

4123-17-58

Drug-free workplace (DFWP) discount program.

Pursuant to division (E) of section 4123.34 of the Revised Code, the administrator may grant a discount on premium rates to an eligible employer that meets the drug-free workplace (DFWP) program requirements under the provisions of this rule.

(A) As used in this rule:

- (1) "Drug-free workplace program" or "DFWP program" means the bureau's rate program which offers a premium discount to eligible employers for implementing a program addressing workplace use and abuse of alcohol and other drugs, including prescription, over-the-counter, and illegal drug abuse.
- (2) "Prescription drug abuse" means the use of over-the-counter drugs or medications prescribed by a licensed medical practitioner by someone other than the person for whom they were prescribed or for purposes other than those for which they were prescribed or manufactured.
- (3) "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 DFWP policy; or
 - (d) Non-vehicular damage in apparent excess of a dollar amount stipulated in the employer's DFWP 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.

- (4) "Reasonable suspicion" means evidence that an employee is using drugs or alcohol in violation of the company's DFWP 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 abuse 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 abuse or substance use that may violate the employer's DFWP policy, and do not appear attributable to other factors.
- (5) "Random selection" means drug testing of an employee selected from a pool of employees made regardless of whether any suspicion of illegal drug use exists. This testing is made without advanced notice to the employee and is based on an equal probability of selection. Random selection testing is based upon an objective and non-discretionary computer program operated and maintained by an outside contractor to identify and test a specified percentage of the total workforce over the course of a year. All employees, including those previously selected for testing, have an equal chance of being selected each time the testing process occurs, such that some employees may be selected more than once for random selection testing while other employees may not be selected at all.
- (6) "Safety-sensitive position or function" means any job position or work-related function or job task designated as such by the employer, which through the nature of the activity could be detrimental or dangerous to the physical well-being of the employee, co-workers, customers or the general public through a lapse in attention or judgment. The safety-sensitive position or function may include positions or functions where national security or the

security of employees, co-workers, customers, or the general public may be seriously jeopardized or compromised through a lapse in attention or judgment.

- (7) "Supervisor" means an employee who supervises others in the performance of their jobs, has the authority and responsibility to initiate reasonable suspicion testing when it is appropriate, and has the authority to recommend or perform hiring or firing procedures.
- (8) "Ohio Department of Alcohol and Drug Addiction Services" or "ODADAS" means the state agency an employer may contact to provide technical assistance or referral to available community resources for employers interested in developing a DFWP program. ODADAS shall maintain a list of DFWP developmental consultant programs meeting specified criteria and offering training to assist employers in developing a DFWP program. Such training shall be experience equivalency for purposes of this rule.
- (9) "Experience equivalency" means consultation and training services offered through a program which facilitates the development of an employer's DFWP program and may qualify the employer to receive a higher discount based on the program level implemented in conjunction with this experience equivalency credit.

The criteria for a program to be an experience equivalency shall include:

- (a) All primary consultants for the organization shall have a minimum of ten hours annual continuing education in drug-free workplace issues;
- (b) The organization shall have provided drug-free workplace policy and operational procedures development consultation and training for a period of at least two years; and
- (c) For purposes of this rule, the organization shall provide a certificate only to an employer that completes a minimum of fifteen hours of face-to-face consultation and training and a minimum of twenty additional hours developing the employer's drug-free workplace policy and program operations.
- (10) "Employee assistance plan" means an employer's plan of action and designated appropriate resources to assist employees who:
- (a) Seek help on their own for an alcohol or drug problem;

- (b) Are referred by management for a possible problem with alcohol or drugs;
or
 - (c) Have a positive alcohol or drug test.
- (11) "Employee assistance program" or "EAP" means a cost-effective program to assist employees and their families in dealing with problems affecting their work performance. An EAP identifies and helps resolve problems by applying short-term counseling, referral, and follow-up services, as determined by the contractual arrangement with the employer. In addition, the EAP provides such services as management training and consultation; prevention and education programs; crisis intervention; benefits analysis; and organizational development. A qualified EAP is one recognized by industry standards which employs certified personnel and operates in compliance with core-technology specific to the EAP discipline. An "employee assistance program" is to be distinguished from an "employee assistance plan," which is used generically by employers offering a composition of assistance services for employees but which do not adhere to the core technology of the EAP field, as defined by the employee assistance professional association (EAPA).
- (12) "Drug and alcohol testing" means a range of tests that may be utilized to address employee use or abuse of alcohol and other drugs that affect workplace safety. These tests include pre-employment or new hire testing to screen from the workforce persons with existing substance use or abuse problems that may affect workplace safety; post-accident testing, for employees who may have caused or contributed to an accident due to use or abuse of alcohol or other drugs; reasonable suspicion testing, which utilizes observations from trained supervisors to identify employees whose behavior suggests use or abuse of alcohol or other drugs that may endanger the employee or other employees; and random drug testing to identify employees who use alcohol or other drugs in contravention of the employer's DFWP policy, with such testing likely to deter substance abuse because employees will not know whether or when they might be tested. The five drugs that are included in the drug testing are amphetamines, cannabinoids (THC), cocaine (including crack), opiates, and phencyclidine (PCP).
- (13) "Consortia" means an entity established to provide more cost-effective services to employers to help the employers meet the DFWP program requirements. Consortia may involve varied pools of employers and their employees, wherein employer education, supervisor training, and drug and alcohol testing may be offered at a reduced cost to the employers who choose to participate. Consortia for drug and alcohol testing purposes may involve contracts with laboratories certified by the department of health and human services and will

operate in concert with established protocols and procedures that are consistent with federal guidelines for testing.

- (14) "Vendor" means any person or organization that provides service to employers participating in the DFWP program for purposes of employers meeting DFWP program requirements.

(B) Application process.

The bureau shall provide application and renewal forms for use in the DFWP program and shall have final authority to approve a state fund employer to receive a discount based on its participation in this program. An employer's participation in a DFWP program shall be on a program year basis, as shall renewal of participation in a DFWP program. Only state fund employers requesting consideration for the DFWP program discount should submit an application. The bureau shall evaluate each application to determine the employer's eligibility to receive a discount under the DFWP program, the employer's eligibility for a specific program level, and the applicable discount per cent.

- (1) A private employer may apply either by June thirtieth for the program year beginning July first of that year to June thirtieth of the following year, or by December thirty-first for the program year beginning January first of the following year to December thirty-first of that year. The progress report and renewal deadlines are March thirty-first for a program year that begins on July first, and September thirtieth for a program year that begins on January first.
- (2) A public employer taxing district may apply by December thirty-first prior to the program year beginning January first of the following year to December thirty-first of that year. The progress report and renewal deadlines are September thirtieth for a program year beginning January first.
- (3) An employer may withdraw its application for enrollment in the DFWP program under this rule at any time prior to receiving the discount on its premium. When an employer becomes aware that it is unable to meet the program requirements associated with its approved DFWP program level by the required implementation date, the employer shall notify the bureau of its inability and shall withdraw from the program. The employer shall return any monetary benefits associated with any discount received, including interest, which shall be calculated as provided in division (E) of section 4123.41 of the Revised Code.

(C) Eligibility requirements.

The DFWP program under this rule is available in the form of technical assistance and support to all private and public employers. However, eligibility for the discount is limited to state fund employers, with the per cent of discount based on an employer's participation in one or more alternate rating programs. A state fund employer seeking a discount shall apply on a bureau application form to implement a DFWP program and shall satisfy all of the eligibility requirements of this rule. The bureau shall review the application to determine whether the employer is eligible to receive a discount for participation in the DFWP program, determine whether the employer is eligible for the level of program applied for, and determine and approve the discount percentage for the level of program for which the employer is determined to be eligible. An employer that is found to be ineligible for participation in the DFWP program may reapply in a subsequent program year. It is recognized that an employer may implement a DFWP program that exceeds the minimum requirements for the discount level approved by the bureau. For all levels of a DFWP program, the employer shall meet the following eligibility requirements:

(1) If an employer participates in any other alternate rating program offered by the bureau, ~~or receives a discount, credit, or benefit for participation in group rating, retrospective rating, or the premium discount program in the same policy year at the same time~~ as the employer participates in the DFWP program, the employer may participate in the DFWP program and may receive the discount provided for under this rule. ~~The employer may receive only the maximum discount, credit, or benefit for whichever program amount is greater for the given policy or program year, or as specifically defined below, as follows in addition to the benefit for participating in the other alternative rating program, subject to the provisions and restrictions below:~~

~~(a) An employer participating in both the premium discount program plus under rule 4123-17-70 of the Administrative Code and the DFWP program may receive a premium discount equal to the greater of the premium discount program discount or the DFWP program discount as earned individually for the given policy or program year.~~

~~(i) Notwithstanding the provision of paragraph (C)(1)(a) of this rule, an employer participating in both the PDP plus under rule 4123-17-70 of the Administrative Code and the DFWP program under this rule may receive a premium discount for both programs. The discounts shall apply so long as the employer satisfies the requirements of each of the programs.~~

~~(ii) In applying the discounts for the two programs, the bureau shall first apply the PDP plus discount to the extent allowable under paragraph (I) of rule 4123-17-70 of the Administrative Code, and then the DFWP discount allowable under this rule.~~

- ~~(b) An individual employer participating in both group rating under rules 4123-17-61 to 4123-17-68 of the Administrative Code and the DFWP program may implement the DFWP program and receive the associated premium discounts in addition to the group discount; provided, however, the combined discounts may not exceed the maximum discount allowed under the group rating plan.~~
- (e)(a) An employer participating in both retrospective rating under rules 4123-17-41 to 4123-17-54 of the Administrative Code and the DFWP program may only receive a premium discount equal to the maximum of either the discount under the DFWP program or the difference between the employer's premium calculated as an individual employer and calculated in the retrospective rating program.
- (b) An employer participating in group rating under rules 4123-17-61 to 4123-17-68 of the Administrative Code or in group retrospective rating under rule 4123-17-73 of the Administrative Code and that participates in the DFWP program during a given program period is not eligible for a DFWP discount in addition to the benefit for participating in either of these other alternative rating programs
- (c) An employer participating in the deductible program under rule 4123-17-72 of the Administrative Code and the DFWP program may implement the DFWP program under this rule and receive the associated premium discounts in addition to the deductible benefit.
- (d) An employer that has an existing substance-free program that has been in place for four or more years at the time of application and is evaluated as comparable to the level one program under this rule is not eligible for a discount under this rule.
- (e) An employer not eligible for a discount under this rule may implement a DFWP program and is encouraged to do so. The bureau and ODADAS will identify available resources for support and technical assistance.
- (2) The employer shall be current as of March thirty-first for the application year beginning July first, or September thirtieth for the application year beginning January first, and subsequent renewal years (not more than forty-five days past due) on any and all premiums, assessments, penalties or monies otherwise due to any fund administered by the bureau, including amounts due for retrospective rating at the time of the application deadline.
- (3) The employer cannot have cumulative lapses in workers' compensation

coverage in excess of ~~fifty-nine~~ forty days within the ~~eighteen~~ twelve months preceding the application or renewal deadline.

- (4) The employer shall be in an active or reinstated policy status the first day of the policy year for the DFWP program.
- (5) An employer in the DFWP program shall continue to meet all eligibility requirements during the year of participation in the program, when applying for renewal, and during each subsequent year of participation in the program, regardless of the level of the employer's DFWP program.

(D) General program requirements.

In signing the application form, the chief executive officer or designated management representative of the employer shall certify that the employer shall meet, at a minimum, the program requirements associated with the level DFWP program for which the employer has applied. This certification is required for the employer to be considered for the discount associated with implementing the specific level DFWP program, and the signature certifies that the employer shall return any monetary benefits associated with any discount received, including interest, based on failure to implement or meet the DFWP program level requirements for which it has applied and been approved.

- (1) An employer approved by the bureau for a DFWP program that does not have an existing substance-free workplace program at the time of application or that has a program in place for less than one year, may receive a maximum of five years of discount under this rule.
- (2) An employer that has an existing substance-free workplace program at the time of application for at least one year but less than four years that is evaluated as comparable to the level one program under this rule may receive a maximum of four years of discount under this rule.

(E) Program requirements - all program levels.

To receive a discount for implementing and operating a DFWP program, an employer shall fully implement, at a minimum, the following program components by the applicable dates.

- (1) Policy - The DFWP program shall include a written policy statement, which, at a minimum, shall consist of the following:
 - (a) Articulate all the elements of the level DFWP program which the

employer is implementing;

- (b) State management's incentive for creating a substance-free workplace (e.g., concern for employee safety and health, productivity, accident prevention, and loss control);
- (c) Identify a DFWP program administrator and indicate the person's role or responsibilities with regard to the DFWP program;
- (d) Communicate the DFWP program and policy through initial presentation to all employees prior to the program implementation and/or on a repetitive basis annually through employee education sessions;
- (e) Clearly state that the program applies to all employees, including all levels of management;
- (f) Contain appropriate references to collective bargaining agreements and show how the DFWP program works in concert with these agreements to promote a safer workplace for all employees;
- (g) Address the use or abuse of alcohol, prescription medications, over-the-counter medications, or illegal drugs. The policy should include which drug or alcohol tests will be used, at what cutoff levels and what testing procedures and protocols will be applied; and a clear statement that supervisors will be trained regarding their responsibilities related to various testing prior to the implementation of any testing;
- (h) Include a commitment to rehabilitation;
- (i) Describe how referrals may be made for testing, assessment, and employee assistance;
- (j) Be in compliance with all federal and state laws or regulations;
- (k) State what is prohibited and the consequences for employees of a violation of this policy;
- (l) State the consequences, if any, for an employee's refusal to submit to a medical examination or a drug or alcohol test in conjunction with the operation of the employer's DFWP program;

- (m) State the consequences for any employee attempting to adulterate a specimen or otherwise manipulate the drug or alcohol testing process;
 - (n) State that law enforcement authorities may be contacted and requested to come onto the employer's property when appropriate in conjunction with a referral for criminal prosecution;
 - (o) Contain a statement that nothing in the policy alters the employment-at-will status as it affects any other employment issues with the employer;
 - (p) State that an employee's violation under the DFWP policy shall not be reported to law enforcement officials unless required by a regulatory body or by criminal law provisions; and
 - (q) Include a discussion of confidentiality of the program records to ensure the privacy rights of individuals.
- (2) Employee education - The DFWP program shall include employee education, which, at a minimum, shall consist of the following:
- (a) A total of at least two hours annually for all current employees prior to implementation of the DFWP program, and at least annually thereafter for each program year in which the employer operates a DFWP program, and with at least one hour for all new employees within the employee's first four weeks of employment;
 - (b) Inform employees about the content of the DFWP program as delineated in the written policy, a copy of which will be presented, discussed and acknowledged by each employee's signature on an appropriate form;
 - (c) Stress management's commitment to the program;
 - (d) Include the disease model for alcohol and other drugs, the signs and symptoms associated with substance use and abuse, and the effects and dangers of commonly used drugs in the workplace;
 - (e) Share a list of helping resources in the community for employees to utilize for themselves or their families; and

- (f) Be presented by a qualified educator or a presenter supervised by a qualified educator holding one of the following credentials:
 - (i) Substance abuse professional (SAP);
 - (ii) Certified employee assistance professional (CEAP);
 - (iii) Certified chemical dependency counselor (CCDCIII);
 - (iv) Ohio certified prevention specialist 1 (OCPS 1); or
 - (v) Ohio certified prevention specialist 2 (OCPS 2).
- (3) Supervisor training - The DFWP program shall include supervisor training, which, at a minimum, shall consist of the following:
 - (a) At least four hours of initial training for all current and new supervisors (with at least two hours of training within six weeks of a current employee becoming a supervisor or from the date of hire of a supervisor), in addition to the annual two hours of employee education, for a total of six hours annually;
 - (b) In subsequent program years, a minimum of two hours of refresher training for supervisors who have received the initial four hours of training, which is in addition to the annual two hours of employee education, for a total of four hours;
 - (c) A discussion of a supervisor's responsibilities in relationship to the employer's DFWP program, including but not limited to how to recognize a possible alcohol or other drug problem; how to document behaviors that demonstrate an alcohol or other drug problem; how to confront employees with the problem in terms of their observed behaviors; how to initiate reasonable suspicion testing; how to make an appropriate referral for assistance; how to follow up with employees re-entering the work setting after a positive drug test; and how to handle DFWP program responsibilities in a manner that is consistent with any pertinent collective bargaining agreements; and
 - (d) Be presented by a qualified trainer or a presenter supervised by a qualified trainer holding one of the credentials provided in paragraphs (E)(2)(f)(i) to (E)(2)(f)(v) of this rule.

- (4) Drug and alcohol testing - The DFWP program shall include drug and alcohol testing which, at a minimum, shall consist of a five-panel drug screen with gas chromatography/mass spectrometry (GC/MS) and alcohol testing consistent with federal standards. The employer shall implement and pay for drug and alcohol testing as follows, with the stipulation that all categories of testing shall be clearly described and defined in the employer's written policy.
- (a) Pre-employment/new-hire testing: at one hundred per cent (drug test required), with testing to be conducted before or within the first ninety days of employment;
 - (b) Post-accident: All employees who may have caused or contributed to an on-the-job accident, as defined in paragraph (A)(3) of 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 thirty-two hours for other drugs.
 - (c) Reasonable suspicion testing based on documentation and concurrence among the trained observing supervisor and a second trained supervisor, wherever possible.
 - (d) Follow-up testing, for any employee with a positive test, commencing with a return-to-duty test as the first in a minimum of four tests over the period of a year from the date of return to duty for such employee where the employer brings the employee back to work or returns the employee to a safety-sensitive position or function after a positive test; no set maximum during the first year that begins with the date of return to duty. A maximum number of tests after the first year from date of return to work are to be determined by agreement between the employee, the substance abuse professional assessing or treating the employee, and the employer.

For the purposes of the DFWP program, the forms of testing to be utilized will be urinalysis (EMIT screen, also referred to as a drug screen, plus GC/MS confirmation) for a panel of five drugs, and breath or saliva with a confirmatory evidential breath test (EBT) for alcohol. However, if an EBT is not available or reasonably accessible, a blood test should be 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. To ensure the integrity of testing and for the safety of employees, participating companies must adopt the procedures and chain-of-custody guidelines recommended by the federal department of health and human services (DHHS) and

required by the federal department of transportation. Employers shall ensure that DHHS certified laboratories process the test results, and that a qualified medical review officer is responsible for evaluating all test results.

Supervisors shall receive training regarding their responsibilities related to various testing prior to implementation of testing. Cut-off levels shall be clearly stated in the written policy, along with the procedures or protocols, such as chain of custody, that define the testing process.

- (5) Employee assistance - The DFWP program shall include an employee assistance plan as defined in paragraph (A)(10) of this rule for levels 1 and 2 DFWP programs, or an EAP as defined in paragraph (A)(11) of this rule for a level 3 DFWP program. Upon an employee's positive test, in addition to any corrective action deemed appropriate, the employer shall explain to the employee what a substance abuse assessment is and, by way of referral, shall provide a list containing names and addresses of qualified substance abuse assessment resources who can administer an assessment.

The specifics of the employee assistance plan as well as any requirements for which the employer contracts with a provider are dependent upon the level DFWP program which the employer implements.

- (6) Other - The DFWP program may contain other provisions related to specific program requirements that do not fall into one of the five basic program components.
- (7) An employer may use a vendor for any of the following: to develop its DFWP program policy under paragraph (E)(1) of this rule; for an educator or presenter supervised by an educator for employee education under paragraph (E)(2) of this rule; for a trainer or presenter supervised by an educator for supervisor training under paragraph (E)(3) of this rule; for drug and alcohol testing under paragraph (E)(4) of this rule; or for employee assistance under paragraph (E)(5) of this rule.

- (a) For an employer to use the services of a vendor under this rule, the vendor, if required by law to possess workers' compensation coverage, either:

- (i) Shall be a current participant in the bureau's DFWP program under this rule;

- (ii) Shall have completed all of the vendor's years of eligible discount in

the DFWP program and shall still maintain a DFWP program comparable to the DFWP program under this rule; or

(iii) If the vendor has applied to the DFWP program under this rule but the bureau has determined the vendor to be ineligible for the program based upon the provisions of paragraph (C)(1)(e) of this rule, shall develop and maintain a DFWP program comparable to the DFWP program under this rule.

(b) If the vendor has applied to the DFWP program under this rule but the bureau has determined the vendor to be ineligible for the program based upon any of the provisions of paragraph (C)(2), (C)(3), or (C)(4) of this rule, the employer may not use the vendor in the DFWP program to develop its DFWP program or meet any of the DFWP program requirements under this rule.

(8) The bureau may establish and administer consortia for the purpose of more effective program administration and reduced costs for employers participating in the DFWP program under this rule. Consortia will allow the bureau to develop pools to offer groups of employers and their employees the employee awareness information for the employer education requirement of paragraph (E)(2) of this rule, the skill building training requirement of paragraph (E)(3) of this rule, and to pool random testing and other drug and alcohol testing services for the drug testing requirements of paragraph (E)(4) of this rule. The bureau will develop the criteria that will govern how the consortia will operate.

(F) Additional level-specific program requirements.

In addition to the general requirements of paragraph (E) of this rule applicable to all employers participating in the DFWP program and receiving a discount, this paragraph of this rule describes additional specific program requirements for the various levels of the DFWP program.

(1) Level 1 DFWP program.

To receive a discount for a level 1 DFWP program, an employer shall meet all of the general requirements of paragraph (E) of this rule.

(2) Level 2 DFWP program.

To receive a discount for a level 2 DFWP program, an employer shall apply for level 2 DFWP program and, after the first full program year, shall have

had a level 1 DFWP program in place for at least one year, shall demonstrate to the satisfaction of the bureau proficiency and readiness to implement a level 2 DFWP program through a documented safety program that is already in place, or shall either have an existing comparable level 1 substance-free workplace program in place or demonstrate its proficiency and readiness to implement a level 2 DFWP program through documented experience equivalency from a program offering employer DFWP development training that has met the criteria specified in paragraph (A)(9) of this rule and is on the list maintained by ODADAS, or shall be a participant in a consortium that meets the requirements established by the bureau pursuant to paragraph (A)(13) of this rule. The employer shall fully implement the program components detailed in paragraph (E) of this rule, and in addition shall implement the following:

- (a) In addition to the drug and alcohol testing DFWP program requirements of paragraph (E)(4) of this rule, the employer shall include random drug testing of ten per cent of the employer's workforce each program year, as shall be clearly described and defined in the employer's DFWP policy. For public employers, random drug testing applies only to safety-sensitive positions or functions, as defined by the employer in the DFWP policy and paragraph (A)(5) of this rule.
- (b) In addition to the employee assistance plan DFWP program requirements of paragraph (E)(5) of this rule, the employer shall have pre-established a relationship for assessment which allows for a three-way exchange of information, with the appropriate consent, among the employee, employer, and provider. A first positive drug or alcohol finding shall result in a direct referral for assessment rather than just providing a list of names and addresses of qualified substance abuse assessment resources, unless otherwise defined within the DFWP policy for specific employment positions. In addition, the employer shall identify in the policy who will pay for the services associated with an assessment.
- (c) The employer shall implement five steps of the bureau's ten step business plan under rule 4123-17-70 of the Administrative Code during the first program year in which it operates a level 2 DFWP program.

(3) Level 3 DFWP program.

To receive a discount for a level 3 DFWP program, an employer shall apply to implement a level 3 DFWP program; shall have conducted a DFWP program at level 1, 2, or 3 for two full years, and shall have met the renewal requirements. The employer shall fully implement the program components

detailed in paragraph (E) of this rule, and in addition shall implement the following:

- (a) In addition to the drug and alcohol testing DFWP program requirements of paragraph (E)(4) of this rule, the employer shall include random drug testing of twenty-five per cent of the employer's entire workforce each program year. For public employers, random drug testing applies only to safety-sensitive positions or functions, as defined by the employer in the DFWP policy and paragraph (A)(5) of this rule.
- (b) In addition to the employee assistance plan DFWP requirements of paragraphs (E)(5) and (F)(2)(b) of this rule, the employer shall offer employees health care coverage which includes chemical dependency counseling and treatment services.
- (c) At level 3, the employer shall implement all ten steps of the bureau's ten step business plan under rule 4123-17-70 of the Administrative Code.

(G) Progress reporting and renewal requirements.

If the bureau determines that an employer is eligible to implement a DFWP program, the employer shall comply with the following requirements for initial participation, and renewal of annual participation in the DFWP program. In order to qualify for renewal, an employer shall have implemented all of the program requirements associated with the DFWP program level for which a discount was obtained by the appropriate implementation date.

- (1) The employer shall permit the bureau or its designee access to the employer's job sites for on-site audit of the employer's DFWP program components, related records and documentation. The employer shall sign a "release of information form" for compliance monitoring and cost-benefit analysis purposes which authorizes the bureau to have access to various aggregate information from drug testing laboratories, medical review officers and the employee assistance plan or employee assistance program.
- (2) By the end of the first quarter of the program year or a subsequent date established by the bureau, for the first year of an employer's DFWP program, the chief executive officer or designated management representative of the employer shall certify on a form provided by the bureau a statement that the employer has fully implemented and is operating its DFWP program in accordance with the program level requirements for which the employer has applied or is receiving the discount.

(3) The employer shall submit to the bureau a DFWP program progress report on a form provided by the bureau providing information regarding its DFWP program for the program year. The progress report shall include information related to drug and alcohol testing and may also include additional information related to other DFWP program components as requested on the progress form. If the employer is applying for renewal, the employer shall include the DFWP program level that is requested for the next year. The reports shall be certified by the chief executive officer or designated management representative of the employer.

(a) Policy - The employer shall certify that it has developed a DFWP policy that meets or exceeds the program requirements associated with the level of DFWP program for which the employer is receiving a discount. The employer shall submit a copy of the written policy with the certification form. The employer shall maintain the following information on site for audit purposes:

(i) A copy of the written policy; and

(ii) Copies of signed acknowledgments from all employees regarding receipt of a copy of the employer's DFWP program policy.

(b) Employee education - The employer shall maintain on site statistics regarding the number of employees educated under the DFWP program, the names and qualifications of all educators who presented the DFWP program employee education sessions, and the names and qualifications of persons supervising any of these educators. In addition, the employer shall maintain the following information on site for audit purposes:

Original attendance sheets, signed by each employee who attended DFWP program employee education, indicating the date and number of hours of each session.

(c) Supervisor training - The employer shall maintain on site statistics regarding the number of supervisors trained under the DFWP program, the names and qualifications of all trainers who presented the DFWP program supervisor training, and the names and qualifications of persons supervising any of these trainers. In addition, the employer shall maintain the following information on site for audit purposes:

Original attendance sheets, signed by each supervisor who attended DFWP program supervisor training, indicating the date and number of

hours of each session.

(d) Drug and alcohol testing - The employer shall report statistics regarding the number of employees tested under the employer's DFWP program. The employer shall maintain on site for audit purposes copies of all billings from medical review officers and laboratories. The following statistics shall be reported:

(i) Total number of employees employed by the company;

(ii) Number of safety-sensitive positions or functions for both private employers and public employers;

(iii) Program year and dates or periods of time in which the testing occurred;

(iv) Number of new hires and percentage tested;

(v) Aggregate reporting of the number of employees tested for each category of testing required in the employer's DFWP program, including the number and per cent of employees tested for pre-employment/new hire, reasonable suspicion, post-accident, government required, random (if applicable), and other testing if applicable; number of positive versus negative tests for each category; and

(vi) Names of medical review officers and names, addresses, phone numbers, and contact persons for all labs or collectors utilized by the employer for drug and alcohol testing under the DFWP program.

(e) Employee assistance - The employer shall maintain on site the following information regarding its employee assistance plan or EAP under the DFWP program:

The name of the organization that provided the employee assistance services, and the name and telephone number of the contact person.

(f) Other - An employer implementing a level 2 DFWP program shall report its progress in implementing the first five steps of the bureau's ten step business plan, and an employer implementing a level 3 DFWP program shall report its progress in implementing all ten steps of the ten step

business plan. An employer implementing a level 2 or level 3 DFWP program shall maintain records on site of its implementation of either the first five steps or all ten steps of the bureau's ten step business plan, as applicable.

(H) Disqualification from program and reapplication.

The bureau may cancel an employer's participation in the DFWP program for the employer's failure to fully implement a DFWP program in compliance with the approved program level. The bureau shall send written notice of cancellation to the employer, and shall require the employer to reimburse the bureau for any discounts received inappropriately, plus interest, as provided in paragraphs (B)(3) and (D) of this rule.

- (1) If the bureau cancels an employer from the DFWP program under this rule for failure to meet the program requirements, the employer may reapply for the DFWP program for the next program period, unless the employer has received a discount and has failed to reimburse the bureau for the discount plus interest. The bureau may deny the application based on circumstances of the initial program period.
- (2) When an employer becomes aware that it is unable to fully implement its DFWP program by the required implementation date, the employer shall notify the bureau immediately. The employer's failure to notify the bureau of its inability to fully implement the DFWP program may disqualify the employer from re-applying for the program in the future, even after the required repayment of any discount that may have been received.

(I) Discount requirements.

An employer participating in the DFWP program or meeting renewal performance standards under this rule shall be eligible to receive discounts as provided for in this rule.

- (1) The discount for an employer implementing a DFWP program shall be as follows:
 - (a) For an employer implementing a level 1 DFWP program, ten per cent;
 - (b) For an employer implementing a level 2 DFWP program, fifteen per cent;
 - (c) For an employer that has operated a DFWP program at level 1, level 2 or level 3 (the latter without a level 3 discount) for a total of no less than

two full years; upon implementing a level 3 DFWP program, the employer is eligible for twenty per cent for each year of remaining eligibility in which the employer is approved to participate at a level 3 DFWP program,

- (2) The discount will be applied to the employer's premium rate, but not to the disabled workers' relief fund assessments or other assessments. The discount will not alter the employer's actual total modification calculation under rule 4123-17-03 of the Administrative Code.
 - (3) The application of the discount associated with the level of the DFWP program approved by the bureau for each employer shall occur effective July first or January first of the appropriate program year for private employers, and January first of the appropriate program year for public employers.
 - (4) An employer is limited to four continuous years, if eligible for four years of discount, or five continuous years, if eligible for five years of discount, to complete its maximum participation in the discount program under this rule; except that an employer which drops out of the DFWP program without receiving a discount or which repays any discount that was received, plus interest, may be considered for four or five years of discount, based on eligibility.
 - (5) An employer which has completed its eligible four years or five years of participation in the DFWP program under this rule is ineligible to reapply.
- (J) An employer may appeal enrollment rejection and renewal rejection to the bureau's adjudicating committee pursuant to rule 4123-14-06 of the Administrative Code.
- (K) Hold harmless statement.

Nothing in this rule requires an employer to implement any policies or practices in developing a DFWP program that conflict or interfere with existing collective bargaining agreements. Rather, the bureau suggests that the employer and employees engage in a collaborative effort to be successful in improving workplace safety by implementing a DFWP program that includes employee input and support.

Where there are legal issues related to development and implementation of a DFWP program, it is the employer's responsibility to consult with its legal counsel to resolve these issues. An employer shall certify in its application to the bureau that it shall hold the state of Ohio harmless for responsibility or liability under the DFWP program.

- (L) Pursuant to section 4121.37 of the Revised Code, the administrator may establish a program of safety grants for employee education, supervisor training, development and legal review of a written substance policy, employee assistance, and research for eligible employers who participate in the safety grant program. The safety grant program may include grants to an employer participating in the drug-free workplace discount program under this rule or to an employer with a program comparable to the DFWP program under this rule for the employer to provide for employee and supervisor education and training as required under paragraphs (E)(2) and (E)(3) of this rule.

The administrator or administrator's designee may authorize special safety grants which will be given in furtherance of drug-free workplace efforts to those employers who demonstrate capability of promoting the development of any drug-free workplace program component on a regional, statewide or industry-specific level including, but not limited to, incorporation of labor efforts to promote education, training and testing.

- (1) The bureau shall determine whether the employer is eligible for the safety grant program grants under this rule. The bureau may limit participation in the safety grant program based upon the availability of bureau resources for the program and upon the merits of the employer's proposal. The safety grant program is available only to a private state fund employer or a public employer taxing district that shall pay workers' compensation premiums to the state insurance fund, shall have active coverage on the date of agreement to participate in the safety grant program, and shall be a participant in the drug-free workplace discount program under this rule or an employer with a program comparable to the DFWP program under this rule at the time of application for the safety grant program.
- (2) The bureau will assess whether the employer is eligible to receive a safety grant under this rule. The bureau and employer shall enter into a written agreement detailing the rights, obligations, and expectations of the parties for performance of the safety grant program.
- (3) The bureau may meet with the owner or chief executive officer of the employer to evaluate the employer's progress in the safety grant program. The employer shall provide the bureau access to records or personnel to conduct research into the effectiveness of the safety grant program.
- (4) An employer who complies with the requirements of the safety grant program under this rule shall be eligible to receive a grant from the bureau as provided in the written agreement.

- (a) The bureau may establish by written agreement with the employer the maximum amount of the safety grant program grant.
 - (b) The bureau may establish by written agreement with the employer a requirement for matching funds from the employer in a ratio to be determined by the bureau.
 - (c) The bureau shall monitor the employer's use of the safety grant program grant and may recover the entire grant if the bureau determines that the employer has not used the grant for the purposes of the safety grant program or has otherwise violated the written agreement on the safety grant program.
- (5) The bureau shall evaluate the research data from the safety grant program on a periodic basis. The bureau may publish reports of the research to assist employers in maintaining a drug-free workplace.

Effective: 05/21/2009

CERTIFIED ELECTRONICALLY

Certification

05/11/2009

Date

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