost-time accidents by 80%; W.W. Gay Contractors saved \$19 for every \$1 spent on drug testing; Pharmacia and Upjohn saved \$799,000 in one year on turnover & in reduced absenteeism.

A testing program is the **LAST** step of a comprehensive program which includes all the previous steps. A drug testing program should meet certain requirements that may include one or more of the following considerations:

- Statutory or regulatory requirements
- Case law
- Union agreements
- Constitutional considerations
- Employer “drug-free workplace incentive” laws

### **Determine:**

- Employee groups to be subject to the testing program
- What drugs will be covered by testing
- How frequently will random testing be done
- Consequences of a positive test result for *applicants* or for *employees*
- What specimens will be tested (urine, oral fluids, hair, breath)

The work-place atmosphere created by implementation of a drug-testing program may actually encourage non-drug using employees to remain drug-free and encourage occasional users to stop.

Studies conducted in the United States in the late 1980's by several associations found that among companies engaged in testing, the number of rehabilitative employee referrals triples if a training/education initiative is also present, strongly reinforcing the notion that the best programs are those that combine testing with other activities.

**Moreover, supervisors trained to know how to spot possible impairment and to intervene are seen as the most important single aspect of a successful workplace program.**

An American Management Association study also found that employers who consider, then reject,



testing are most often concerned with invasion of privacy, questionable accuracy of testing, and negative impact on employee morale. They are also concerned with possible legal challenges.

Drug testing is generally done under some or all of the following circumstances:

**FACT:** The use of random drug testing increased by 1248% between 1987 and 1996.

*Source: 1996 AMA Survey: Workplace Drug Testing and Drug Abuse Policies, Summary of Key Findings.*

- Pre-employment/post-offer of job applicants
- Reasonable Suspicion and for cause
- Randomly
- Post-incident
- Return to duty
- Periodic unannounced
- Follow-up (post-treatment)
- During annual physical
- Pre-promotion
- Designated positions/government required
- Site testing (specified location and one time only)

To protect privacy, separate files should be kept for test results. These files should be in a location different from the regular personnel files. The files should also be secured and a company should designate as few staff members as practical to be the point of contact for test results and record keeping. These records should be as complete as possible in the event of legal challenges.

**Standard illicit drug tests:**

- 5-panel: marijuana, PCP, opiates, amphetamines, cocaine
- 10-panel: above 5 + barbiturates, benzodiazepines, methaqualone, methadone, & propoxyphene
- Alcohol

**Specimens used for testing:**

- Urine
- Breath (for alcohol testing)
- Blood (only in specific situations-rarely used)
- Hair
- Oral fluids
- Sweat

**Testing process best-practices overview:**

- Specimen given in a secured restroom, unobserved
- Chain-of-custody form and procedures used with specimen
- Specimen screened for selected drugs
- If positive result on screening test, specimen goes to confirmatory testing
- Confirmatory testing uses a different chemical method
- If confirmed positive, have reviewed by a Medical Review Officer (MRO)

**Medical Review Officer qualifications and responsibilities:**

- must be a licensed physician
- must have knowledge of substance abuse disorders
- may be company staff or contracted by employer
- must review all confirmed "positive" test results
- must examine alternative medical reasons for "positive" result
- must review the custody form for accuracy and correct procedures
- must provide employee with opportunity to discuss "positive" result
- can request re-analysis of the original specimen
- can reject results not obtained or processed in accordance with employer's policy/procedures
- will report test result as: verified positive; negative; or invalid
- must report results only to employee and company official or authorized representative of each
- may act as consultant to management, oversee collection facilities, prepare drug screen results reports, assist with technical aspects of policy development
- must maintain strict confidentiality and privacy rights of employee

<b>5-PANEL DRUG SCREEN</b>				
DRUG	SCREEN	CUT-OFF	CONFIRM	CUT-OFF
Cannabinoids	EMIT	50 ng/ml	GC/MS	15 ng/ml
Cocaine	EMIT	300 ng/ml	GC/MS	150 ng/ml
Opiates*	EMIT	2000 ng/ml	GC/MS	2000 ng/ml
Amphetamines	EMIT	1000 ng/ml	GC/MS	500 ng/ml**
Phencyclidine	EMIT	25 ng/ml	GC/MS	25 ng/ml

\*Additional test has been added to this group: 6-AM (for heroin). Used if specimen tests positive for morphine on confirmatory test at 2000 ng/ml level. The 6-AM confirmatory cut-off level is set at 10 ng/ml.

\*\*If testing for methamphetamine, test must include at least 200 ng/ml of the metabolite amphetamine.

ng/ml = nanograms per milliliter

EMIT = Enzyme Immunoassay

GC/MS = Gas Chromatography/Mass Spectrometry

<b>10-PANEL DRUG SCREEN</b>				
DRUG	SCREEN	CUT-OFF	CONFIRM	CUT-OFF
5-panel drugs and the following additional drugs				
Barbiturate	EMIT	300 ng/ml	GC/MS	250 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	200 ng/ml
Methaqualone	EMIT	1000 ng/ml	GC/MS	300 ng/ml
Methadone	EMIT	300 ng/ml	GC/MS	200 ng/ml
Propoxyphene	EMIT	300 ng/ml	GC/MS	300 ng/ml

\*Additional test has been added to this group: 6-AM (for heroin). Used if specimen tests positive for morphine on confirmatory test at 2000 ng/ml level. The 6-AM confirmatory cut-off level is set at 10 ng/ml.

\*\*If testing for methamphetamine, test must include at least 200 ng/ml of the metabolite amphetamine.

ng/ml = nanograms per milliliter

EMIT = Enzyme Immunoassay

GC/MS = Gas Chromatography/Mass Spectrometry

## DETECTION CHART FOR DRUGS AND ALCOHOL

DRUG	COMMON NAME	DETECTION TIME (Light/Chronic Use)
<b>Cannabinoids</b>	Marijuana, grass	2-7 days/30+ days
<b>Cocaine</b>	Snow, crack	1-2 days/4-6 days
<b>Opiates</b>	Heroin, codeine	2-4 days/1 week+
<b>Amphetamines</b>	Speed, dexies	1-2 days/2-4 days
<b>Phencyclidine</b>	PCP, Angel Dust	2-7 days/2-7 days
<b>Barbiturates</b>	Seconal, downers	2-4 days/up to 3 weeks
<b>Benzodiazepines</b>	Valium, Librium	1-2 weeks/30+ days
<b>Methaqualone</b>	Vitamin Q, ludes	5+ days/5+ days
<b>Propoxyphene</b>	Darvon	1-2 days/1 week+
<b>Ethyl Alcohol</b>	Alcohol, booze	3-12 hours

## **CONSIDERATIONS REGARDING EMPLOYER LIABILITY**

Generally, an employer is liable for the acts of its employee while the employee is performing his/her duties for the employer during the employee's working hours. The employer's liability has been interpreted quite broadly in the United States so that a wide range of activities, although perhaps not exactly within the job description of the employee, resulted in employer liability. An employer can also be liable directly for negligence, for example, in letting an employee who is under the influence of drugs or alcohol drive a car or otherwise be in the position of injuring persons or property. Finally, an employer can even be liable for failure to terminate an employee who has demonstrated a tendency to injure persons or property.

Therefore, employers should be cautious in allowing employees to continue to work if the employer believes that the employee may be under the influence of drugs or alcohol, especially if the employee is in the position of doing harm.

*Source: Substance Abuse: A Guide for Business and the Community. Walnut Creek Chamber of Commerce*

## **DRUG-FREE WORKPLACE POLICY LEGAL ACTIONS GENERALLY OCCUR IN THE FOLLOWING SIX AREAS:**

- Right to privacy
- Freedom from unreasonable searches
- Due process
- Negligence (including negligent hiring, supervision, libel, and slander)
- Contract law
- Wrongful termination

U. S. cases brought under the first three categories usually involve public employment (utilities, local governments, schools) where employees are protected by a constitutional right to privacy, though there have been exceptions. Private-sector employers need not be as concerned about those issues if they exercise good personnel practices. However, the last three, negligence, contract law and wrongful termination, clearly apply equally to all employers.

Many states in the United States have enacted voluntary laws supportive of drug-free workplace programs. Some states have gone beyond being merely supportive and have enacted laws providing financial incentives for those businesses that implement drug-free workplace policies and testing programs.

Regardless of mandated requirements, businesses should adhere to specific and generally accepted standards in program components and privacy protections as a matter of good business practice. If these generally-accepted standards and practices are not followed, liability exposure for the company will significantly increase and it may be subject to lawsuit. Testing programs in the United States have now settled into accepted procedures that protect the company *and* its employees. These protocols are the basis for drug-free workplace program and policy requirements not only because of prescribed privacy protections and support in case law, but because such standard practices result in non-discriminatory treatment of all employees.

By following generally-accepted practices and complying with tested and tried standards, a company will most likely avoid any drug-policy legal actions such as in the six areas cited above.

# DRUG-FREE WORKPLACE ACT OF 1988

## THE FEDERAL LAW

This law, enacted November 1988, with subsequent modification in 1994 by the Federal Acquisition Streamlining Act (*raising the contractor amount from \$25,000 to \$100,000*), requires compliance by all organizations contracting with any U. S. Federal agency in the amount of \$100,000 or more that does not involve the acquisition of commercial goods via a procurement contract or purchase order, and is performed in whole in the United States. It also requires that *all* organizations receiving Federal grants, regardless of amount granted, maintain a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. The Law further requires that all *individual* contractors and grant recipients, regardless of dollar amount/value of the contract or grant, comply with the Law.

Certification that this requirement is being met must be done in the following manner:

- By publishing a statement informing all covered employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the covered workplace, and what actions will be taken against employees in the event of violations of such statement.
- By providing **ALL** covered employees with a copy of the above-described statement, including the information that as a condition of employment on the Federal contract or grant, the employee must abide by the terms and conditions of the policy statement.

*For Federal contractors this encompasses employees involved in the performance of the contract. For Federal grantees all employees must come under this requirement as the Act includes all "direct charge" employees (those whose services are directly & explicitly paid for by grant funds), and "indirect charge" employees (members of grantee's organization who perform support or overhead functions related to the grant and for which the Federal Government pays its share of expenses under the grant program).*

*Among "indirect charge" employees, those whose impact or involvement is insignificant to the performance of the grant are exempted from coverage. Any other person who is on the grantee's payroll and works in any activity under the grant, even if not paid from grant funds, is also considered to be an employee. Temporary personnel and consultants who are on the grantee's payroll are covered. Similar workers who are not on the grantee's payroll, but on the payroll of contractors working for the grantee, are not covered even if physical place of employment is in the grantee's workplace.*

- By establishing a continuing, drug-free awareness program to inform employees of the dangers of drug abuse; the company's drug-free workplace policy; the penalties for drug abuse violations occurring in the workplace; the availability of any drug counseling, rehabilitation, and/or employee assistance plans offered through the employer.

- By requiring each employee directly involved in the work of the contract or grant to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not less than five (5) calendar days after such conviction.
- By notifying the Federal agency with which the employer has the contract or grant of any such conviction within ten (10) days after being notified by an employee or any other person with knowledge of a conviction.
- By requiring the imposition of sanctions or remedial measures, including termination, for an employee convicted of a drug abuse violation in the workplace. These sanctions may be participation in a drug rehabilitation program if so stated in the company policy.
- By continuing to make a "good-faith" effort to comply with all of the requirements as set forth in the Drug-Free Workplace Act.

All employers covered by the law are subject to suspension of payments, termination of the contract or grant, suspension or debarment if the head of the contracting or granting organization determines that the employer has made any type of false certification to the contracting or grant office, has not fulfilled the requirements of the law, or has excessive drug violation convictions in the workplace. Penalties may also be imposed upon those employing a number of individuals convicted of criminal drug offenses as this demonstrates a lack of good faith effort to provide a drug-free workplace. The contract or grant officer may determine the number on a case-by-case basis. Employers who are debarred are ineligible for other Federal contracts or grants for up to five (5) years. Compliance may be audited by the Federal agency administering the contract or grant.

***The Drug-free Workplace Act does not require employers to establish an employee assistance program (EAP) or to implement drug testing as a part of the program.***

*Source: Federal Registers April 11, 1988 & May 25, 1990  
& the Federal Acquisition Streamlining Act of 1994 (FASA).*



# OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991

## SUMMARY

In October of 1991, the *Omnibus Transportation Employee Testing Act of 1991* was passed by Congress in response to several serious accidents in the transportation industry which were related to the use or abuse of alcohol or illegal drugs.

The law has provisions requiring drug and alcohol testing for safety-sensitive employees of the FAA, air carriers, railroad industry, commercial motor vehicle industry and the mass transportation industry.

Drug and alcohol testing is required under the following conditions:

- Pre-employment
- Reasonable suspicion
- Post-accident
- Periodic physical examinations
- Random

The Act was approved by the House and Senate as part of the Department of Transportation and Related Agencies Appropriations Act of 1992 (H.R. 2942). The President signed it into law (P.L. 102-143) on October 28, 1991.

Section 3. **Testing to enhance aviation safety** amends Title VI of the Federal Aviation Act of 1958 by adding at the end: **Sec. 614. Alcohol and controlled substances testing**, which takes effect within twelve months after date of enactment requiring air carriers to conduct testing as listed above.

Section 4. **Testing to enhance railroad safety** amends Section 202 of the Federal Railroad Safety Act of 1970, which takes effect within twelve months after date of enactment requiring railroads to conduct testing as listed above.

Section 5. **Testing to enhance motor carrier safety** amends the Commercial Motor Vehicle Safety Act of 1986 by adding a new section at the end: **Sec. 12020. Alcohol and controlled substances testing**, which takes effect within twelve months after the date of enactment requiring testing as listed above.

Section 6. **Testing to enhance mass transportation safety** requires testing to be implemented for all mass transportation operations which are recipients of Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 or section 103(e)(4) of title 23, United States Code. The regulations shall be issued within twelve months after date of enactment.

*SOURCE: The Bureau of National Affairs, Inc.*

# DEPARTMENT OF TRANSPORTATION (DOT) REGULATIONS

## Brief summary and history of DOT drug-free workplace regulations:

The Department of Transportation (DOT) issued its final rule "Procedures for Transportation Workplace Drug Testing Programs", December 1, 1989. This rule sets forth the procedural requirements for drug testing, including preparation for testing, specimen collection procedures, laboratory requirements, Medical Review Officer qualifications and functions, reporting and transmission of test results and employee protection safeguards for all modes of transportation regulated by the DOT. Each DOT agency or Operating Administration (OA) followed the mandate with rules specific to their OA. The six (6) OA's generally have the same requirements and language to the extent possible in order to facilitate compliance for companies and employers subject to more than one OA. It should be noted that Federal Safety Standards take precedence over union agreements.

On March 17, 1994, final rules for modifications and additions to the DOT rules were issued. These changes were required by the Omnibus Transportation Employee Testing Act of 1991 and provide for the alcohol misuse prevention program final rules. The intent of the regulations is to enhance the overall safety of the transportation industry and the public. All employers were required to have programs in place by January 1, 1996.

Since 1994 there have been modifications and additions to the regulations.

The six (6) OA's are:

- Federal Aviation Administration (FAA)
- Federal Motor Carrier Safety Administration (FMCSA)
- Federal Railroad Administration (FRA)
- Research and Special Programs Administration (RSPA)
- Federal Transit Administration (FTA)
- United States Coast Guard (USCG)

Generally speaking, the transportation regulations pertain to all occupations under DOT jurisdiction including:

- flight crews, flight attendants, instructors, air traffic controllers, aircraft dispatchers, aircraft dispatchers, maintenance, screening & ground security coordinator personnel.
- commercial motor vehicles used for *inter-* and *intra-*state commerce when:  
(1) the vehicle has a GVWR of more than 26,000 pounds; or (2) the vehicle is designed to transport more than 16 passengers including the driver; or (3) the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding.

Under the FMCSA, the rules extend to the following:

Trucking and Motor Coach operations of:

Federal, State and local government agencies (includes school districts)

Church and civic organizations

Tribal Governments

Farmers and Custom Harvesters (unless exempted)

Apiarian Industries

For-hire and private companies

Note: Owner/Operators covered as both employer and employee.

- Employees subject to the Railroad Hours of Service Act, engine, train & signal services, dispatchers, operators.
  
- Operations, maintenance, and emergency-response personnel at a pipeline or liquid natural gas facility.
  
- Crew members on a commercial vessel licensed, certificated, or documented by the U.S. Coast Guard.

Employers are responsible for meeting all applicable requirements and for *all actions* of officials, representatives and agents. Agents include any service agents such as a third-party administrators, random-test consortium administrators, and any service provider contracted to carry out the requirements of the DOT and individual OA regulations for the employer. Employers should be knowledgeable as to the regulatory requirements even if contracting with a service agent to run the DOT drug-testing program.

**COMPARISON OF COMMON DRUG-TESTING REQUIREMENTS AND STANDARD PRACTICES<sup>8</sup>**

	<b>NON-REGULATED EMPLOYER</b>	<b>DEPARTMENT OF TRANSPORTATION (DOT) REGULATED</b>	<b>PUBLIC-EMPLOYER</b>	<b>U.S. ANTI-DOPING AGENCY (USADA)</b>	<b>STUDENTS</b>
<b>Who is tested</b>	All employees or designated classes of employees	Safety-sensitive transportation employees and service agents	Safety-sensitive employees	U.S. and international athletes in sanctioned competitions	Students grades 7-12 in extra-curricular activities & athletics; holders of parking permits
<b>Testing circumstances</b>	Pre-employment; reasonable suspicion; for cause; random; post-incident; return-to-duty; follow-up; other	Pre-employment; reasonable suspicion; for cause; random; post-incident; return-to-duty; follow-up	Pre-employment; reasonable suspicion; for cause; random; post-incident; return-to-duty; follow-up	Random; reasonable suspicion; for cause	Random; reasonable suspicion; for cause
<b>Specimen types</b>	Urine, hair, saliva, sweat, nails	Urine <sup>9</sup>	Urine	Urine	Urine, hair, saliva
<b>Tested drugs</b>	SAMHSA-5 <sup>10</sup> ; 8 or 10-panel screens <sup>11</sup>	SAMHSA-5 - required split specimen	SAMHSA-5 - required split specimen	Steroids, hormones, diuretics, masking agents, stimulants, narcotics, cannabinoids, others	SAMHSA-5; steroids; 8 or 10-panel screens; MDMA
<b>Concentration levels</b>	SAMHSA-established cut-offs <sup>12</sup>	SAMHSA-established cut-offs	SAMHSA-established cut-offs	Limits of detection	SAMHSA-established cut-offs
<b>Refusal to test</b>	Treated as a positive test	Treated as a positive test	Treated as a positive test	Treated as a positive test	Treated as a positive test
<b>Chain of custody (cc)</b>	Multi-copy cc form	Multi-copy cc form	Multi-copy cc form	Multi-copy cc form	Multi-copy cc form
<b>Medical review of positive results</b>	Optional but recommended; may be governed by state law	Required by Medical Review Officer (MRO)	Required by Medical Review Officer (MRO)	Required by USADA Review Board	Optional but recommended; may be governed by state law
<b>Laboratory requirements</b>	None or governed by state law	Only SAMHSA certified	Only SAMHSA certified	Only World Anti-doping Agency certified	None or governed by state law
<b>Observed collections</b>	No <sup>13</sup>	Under specific circumstances	Under specific circumstances	Under all circumstances	No
<b>Education/treatment provisions</b>	Optional	Yes	Yes	No	Optional

<sup>8</sup> Alcohol testing excluded for purposes of this comparison chart.

<sup>9</sup> US Dept. of Transportation is anticipated to release new rules adding alternative specimens in 2005.

<sup>10</sup> Cocaine, phencyclidine (PCP), opiates, cannabinoids (marijuana), amphetamines.

<sup>11</sup> Above 5-panel plus: barbiturates, benzodiazepines, methadone, methaqualone, propoxyphene.

<sup>12</sup> Unregulated employers and student programs usually follow the DOT guidelines in most areas of drug testing, but may determine their own tolerance levels. May also be subject to state law.

<sup>13</sup> Some employers request, in written policy, observed collection when specimen substitution is suspected, but most consider substitution equivalent to a positive test result and terminate the testing process with the substitution.

**DRUG-FREE WORKPLACES**  
**Guide No. 1**  
**Arizona H.I.D.T.A.**  
**Demand Reduction Office**

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