

AN EMPLOYER'S GUIDE TO A DRUG-FREE WORKPLACE

This information and resource guide is comprised primarily of materials abstracted from a number of different sources. This guide is to be used as an overview of a drug-free workplace program, and is being offered as an informational tool only, with the understanding that it is not official language of the Florida Statutes. It is not intended to replace the original source publications. Information presented in this publication does not necessarily reflect the opinions or policies of the State of Florida, Department of Financial Services, Division of Workers' Compensation.

Revised April 2005

**STATE OF FLORIDA
DIVISION OF WORKERS' COMPENSATION
Customer Service Center
200 East Gaines Street
Tallahassee, Florida 32399-4227**

**Telephone #:(850) 413-1601
FAX #:(850) 921-2572**

TABLE OF CONTENTS

I.	Introduction	4
II.	The Benefits of Going Drug-Free	4
III.	How to Become a State of Florida, Workers' Compensation Drug-Free Workplace	6
	A. Plan And Develop A Clear And Comprehensive Drug-Free Workplace Policy	6
	1. A General Statement of the Employer's Policy on Drug Use	6
	2. The Existence of the Florida Law Which Gives the Employer the Authority to Require Drug Testing	7
	3. Drug Testing Procedures	7
	4. Confidentiality	8
	5. A List of Over-The-Counter Medications Which May Alter or Affect Drug Test Results	9
	6. Consequences And Sanctions of Refusing to Submit to Drug Testing	9
	7. A Listing of Employee Assistance Programs in your Local Area, with Addresses and Phone Numbers	9
	8. A Statement that an Employee or Job Applicant who is Notified of a Positive Confirmed Test Result May Contest the Result to the MRO	9
	9. A Statement Informing the Employee or Job Applicant of His/Her Responsibility to Notify the Laboratory of any Administrative or Civil Action	10
	10. The Types of Drugs for Which Workers Will be Tested	10
	11. A Statement Regarding any Applicable Collective Bargaining Agreement and the Right to Appeal to the Public Employees Relations Commission or Applicable Court	10
B.	Once You Have Planned Your Program, How Do You Implement It?	10

IV. Drug Testing Standards	12
V. Employer's Rights and Responsibilities	12
VI. Employee's Rights and Responsibilities	13
VII. Education Method	14
VIII. Most Commonly Asked Questions and Answers	15
IX. Terms	17
X. Important Phone Numbers	21
Example: Substance Abuse Policy Statement	23
Example: Sample Letter to Employees to Accompany the Substance Abuse Policy Statement	24
Example: Pre-Employment Drug Testing Consent and Release Form	25
Example: Active Employee Certificate of Agreement	26
Appendix 1: Application Form 09-1	27

I. INTRODUCTION

In 1990, legislation was enacted that created the Florida Drug-Free Workplace Program. The

intent was to “promote drug-free workplaces in Florida, in order that employers (would) be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug abuse by employees.” This legislation provides standardized criteria for employers and the worker’s rights by ensuring consistent, accurate and reliable test results. The success of a drug-free workplace program largely depends upon the commitment of management and labor to actively contribute to and support the implementation of the program. By using the guidelines set forth in the Workers’ Compensation Law, the workplace will be a safer place. Safer workplaces may mean fewer accidents, and fewer accidents mean lower workers’ compensation costs for the employer.

For questions, comments, or suggestions concerning the contents of this brochure, you may contact the Division of Workers’ Compensation, Customer Service Center at (850) 413-1601 or (850) 921-6966.

Incentives for Employers to Implement a Drug-Free Workplace Program may include:

- Ensuring a safer workplace
- A happier, healthier workforce
- A workplace in which all employees are drug-free
- A premium credit applied to an employer’s workers’ compensation premium
- Premium dollars are spent providing workers’ compensation benefits to workers for bonafide workers’ compensation accidents

II. THE BENEFITS OF GOING DRUG-FREE

If you are in business, it's time you know the facts....

The available data continue to indicate that substance abuse has a significant impact in the workplace, with costs estimated at over \$100 billion annually. Data show that:

- Seventy-one percent of illegal drug users are employed.
- Alcoholism causes 500 million lost workdays each year.
- Drug and alcohol-related problems are one of the four top reasons for the rise in workplace violence.
- Of those who called the cocaine helpline, 75 percent reported using drugs on the job, 64 percent admitted drugs adversely affected their job performance, 44 percent sold drugs to other employees, and 18 percent had stolen from co-workers to support their drug habit.
- A study conducted by the Institute for Health Policy, Brandeis University, found substance abuse to be the number one health problem in the country, resulting in more deaths, illnesses, and disabilities than any other preventable health condition.

While we do not yet have comprehensive data on the specific impact of workplace substance abuse, the data and studies available are compelling. For example:

- Drug-using employees at GM average 40 days sick leave each year compared to 4.5 days for non-users.
- Employees testing positive on pre-employment drug tests at Utah Power & Light were 5 times more likely to be involved in a workplace accident than those who tested negative.
- The State of Wisconsin estimates that expenses and losses related to substance abuse average 25 percent of the salary of each worker affected.

Despite recent news reports about the increased use of drugs, we continue to be encouraged that workplace substance abuse is a problem for which a solution exists. When the issue is addressed by establishing comprehensive programs, it is a "win-win" situation for both employers and employees. The following examples are illustrative.

- A study of the economic impact of substance abuse treatment in Ohio found significant improvements in job-related performance:
 - a 91 percent decrease in absenteeism;
 - an 88 percent decrease in problems with supervisors;
 - a 93 percent decrease in mistakes in work; and,
 - a 97 percent decrease in on-the-job injuries.
- At Southern Pacific railroad, injuries dropped 71 percent.
- An electric supply company with 150 employees experienced a 39 percent decrease in absenteeism and a 36 percent increase in productivity.
- A construction company with 60 employees reduced workers' compensation claims by \$50,000.
- A manufacturer with 560 employees experienced a 30-35 percent decrease in industrial accidents.

Statistics such as these suggest not just that workplace substance abuse is an issue that all employers need to address but also that it is an issue for which there is an answer. Taking steps to identify those with substance abuse problems and offer a helping hand will not only improve worker safety and health but also increase workplace productivity and competitiveness.



U.S. Department of Labor

No one wants to believe that a friend or a co-worker has a substance abuse problem. Subtle changes in behavior may not be recorded because no one knows how or wants to confront the problem. If there is a problem, ignoring it will not make it go away. Substance abuse problems do not get better if left alone, they only get worse. When these behaviors are ignored, workers who have a substance abuse problem continue to be a risk to themselves and their co-workers.

By taking steps to eliminate drugs in your workplace, you will have a safer work environment, a more productive workforce, reduced workdays lost as a result of work accidents, and possibly lower workers' compensation costs and premiums.

IMPLEMENTING A WORKERS' COMPENSATION DRUG-FREE WORKPLACE PROGRAM CAN SAVE YOU \$\$\$\$\$

An employer that implements a Drug-Free Workplace Program, and becomes a carrier certified drug-free workplace may be protected (in most cases) from workplace accidents that are a result of employees working under the influence of drugs or alcohol. Studies have shown a well-planned program to reduce substance abuse can increase productivity, reduce accidents, and decrease costs due to insurance claims. An employer implementing this program will also receive additional benefits:

~All employees will become more aware of the importance of safety in the workplace and will benefit from a safer work environment.

~When an employee incurs a work-related injury, and refuses to take a drug test when requested, the injured employee may forfeit eligibility for workers' compensation benefits,

regardless of the cause of the accident.

~An employee who loses a job or is denied employment as a result of a positive drug/alcohol test, may not qualify for unemployment compensation benefits. In that case, the contributory employer could be relieved of charges in connection with the unemployment claim.

~If drugs are found in the employee's system at or above threshold levels, the injured employee may not be entitled to workers' compensation benefits (Note: Case law may affect the injured employee's eligibility to benefits). This benefit is provided to employers who are carrier certified and in compliance with the program. If the employer is not carrier certified as a drug-free workplace, and the injured employee is able to show that the cause of the accident was not related to the presence of drugs in his/her system (i.e., if a heavy piece of equipment falls on the worker through no fault of his or her own), he or she may still be entitled to benefits.

~If you implement a drug-free workplace program and become carrier certified, you are eligible for a 5 percent credit to your workers' compensation insurance premium.

III. HOW TO BECOME A STATE OF FLORIDA, WORKERS' COMPENSATION DRUG-FREE WORKPLACE

A. Plan And Develop A Clear And Comprehensive Drug-Free Workplace Policy

The first step in becoming a carrier certified workers' compensation drug-free workplace will be to plan, organize and develop your drug-free workplace policy. One time only, prior to any testing, this policy must be provided to all employees and job applicants. There are certain components which must be contained in the written drug-free workplace policy in order to qualify for and be in compliance with the Carrier Certified Workers' Compensation Drug-Free Workplace Program. These are:

1. A General Statement of the Employer's Policy on Employee Drug Use, which must identify the following:

- >Employer prohibition of drug use
- >Types of tests required (see table titled "Drug Tests")
- >Actions an employer may take as a result of a positive test result

2. The Florida Law which gives the Employer the Authority to Require Drug Testing. That Law is found in Section 440.102, of the Florida Statutes (a copy of Section 440.102 can be provided by calling the Customer Services Center at (850) 413-1601)

3. Drug Testing Procedures

>An employer must use a laboratory that is licensed by the Florida Agency for Health Care Administration or certified by the U.S. Department of Health and Human Services. The name and address of the testing laboratory the employer will be using must also be stated in the policy (A current listing

of the certified laboratories authorized by the Agency for Health Care Administration can be obtained by calling the Agency for Health Care Administration at (850) 487-3109 or the WC Customer Service Center at (850) 413-1601).

>An employer is required to use a certified medical review officer (MRO) (include name and address, telephone number in your policy). The MRO will be responsible for:

Interpreting the drug test results,

Contacting the employee if the drug test is positive.

The MRO is required to contact the donor who has a confirmed positive test result before reporting the results of the test to the employer.

If the donor has a plausible explanation for the test result showing positive (i.e., legal use of prescription or nonprescription medication), as determined by the MRO, the MRO will report the test result as negative to the employer. The MRO cannot be an employee of the testing laboratory.

>Initial testing cannot begin until 60 days notice has been provided of the effective date of the program, unless the employer had some type of testing program in place prior to 07/01/90; then no notice period is required. The date of initial testing should also be included in the policy. This gives employees a chance to come to the employer and request assistance. The 60 day notice does not apply to job applicants.

>The employer must include notice to job applicants on vacancy announcements for those positions for which drug testing is required. A notice of the employer's drug-testing policy must be posted in plain view on the employer's premises, and copies of the policy must be made available for the employees or job applicants during regular business hours in the employer's personnel office, or other suitable location.

4. Confidentiality

>All information, interviews, reports, statements, memoranda, and drug test results received by the employer through a drug-testing program are to be considered confidential information. An assurance must be provided regarding the confidentiality of test results, as well as information about prescription drugs provided by the employee or job applicant. This statement need only say that all information produced as a result of testing remain confidential unless the employee authorizes the release by written consent. The only exceptions to this are: 1) when such a release is compelled by a hearing officer or a court of competent jurisdiction, and 2) for determining qualification for unemployment compensation benefits.

The written consent form must contain the following information:

The name of the person who is authorized to obtain the information,

The purpose of releasing the information,

The duration of the consent (the length of time the release will be needed; complete start and end dates)

The signature of the person authorizing release of the information.

>Procedures for employees and job applicants to confidentially report to the MRO the use of prescription or nonprescription medications both **before and after** being tested. You may instruct your MRO to contact each donor prior to testing to ensure that he or she has all of the information necessary to adequately and effectively analyze the test results. This information may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except as provided in the law.

>Information on drug testing shall not be released or used in any criminal proceeding(s) against the employee or job applicant. The employer, agent of the employer, or laboratory may have access to employee drug testing information when consulting with legal counsel in connection with actions relating to defense of a civil action.

5. A List of Over-The-Counter Medications Which May Alter or Affect Drug Test Results

>A list of the most common medications, by brand name or common name, as well as by chemical name, which may alter or affect a drug test must be provided to each donor prior to testing. This will allow the donor to provide necessary information to the MRO to properly analyze the test results. A list of such medications, as developed by the Agency for Health Care Administration, is available by contacting the Agency for Health Care Administration at (850) 487-3109, or the WC Customer Service Center at (850) 413-1601.

6. Consequences and Sanctions of Refusing to Submit to Drug Testing

>Consequences and sanctions for an employee who refuses to submit to a drug test must be described in your policy. If an employee or job applicant refuses to submit to a drug test, the employer may discharge or discipline the employee or refuse to hire the job applicant. Sanctions imposed as a result of refusing to submit to testing, should, however, be consistent with the sanctions imposed on employees or job applicants who have tested positive for drugs or alcohol. Keep in mind, sanctions must be applied

consistently to all employees. **All employees must be treated equally.**
Firm and consistent application of sanctions stated in your policy is essential for a successful program.

7. A Listing of Employee Assistance Programs in your Local Area, with Addresses and Telephone Numbers

>A list of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs may be found in your local telephone directory, or provided by the county health service, or local Chamber of Commerce. If you need assistance in making your list, contact the Workers' Compensation Customer Service Center at (850) 413-1601.

8. A Statement that an Employee or Job Applicant who is Notified by the MRO of a Positive Confirmed Test Result May Contest the Result to the MRO within 5 Working Days after Receiving Notification of the Test Result

>If the employee's or job applicant's explanation or challenge is unsatisfactory to the MRO, the MRO may report a positive test result back to the employer.

9. A Statement Informing the Employee or Job Applicant of His/Her Responsibility to Notify the Laboratory of any Administrative or Civil Action brought Pursuant to Section 440.102, F.S.

10. The Types of Drugs for which Workers will be Tested

>The policy must include a complete list of all of the drugs for which the employer will test, described by brand name or common name (if applicable), as well as by chemical name. The employer has the responsibility for choosing which drugs will be tested for in the testing procedures. The employer has the right to choose **any or all** drugs listed by the Agency for Health Care Administration in Rule Chapter 59A-24, Florida Administrative Code (A copy of Chapter 59A-24 may be obtained by calling the Agency for Health Care Administration at (850) 487-3109, or the WC Customer Service Center at (850) 413-1601).

11. A Statement Regarding any Applicable Collective Bargaining Agreement or Contract and the Right to Appeal to the Public Employees Relations Commission or Applicable Court

Other practices and policies which you might want to consider including in a Drug-Free Workplace Program are:

>Involving employees in the development and implementation of the program

>Determining how the program will be presented to and made available to

new and existing employees

B. Once You Have Planned Your Program, How Do You Implement It?

>Distribute the policy to all employees

>Educate your employees about the program. Meet with your employees to explain the benefits of having a drug-free work place and to answer any questions they may have.

>Post notification of your drug-free work place program. Give notice well in advance of policy implementation.

Once you have planned, developed and implemented your Workers' Compensation Carrier Certified Drug-Free Workplace Program, you can complete and submit Form 09-1 (you may obtain a copy of this form, at the back of this brochure, Appendix 1) **to your insurance carrier (do not send the application form to the Division of Workers' Compensation)** to apply for your 5 percent credit on your workers' compensation insurance premium.

If you are individually self-insured, your savings will be evident through reduced incidence of accidents and a reduction in the premium calculations for assessments paid to the Workers' Compensation Administration Trust Fund. For more information regarding assessment reductions for individual self-insureds, please call the Division of Workers' Compensation's Bureau of Monitoring and Audit at (850) 487-4899

An Employer is required to conduct the following types of Drug Tests under the Florida Workers' Compensation Drug-Free Workplace Program :

1. Job Applicant Testing. All final candidates for jobs (persons to whom you have offered employment) must be tested, although they may begin work pending the results of the drug test. Limited testing of applicants, based on a reasonable job classification basis, is permissible.

2. Reasonable Suspicion Testing. Drug tests must be conducted following any observed behavior creating "reasonable suspicion." These behaviors must be **clearly** defined in the policy. Some **examples** of reasonable suspicion include:

*Direct observation of drug/alcohol use, or the symptoms of being under the influence of a drug or alcohol.

*Abnormal behavior while at work or a significant deterioration in work performance. Be certain that these behaviors are properly documented to avoid any misunderstandings that may arise if this situation is contested by the employee.

*A report of drug use, provided by a reliable and credible source.

*Evidence that an individual has tampered with a drug test while working for you.

*Information that an employee has caused, contributed to, or been involved in, an accident while at work.

*Evidence that an employee has used, possessed, sold, or solicited drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery or equipment. If the testing is conducted on a "reasonable suspicion" basis, the employer must promptly record the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation must be provided to the employee on request, and the original documentation must be kept confidential by the employer.

3. Follow-up Testing. If an employer requires an employee to enter an employee assistance program, or a drug rehabilitation program, as a condition of continued employment after a confirmed, positive drug test, the employer must require the employee to submit to a random drug test, at least once per year for a two year period after completion of the program. Advance notice of the testing date must not be given to the employee being tested. If the employee voluntarily enters the program, the employer has the option to not require follow-up testing.

4. Routine Fitness-For-Duty Testing. If you ordinarily require annual physical fitness for duty examinations, these examinations must include drug testing.

*An employer may conduct "random testing" or any other legal types of testing of their employees.

IV. DRUG TESTING STANDARDS

If you have any questions concerning the technical aspects of drug testing, you may contact the Florida Agency for Health Care Administration at (850) 487-3109.

V. EMPLOYER'S RIGHTS AND RESPONSIBILITIES

>Within 5 working days after receipt of a positive confirmed test result from the MRO, an employer must inform the employee or job applicant in writing of the positive test result, the consequences of the positive test result, and the employee's available options.

> If the employee's or job applicant's explanation of the positive test result is unsatisfactory to the employer, the employer must provide a written statement to the employee/job applicant as to why the explanation was not satisfactory, along with the report of the positive test result. This confidential information must be kept by the employer for at least one (1) year.

>The employer must provide a copy of the test results to the employee/job applicant if the employee/job applicant requests a copy.

>An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee/job applicant on the basis of a positive test result that has not been verified by a confirmation test and by a MRO.

>An employer shall ensure that collection sites and laboratories use chain-of-custody procedures as established by the Agency for Health Care Administration to ensure proper record keeping, handling, labeling, and identification of all specimens tested.

>An employer must pay for all drug tests which the employer requires. An employee/job applicant must pay for all drug tests not required by the employer.

>An employer may not discharge, discipline, or discriminate against an employee because the employee has voluntarily come forth to seek treatment for a drug-related problem if the employee has not previously tested positive for drug use.

>An employer is not required to pay the costs of treatment for an employee with a drug related problem, unless they choose to do so. However, the employer may choose the employee assistance program or rehabilitation center if the employer is paying the costs for the employee's participation.

>If drug testing is performed based on "reasonable suspicion," the employer must outline and detail in writing the circumstances surrounding the determination that this type of testing is warranted. A copy must be provided to the employee upon request. The original documentation must be kept by the employer for a period of at least one (1) year, and must be kept confidential.

>All initial treatment and care provided by a health care provider to an injured employee before workers' compensation benefits are denied must be paid for by the carrier or self-insured employer. However, the carrier/self-insured employer must give reasonable notice to all affected health care providers that payment for treatment to the injured employee after a certain date will be denied.

>An employee/job applicant whose drug test is confirmed as positive shall not be deemed to have a "handicap" or "disability" based on the drug test results alone.

>Be sure that your policy contains necessary information written in clear, concise language for your employees to understand.

>If an employee/job applicant refuses to submit to a drug test, the employer can discharge or discipline the employee or refuse to hire the job applicant.

VI. EMPLOYEE'S RIGHTS AND RESPONSIBILITIES

>A drug test can be conducted only to determine “illegal” drug use. A person who tests positive for a lawfully used prescription drug cannot be subject to discrimination.

>The employee’s right to challenge the results of a drug test must be spelled out in the employer’s written policy.

>The employee has five (5) working days, after receiving written notification of the test result, to contest or explain the results to the MRO. If the explanation is unsatisfactory to the MRO, the MRO shall report a positive drug test result to the employer. The employees and job applicants have a right to consult with the MRO for technical information regarding prescription and/or nonprescription medications.

>An employer cannot ask job applicants what prescription drugs they may be taking before making a conditional offer of employment.

>Every specimen that produces a positive test result must be preserved by the licensed or certified laboratory that conducted the test for a period of at least 210 days after the result of the test was mailed or otherwise delivered to the MRO. If the employee or job applicant challenges the test result, the laboratory is to retain the sample until the case is settled.

>It is the responsibility of the employee/job applicant to notify the laboratory of any administrative or civil action pursuant to the law. This is important if the donor wishes to contest the results.

>The policy must contain a statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission, or applicable court.

>The employee or job applicant has 180 days after receiving written notification of a positive test result, and to have the sample retested at his or her expense at another licensed or certified laboratory chosen by the employee or job applicant.

An employer is not required to allow an individual to submit a new sample for retesting.

VII. EDUCATION METHOD

>An important part of your Drug-Free Workplace Program for employees should include education. How you inform employees of your policy and how you reinforce its message are important in determining the program’s success. There are various methods by which employers may provide education. Employers may provide education on drug abuse on an annual basis.

VIII. MOST COMMONLY ASKED QUESTIONS AND ANSWERS

Q.: Will becoming a drug-free workplace save me money?

A.:Yes. In addition to the premium credits which you will receive, having a Workers' Compensation Drug-Free Workplace Program will make your workplace safer, resulting in fewer accidents, which may reduce your workers' compensation costs.

Q.: Am I required to become a carrier certified drug-free workplace?

A.:No. Becoming a carrier certified drug-free work place is voluntary. However, without the certification, you are not eligible for any of the benefits provided under this program.

Q.: Under the Workers' Compensation Drug-Free Workplace Program, can I conduct random drug testing of my employees?

A.:Yes. In addition to the situations in which testing is mandatory, the law does not prohibit an employer from conducting random testing or any other lawful testing of employees.

Q.: Can I use a breathalyzer as a valid drug testing method?

A.:No. Under the Florida Workers' Compensation Drug-Free Workplace Program, the use of breathalyzers are not valid testing methods for initial or confirmation tests.

Q.: What if an employee refuses to take a drug test?

A.:If an injured employee refuses to submit to a test for drugs or alcohol, the employee may forfeit eligibility for medical and indemnity benefits, **if this sanction is contained within the employer's written policy**. If an employee or job applicant refuses to submit to a drug test, the employer is permitted to discharge or discipline the employee or may refuse to hire the applicant (if specified in the written Drug-free Workplace Policy), since by law, refusal to submit to a drug test is presumed to be a positive test result.

Q.: If a terminated employee files for Unemployment Compensation, may I inform the adjudicator that the employee was terminated as a result of a positive drug test?

A.:Yes. The employer is not breaching confidentiality since the adjudication process is confidential. However, if the employee appeals the adjudicator's decision and the case is remanded to an Appeals Referee, the positive test result is no longer confidential and becomes part of the official record.

Q.: Can I post the results of my employees' drug tests?

A.:No. All information, interviews, reports, statements, memoranda and drug test results, written or otherwise, received by the employer through a drug testing program are confidential.

Q.: Am I responsible for payment for services when my employee participates in an Employee Assistance program (EAP)?

A.:No, you are not. However, if you choose to do so, you have the right to choose the facility providing treatment. Remember also, if an employee does participate in an Employee Assistance Program, you, the employer, are required to extend the same considerations as reflected under the federal guidelines established for The Americans with Disabilities Act and The Family and Medical Leave Act.

Q.: How many days does the employee have to re-test the specimen, if he or she wishes to contest the positive test results?

A.:During the 180 day period after written notification of a positive test result, the employee who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's expense, at a licensed or certified laboratory of his or her choice.

Q.: Where may I obtain a listing of approved Employee Assistance Programs for my area?

A.:The Florida Alcohol and Drug Abuse Association, Inc. publishes a directory designed to provide reference to program listings and services (Please see Section 10 "Important Phone Numbers" for more detailed information).

Q.: Who pays for the drug tests?

A.:The employer is responsible for payment of all drug tests they may require. If an employee wishes to have the specimen retested, it will be at the employee's expense. In cases where the insurance carrier uses the positive test result to determine eligibility for workers' compensation benefits, the carrier will pay for the test.

Q.: What evidence should I take to an unemployment compensation hearing?

A.:The original and two copies of the following documents:

- 1.The laboratory report of the drug test results and chain of custody forms.
- 2.Documentary proof of qualification for the workers' compensation insurance discount as approved by the insurance carrier or the Division of Workers' Compensation's Self-Insurance Section. In the absence of these documents, an employer may arrange to call a qualified representative from the testing

laboratory as a witness. Other helpful witnesses would include anyone who saw the worker using drugs or anyone to whom the worker admitted using drugs.

IX. TERMS

Chain of Custody

refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

Confirmation Test

a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. This test must be different in scientific principle from that of the initial test procedure and must be capable of providing valid test results. This test is required before a medical review officer contacts the injured worker about test results.

Drug

alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed above. An employer may test an individual for any or all such drugs.

Drug Rehabilitation Program

a service provider that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

Drug Test

any chemical, biological, or physical instrumental analysis administered by a laboratory licensed by the Agency for Health Care Administration or certified by the U.S. Department of Health and Human Services, for the purpose of determining the presence or absence of a drug or its metabolites.

Employee

any person who works for salary, wages, or other remuneration for an employer.

Employee Assistance Program

Program an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work.

Employer

a person or entity that employs a person and that is covered by the Workers' Compensation Law.

Initial Drug Test

a sensitive, rapid, and reliable procedure used to identify negative and positive specimens, usually using a chemical procedure or a more accurate scientifically accepted method approved by the United States Food and Drug Administration or the Agency for Health Care Administration.

Job Applicant

a person who has applied for a position with an employer, and has been offered employment conditioned upon successfully passing a drug test, and may have begun work pending the results of the drug test. For a public employer, "job applicant" is a person who has applied for a special-risk or safety-sensitive position.

Medical Review Officer (MRO)

a licensed physician, qualified under section 59A-24.008(1)(a)-(e), F.A.C., who evaluates a donor's test result, together with his or her medical history or any other biomedical information, and makes the final determination of the donor's test results.

Prescription or Non-prescription Medication

a drug or medication obtained pursuant to a prescription, or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

Public Employer

any agency within state, county, or municipal government that employs individuals for a salary, wages, or other remuneration.

Reasonable

Suspicion

drug testing based on a belief that an employee is using or has used drugs in violation of the employer's policy. The reasons for "reasonable suspicion" testing must be clearly defined in the employer's Drug-Free Workplace policy. "Reasonable Suspicion" may include the following:

1. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug.
2. Abnormal conduct or unpredictable behavior while at work or a significant deterioration in work performance.
3. A report of drug use, provided by a reliable and credible source.
4. Evidence that an individual has tampered with a drug test during his employment with the current employer.
5. Information that an employee has caused, or contributed to, or been involved in an accident while at work.
6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

Safety-Sensitive

with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety; or such position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to s. 110.1127, Florida Statutes; or a position in which a momentary lapse in attention could result in injury or death to another person.

Special-Risk

with respect to a public employer, a position that is required to be filled by a person who is certified under Chapter 633 or Chapter 943, Florida Statutes.

Specimen

tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration or the Agency for Health Care Administration.

X. IMPORTANT PHONE NUMBERS

National Assistance

CSAP Workplace Helpline **1-800-WORKPLACE** **1-800-967-5752**

This Center for Substance Abuse Prevention's toll free service operates from 9:00 a.m.- 8:00 p.m. EST. Technical assistance is available for business owners, managers, and union leaders on the development and implementation of comprehensive drug-free workplace programs.

National Clearinghouse for Alcohol and Drug Information **1-800-729-6686**

This toll-free service has information available on all aspects of substance abuse, from prevention materials and videos to specific program guidelines and resources within your state. Many publications offered are free from the Clearinghouse.

Drug Information Hotline **1-800-662-4357**
(Spanish) **1-800-662-9832**

Employee Assistance Professionals Association (EAPA) **(703) 522-6272**

EAPA provides information on how to select EAP's, and the value they can provide.

AIDS Treatment Information Service **1-800-448-0440**

Al-Anon/Alateen Family Groups **1-800-356-9996**

Alateen **(212) 302-7240**

Alcoholics Anonymous	1-800-252-6465
American Council on Alcoholism Helpline	1-800-527-5344
800 Cocaine - (Information and Referral Hotline)	1-800-COCAINE
MADD (Mothers Against Drunk Driving)	(214) 744-6233
Nar-Anon Family Group Headquarters	(310) 547-5800
Narcotics Anonymous	(818) 773-9999
National Council on Alcoholism and Drug Dependency	1-800-NCA-CALL
Partnership for a Drug-Free America	(212) 922-1560

State Assistance

Drug/Alcohol Abuse Helpline (24 Hours)	1-800-362-2644
Drug Abuse Alcoholism & Cocaine (Toll Free)	1-800-333-4444
Drug/Alcohol Abuse & Information (24 Hour Emergency Service)	(850) 487-2930
Drug/Alcohol Abuse (24 Hour Crisis line & Treatment)	1-800-283-2600
Florida AIDS Hotline	1-800-352-2437

For information regarding drug testing standards, procedures, laboratory certification, qualifications of Medical Review Officers, collection sites, please call:
The Agency for Health Care Administration..... (850) 487-3109

For information and questions regarding the State of Florida's, Workers' Compensation Drug-Free Workplace Program, please call:
The Division of Workers' Compensation, Customer Service Center
..... **(850) 413-1601**

For information and questions regarding Unemployment Compensation Hearings, please call:
The Division of Unemployment Compensation, Bureau of Appeals.....(850) 921-3511

For additional copies of the application form 09-1, please call:

Your insurance carrier,

The Division of Workers' Compensation, Customer Service Center Section

..... (850) 413-1601

For a listing of Employee Assistance Programs and Drug Rehabilitation Programs in your area, you may:

Check the local listings in your Telephone Directory,

Contact your County Health Department,

Call your local Chamber of Commerce, or

Obtain a Directory of Programs from the Florida

Alcohol and Drug Abuse Association, Inc. (for prices call).....(850) 878-2196

AN EXAMPLE OF A SUBSTANCE ABUSE POLICY STATEMENT

(This substance abuse policy statement is intended for general information purposes only and does not reflect an official opinion of the State of Florida, Department of Financial Services, Division of Workers' Compensation. The Florida Department of Financial Services disclaims any and all responsibility for the implementation of these policies.)

(YOUR COMPANY LETTERHEAD)

(Your Company Name) is committed to providing a safe work environment and to fostering the well-being and health of its employees. That commitment is jeopardized when any (Your Company Name) employee illegally uses drugs on the job; comes to work under the influence; possesses, distributes or sells drugs in the workplace; or abuses alcohol on the job. Therefore, (Your Company Name) has established the following policy:

1. It is a violation of company policy for any employee to use, possess, sell, trade, offer for sale, or offer to buy illegal drugs or otherwise engage in the illegal use of drugs on the job.
2. It is a violation of company policy for anyone to report to work under the influence of illegal drugs or alcohol.
3. It is a violation of the company policy for anyone to use prescription drugs illegally. (However, nothing in this policy precludes the appropriate use of legally prescribed medications.)
4. Violations of this policy are subject to disciplinary action up to and including termination.

It is the responsibility of the company's supervisors to counsel employees whenever they see changes in performance or behavior that suggest an employee has a drug problem. Although it is not the supervisor's job to diagnose personal problems, the supervisor should encourage such employees to seek help and advise them about available resources for getting help.

Everyone shares responsibility for maintaining a safe work environment, and co-workers should encourage anyone who has a substance abuse problem to seek help.

The goal of this policy is to balance our respect for individuals with the need to maintain a safe, productive and drug-free environment. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that the illegal use of drugs and the abuse of alcohol are incompatible with employment at (Your Company Name).

REMEMBER: Your Substance abuse policy must also contain the necessary criteria as provided in Section III, of this brochure.

A SAMPLE LETTER TO EMPLOYEES TO ACCOMPANY SUBSTANCE ABUSE POLICY STATEMENT

(This substance abuse policy statement is for general information purposes only and does not reflect an official opinion of the State of Florida, Department of Financial Services, Division of Workers' Compensation. The Florida Department of Financial Services disclaims any and all responsibility for the implementation of these policies.)

(YOUR COMPANY LETTERHEAD)

LETTER TO ALL EMPLOYEES:

The illegal use of drugs and the abuse of alcohol are problems that invade the workplace, endangering the health and safety of the abusers and those who work around them. This Company is committed to creating and maintaining a workplace free of substance abuse without jeopardizing valued employees' job security. To address this problem, our Company has developed a policy regarding the illegal use of drugs and the abuse of alcohol that we believe best serves the interests of all employees. Our policy formally and clearly states that the illegal use of drugs or abuse of alcohol or prescription drugs will not be tolerated. As a means of maintaining our policy, we have implemented pre-employment and active employees drug testing. This policy was designed with two basic objectives in mind:

- 1.employees deserve a work environment that is free from the effects of drugs and the problems associated with their use, and
- 2.this Company has a responsibility to maintain a healthy and safe workplace.

*To assist us in maintaining a safe and healthful workplace, we have created an Employee Assistance Program (EAP). The EAP provides employees and their families confidential assessment, referral, and follow-up for personal or health problems.

**To assist us in providing a safe and healthy workplace, we maintain a resource file of information on various means of employee assistance in our community, including but not limited to drug and alcohol abuse programs. Employees are encouraged to use this resource file, which is located [insert where]. In addition, we will distribute this information to employees for their confidential use. An employee whose conduct violates this Company's Substance Abuse Policy (*and who does not accept the help we offer under the EAP) will be disciplined up to and including termination. I believe it is important that we all work together to make this Company a drug-free workplace and a safe, rewarding place to work.

Sincerely,

President

*Insert if your business has **added** an EAP to its Drug-Free Workplace Program.

Insert if your business has **not added an EAP, but instead provides other means of employee assistance in the community.

**SAMPLE: PRE-EMPLOYMENT DRUG TESTING CONSENT AND
RELEASE FORM**

(This Pre-Employment Drug Testing Consent and Release Form is used for general information purposes only and does not reflect an official opinion of the State of Florida, Department of Financial Services, Division of Workers' Compensation. The Florida Department of Financial Services disclaims any and all responsibility for the implementation of these policies.)

(YOUR COMPANY LETTERHEAD)

I hereby consent to submit to the testing for drugs and/or alcohol as shall be determined by (Your Company Name) in the selection process of applicants for employment, for the purpose of determining the drug and/or alcohol content thereof.

I agree that (Name of clinic or physician)_____

may collect these specimens for these tests and may test them, if qualified, or forward them to a licensed or certified laboratory designated by the company for analysis. I further agree to and hereby authorize the release of said test results to the company.

I understand that my current use of illegal drugs may prohibit me from being employed at this Company.

I further agree that a reproduced copy of this pre-employment consent and release form shall have the same force and effect as the original.

I have carefully read the foregoing and fully understand its contents. I acknowledge that my signing of this consent and release form is a voluntary act on my part and that I have not been coerced into signing this document by anyone.

Applicant:
Print Name: _____
SS#: _____

Applicant Signature: _____
Date: _____

Witness Print
Name: _____

Witness
Signature: _____

SAMPLE: ACTIVE EMPLOYEE CERTIFICATE OF AGREEMENT

(This Active Employee Certificate of Agreement is for general information purposes only and does not reflect an official opinion of the State of Florida, Department of Financial Services, Division of Workers' Compensation. The Florida Department of Financial Services, Division of Workers' Compensation disclaims any and all responsibility for the implementation of these policies and/or agreements.)

(YOUR COMPANY LETTERHEAD)

I do hereby certify that I have received, read and understand the (Your Company Name) Substance Abuse and Testing Policy, and have had the Drug-Free Workplace Program explained to me. I understand that if my performance indicates it is necessary, I will submit to a drug test. I also understand that failure to comply with a drug testing request or a positive result may lead to sanctions as laid out in the policy, including termination of employment.

Name: _____

Signature: _____

Date: _____

NOTICE TO EMPLOYER: If you have a Drug-Free Workplace Program established and maintained in accordance with Florida law, and you would like to apply for the 5% premium credit that is available, please complete this form and forward it to your insurer. Re-certification is required annually.

APPLICATION FOR DRUG-FREE WORKPLACE PREMIUM CREDIT PROGRAM

Name of Employer: _____

Date Program Implemented: _____

Testing:

Procedures for drug testing have been established and/or drug testing has been conducted in the following areas:

- Job applicant
- Reasonable suspicion
- Routine fitness for duty
- Follow-up testing to Employee Assistance Program

Notice of Employer's Drug Testing Policy:

- Copy to all employees prior to testing
- Posted on employer's premises
- Copy to job applicants prior to testing
- General notice given 60 days prior to testing
- Show notice of drug testing on vacancy announcements
- Copies available in personnel office or other suitable locations
- No notice required because the employer had a drug testing program in place prior to July 1, 1990

Education:

- Resource file on providers
- Employee Assistance Program
- Education

Name of Medical Review Officer: _____

A. Name of approved Agency for Health Care Administration Lab or United States Department of Health and Human Services Certified Laboratory: _____

B. Phone No.:() _____

C. Address

:

Your certification is subject to physical verification by the insurer. Your policy is subject to additional premium for reimbursement of premium credit, and cancellation provisions of the policy if it is determined that you misrepresented your compliance with Florida law. Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

_____ Employer Name	_____ Date	_____ Officer/Owner Signature*
		_____ Title

* Application must be signed by an officer or owner.

THE ABOVE SIGNED CERTIFIES THAT THIS INFORMATION IS A TRUE AND FACTUAL DEPICTION OF THEIR CURRENT PROGRAM.

_____ Notary Public's Signature (NC3010) Form 09-1	_____ Date	_____ Expiration of Commission
---	---------------	-----------------------------------