



## Ohio Administrative Code

### Rule 4123-17-58 Drug-free safety program (DFSP) and comparable program.

Effective: May 9, 2021

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#### (A) Definitions.

For purposes of this rule:

- (1) "AEO" and "PEO" have the same meaning as defined in rule 4123-17-15 of the Administrative Code.
- (2) "Application deadline" means the applicable deadline set forth in appendix A or in appendix B to rule 4123-17-74 of the Administrative Code.
- (3) "Client employer" has the same meaning as defined in rule 4123-17-15 of the Administrative Code.
- (4) "Comparable program" means a program referred to in section 153.03 of the Revised Code.
- (5) "Drug-free safety program" or "DFSP" means the bureau's loss prevention and safety program to prevent and reduce the risk of workplace accidents and injuries attributed to the use and abuse of alcohol and other drugs, including prescription, over-the-counter, and illegal drugs.
- (6) "Program period" means the policy year for which the employer elects to participate in DFSP.
- (7) "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 dangerous to the physical well-being of or jeopardize the security of the employee, co-workers, customers or the general public through a lapse in attention or judgment.
- (8) "Supervisor" means an employee who supervises others in the performance of their jobs, has the authority and responsibility to initiate reasonable suspicion testing and recommend or perform hiring



or firing procedures.

(9) "Superintendent" means the superintendent of the division of safety and hygiene or the superintendent's designee.

(B) Eligibility requirements.

(1) To receive benefits under this rule, the employer must, as of the application deadline:

(a) Be current with respect to all payments due the bureau, as defined in paragraph (A)(1)(b) of rule 4123-17-14 of the Administrative Code;

(b) Not have cumulative lapses in workers' compensation coverage in excess of forty days within the twelve months preceding the application deadline;

(c) Be in an active policy status, which for purposes of this rule, does not include a policy that is a no coverage policy or a policy that is lapsed; and

(d) Report actual payroll for the preceding policy year and pay any premium due upon reconciliation of estimated premium and actual premium for that policy year no later than the application deadline date set forth in rule 4123-17-74 of the Administrative Code.

(2) The following employers shall not be eligible for benefits under this rule:

(a) State agencies;

(b) Self-insuring employers providing compensation and benefits pursuant to section 4123.35 of the Revised Code.

(3) An AEO or a PEO shall not be eligible to receive benefits under this rule unless the AEO or the PEO and each of the client employers of the AEO or the PEO meet all eligibility and program requirements.



(4) An employer determined to be ineligible for participation in the DFSP based on the bureau's review of the employer's submitted application may appeal such determination to the adjudicating committee pursuant to section 4123.291 of the Revised Code.

(5) An employer that is found to be ineligible for participation in the DFSP may reapply for a subsequent program period.

(C) Basic DFSP level.

To implement a basic DFSP, an employer shall make annual application to the bureau by the application deadline and implement the program elements set forth in paragraphs (C)(1) to (C)(6) of this rule. The requirements and timeframes for completion of each element shall be determined by the superintendent.

(1) Safety - The DFSP shall include, but is not limited to the following:

(a) Completing and submitting the bureau's online safety assessment;

(b) Ensuring each supervisor completes accident-analysis training; and

(c) Utilizing online accident-analysis reporting on the bureau's website.

(2) Policy - Employers are required to put in place a written DFSP policy.

(3) Employee education - The DFSP shall include annual education for all employees.

(4) Supervisor skill-building training - The DFSP shall include annual training for all supervisors in support of enforcing the employer's written DFSP policy and procedures.

(5) Drug and alcohol testing - The DFSP program shall include alcohol and other drug testing which conforms to the federal testing model promulgated by the United States department of health and human services. The employer shall implement and pay for testing required by DFSP participation but is not required to pay for re-testing requested by an employee and follow-up testing. Testing shall



occur as specified by the bureau including, but not limited to the following:

- (a) Pre-employment and new-hire drug testing;
  - (b) Post-accident alcohol and other drug testing;
  - (c) Reasonable suspicion alcohol and other drug testing; and
  - (d) Return-to-duty and follow-up alcohol and other drug testing.
- (6) Employee assistance - The DFSP shall include an employee assistance plan.
- (D) Advanced DSFP level.

To implement an advanced DFSP, an employer shall make annual application to the bureau by the application deadline and implement the program elements set forth in paragraphs (D)(1) and (D)(2) of this rule. The requirements and timeframes for completion of each element shall be determined by the superintendent.

- (1) The employer shall meet all of the requirements of a basic DFSP as provided in paragraph (C) of this rule.
- (2) The employer shall do all of the following:
  - (a) Ensure that its written DFSP policy clearly reflects how random drug testing will be implemented and how additional employee assistance will be provided;
  - (b) Ensure conducting fifteen per cent or higher random drug testing of the employer's workforce each program period;
  - (c) Pre-establish a relationship for, and pay the costs of, a substance assessment of an employee who tests positive, comes forward voluntarily to indicate he or she has a substance problem, or is referred by a supervisor;



- (d) Timely submit a safety action plan based on the results of the completed safety assessment which outlines specific safety process improvements the employer intends to implement during the remainder of the program period;
- (e) Commit to not terminate the employment of an employee who tests positive for the first time, who comes forward voluntarily to indicate he or she has a substance problem, or who is referred by a supervisor for an assessment.
- (E) Comparable program.
- (1) Self-insuring employers and state-fund employers not participating in the DFSP shall submit an application for approval of a comparable program.
- (2) Prior to providing labor services or on-site supervision of such labor services under a public improvement project as defined in division (A)(9) of section 153.03 of the Revised Code, employers participating in the comparable program shall:
- (a) Develop, implement, and provide to all employees a written substance use policy the written policy required by division (B)(2)(a) of section 153.03 of the Revised Code;
- (b) Complete all employee education required by division (B)(2)(d) of section 153.03 of the Revised Code; and
- (c) Complete all supervisor training required by division (B)(2)(e) of section 153.03 of the Revised Code.
- (F) Progress reporting and renewal requirements.
- (1) In order to qualify for renewal, an employer shall have implemented all requirements of its basic or advanced level DFSP by the implementation date specified by the bureau.
- (2) The employer shall submit an annual report detailing program implementation and reporting



annual statistics on a form provided by the bureau. The requirements and timeframes for completion of the annual report shall be determined by the superintendent.

(a) If the employer is applying for renewal in the DFSP, the annual report shall be deemed the employer's annual application, and the employer shall identify which DFSP level is requested for the following program period;

(b) The employer shall provide any follow-up documentation required by the bureau and shall maintain on-site statistics as required by the bureau;

(c) The report required by this section and any other information submitted by the employer in meeting DFSP requirements shall be considered part of the annual statement submitted to the bureau as required by section 4123.26 of the Revised Code. The bureau shall hold such information as confidential pursuant to section 4123.27 of the Revised Code.

(3) In conjunction with the annual report required under paragraph (F)(2) of this rule, an AEO or a PEO participating in the DFSP must submit a client employer list.

(a) The list shall include all client employers with whom the AEO or the PEO had an agreement as of thirty days prior to the filing deadline for the annual report;

(b) The list shall include each client employer's name, address, federal tax identification number, bureau of workers' compensation policy number; and the amount of payroll, listed by classification code, reported by the AEO or the PEO on behalf of each client employer;

(c) If the bureau determines the AEO or the PEO has manipulated the client list for purposes of obtaining benefits under this rule, the AEO or the PEO shall not be eligible to receive such benefits;

(d) The bureau shall hold the list required under this section as confidential pursuant to section 4125.05 of the Revised Code.

(G) The bureau may remove an employer from participation in the DFSP for failure to fully implement a DFSP in compliance with the approved program level requirements. The bureau shall



send written notice of cancellation to the employer. An employer removed from the DFSP under this section may reapply for the DFSP for the next program period. The bureau may deny the application based on circumstances of previous participation.

(H) An employer completing program requirements may be eligible for a bonus equal to the amount identified in the appendix to rule 4123-17-75 of the Administrative Code times the employer's pure premium costs during the program period. To be eligible for the bonus, an employer must report actual payroll due upon reconciliation of estimated premium and actual premium for the program participation year no later than the date set forth in rule 4123-17-14 of the Administrative Code. An employer will be deemed to have met this requirement if the bureau receives the payroll report and the employer pays premium associated with the payroll report before the expiration of any grace period established by the administrator pursuant to rule 4123-17-16 of the Administrative Code. Additional program requirements for bonus eligibility shall be determined by the superintendent of the division of safety and hygiene.

(I) Participation in this program under this rule is voluntary. Nothing contained in this rule shall affect, modify, or amend any collective bargaining agreement or alter the rights or obligations of an AEO, an employer, an employee, a client employer, a PEO, or a shared employee under applicable federal or state law. Provisions of a collective bargaining agreement that prevent implementation of program criteria will preclude employer participation in the program.

(J) Pursuant to section 4121.37 of the Revised Code, the administrator may establish a grant program to offset, in whole or in part, costs incurred by employers that implement a basic or advanced DSFP and meet such grant program's eligibility requirements.