

Model Drug-Free Workplace Act

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Model Drug-Free Workplace Act

Policy Statement

The impact of alcohol and other drug abuse in the American workplace is substantial. Alcohol and other drug abuse adversely affects the health, safety, and quality of life of employees and their families. Such abuse also affects workplace performance and production. The Alcohol, Drug Abuse, and Mental Health Administration has estimated the annual cost of alcohol and other drug problems to business in America to be almost \$100 billion. Such estimates typically include calculations of factors such as increased medical claims, medical disability costs, decreased productivity, injuries, theft, and absenteeism.

The products and services delivered in this state must maintain an acceptable level of quality and performance and should not be subject to the problems associated with alcohol and other drug abuse. To help insure this, the Commission believes that employers contracting, subcontracting, or receiving grants from the state must implement and maintain drug-free workplaces.

Again, the Commission recommends that employers provide employees with written policy statements on alcohol and other drug abuse and provisions of employee assistance program services or rehabilitation resources to help reduce and treat employee alcohol and other drug abuse problems. It is the Commission's hope that employers' drug-free workplace programs mirror the comprehensive drug-free workplace provisions established in the Model Drug-Free Private Sector Workplace Act, found in this volume.

This bill mirrors at the state level the Federal Drug-Free Workplace Act passed in 1988.

Highlights of the Model Drug-Free Workplace Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol and other drug abuse adversely affects employee health and well-being, jeopardizes employee safety, and reduces the quality of services to the state.
- Recognizes that a primary goal of the state is to take all reasonable steps possible to eradicate the manufacture, sale, distribution, possession with intent to distribute, and use of drugs or unlawful driving while under the influence of alcohol or other drugs by public officials and employees, including contractors, subcontractors, and grantees.

SPECIFIC RECOMMENDATIONS

- Provides that no business or legal entity may receive a grant within the state or be awarded a contract within the state for any goods, construction, or services for a stated or estimated value of [fifty thousand] dollars or more from any state agency unless that company has certified to the contracting agency that it will provide a drug-free workplace.
- Provides that a business or legal entity certifying that it has a drug-free workplace must:
 - Publish a written policy statement;
 - Establish an alcohol and other drugs awareness and education program;
 - Distribute the written policy statement annually to its employees;
 - Notify the employee that the employee will abide by the terms of the statement and will notify the employer of any alcohol or other criminal drug statute convictions occurring in the workplace no later than five days after the conviction;

- Notify the contracting agency within ten days after receiving such notice from an employee;
- Require the active engagement in an alcohol and other drug abuse treatment or rehabilitation program by, and/or taking appropriate personnel action against, any employee convicted; and
- Make a good faith effort to continue to maintain a drug-free workplace.
- Provides for similar drug-free certification for any individual entering into a contract within the state or receiving a grant with the state for [fifty thousand] dollars or more.
- Specifies responses by a grantee, contractor, or subcontractor to notice of an employee who has been convicted of an alcohol or other drug-related offense.
- Provides for the termination of an employee for failing to give notice to an employer of a drug or DUI/DWI conviction.
- Provides conditions justifying the suspension or termination of a state grant or contract based on the failure to adhere to the provisions of this Act.

Model Drug-Free Workplace Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the “Model Drug-Free Workplace Act.”

Section 2. Legislative Findings.

- (a) Alcohol and other drug abuse adversely affects employee health and well-being on and off the job.
- (b) A healthy and productive work force, safe working conditions free from the effects of alcohol and other drugs, and maintenance of the quality of products produced and services rendered, are important to employees, employers, and the general public in this state.
- (c) The abuse of alcohol and other drugs creates a variety of workplace health and safety problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.
- (d) A primary goal of this state, of all of its agencies and instrumentalities, and of all of its contractors, subcontractors, and grantees is to take all reasonable steps possible to eradicate the manufacture, sale, distribution, possession with intent to sell or distribute, and use of drugs or unlawful driving while under the influence of alcohol or other drugs by public officials and employees, including contractors, subcontractors, and grantees.

Section 3. Purpose.

The purpose of this [Act] is to insure that all contractors, subcontractors, and grantees conducting business with or for the state implement drug-free workplaces in accordance with the provisions of this [Act].

Section 4. Definitions.

As used in this [Act]:

- (a) “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (b) “Contractor” means the department, division, or other unit of a person responsible for the performance under a contract with a state agency or political subdivision.
- (c) “Conviction” means a finding of guilt, including a plea of nolo contendere or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- (d) “Criminal drug statute” means a criminal statute involving manufacture, sale, distribution, possession with intent to sell or distribute, or possession or use of any drug.
- (e) “Drug” or “drugs” means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, barbiturates, benzodiazepines, methadone, methaqualene, propoxyphene, or a metabolite of any such substance.
- (f) “Drug-free workplace” means a site for the performance of work done in connection with a specific grant or contract of an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, sale, distribution, possession with intent to sell or distribute, or use of a controlled substance or alcohol in accordance with the requirements of this [Act].
- (g) “Employee” means any person who works for salary, wages, or other remuneration for a grantee or contractor engaged in the performance of work pursuant to the provisions of the grant or contract.
- (h) “Grantee” means the department, division, or other unit of a person responsible for the performance under a grant.

(i) "Manufacture," "sale," "distribution," "possession with intent to sell or distribute," "possession," and "use" shall have the same meaning as those terms are used in [state controlled substance law].

(j) "Person" means a partnership, a joint stock company, a business trust, an association, a corporation, any business or legal entity not already described in this subsection, including a receiver, trustee, or liquidating agent, and a state, state agency, or an officer or employee of a state or state agency.

(k) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

(l) "Subcontractor" means the department, division, or other unit of a person responsible for the performance under a contract with a contractor.

Section 5. Certification that Drug-Free Conditions Exist Required for Eligibility for Certain State Grants and Contracts.

No person, other than an individual, may receive a grant within the state or be awarded a contract within the state for the procurement of any goods, construction, or services for a stated or estimated value of [fifty thousand] dollars or more from any state agency unless the person has certified to the contracting agency that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs or unlawful driving while under the influence of alcohol and/or other drugs is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(b) Establishing an annual alcohol and other drugs awareness and education program that shall include, but need not be limited to, the following information:

- (1) An explanation of the disease of addiction for alcohol and other drugs;
- (2) An explanation of the effects and dangers of the commonly abused substances in the workplace;
- (3) A description of the person's policy in maintaining a drug-free workplace;

(4) A description of how employees who wish to obtain alcohol and other drug abuse counseling or treatment can do so, and a description of any available alcohol and other drug counseling programs, internal or external employee assistance programs, treatment, and rehabilitation services available; and

(5) An explanation of the penalties that may be imposed upon employees for alcohol and other drug violations;

(c) Requiring that each employee engaged in the performance of the contract annually be given a copy of the statement required by subsection (a);

(d) Notifying the employee in the statement required by subsection (a) that, as a condition of employment on the contract or grant, the employee will:

- (1) Abide by the terms of the statement; and
- (2) Notify the employer of any alcohol or other criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction;

(e) Notifying the contracting agency within ten days after receiving notice under subsection (d)(2), from an employee or otherwise receiving actual notice of the conviction;

(f) Requiring the active engagement in an alcohol and other drug abuse treatment or rehabilitation program by, and/or taking appropriate personnel action against, any employee convicted as required under Section 7; and

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

COMMENT

This section mirrors the provisions of the federal Drug-Free Workplace Act. No person, other than an individual, may receive a grant within the state or be awarded a contract within the state for [fifty thousand] dollars or more from any state agency unless the person has certified to the contracting agency that it will provide a drug-free workplace.

The written policy statement insures that employers have notified their employees of exactly what the employer's drug-free workplace program entails. This written policy statement must provide employees with all the information they must know about the employer's substance abuse program, including information

about the employer's general policy on substance abuse, yearly alcohol and other drug abuse education programs for employees, the duty to report any alcohol and other drug convictions to an employer subject to this [Act], and alcohol and other drug treatment and rehabilitation possibilities for employees.

Section 6. Individual Required to Certify Absence of Alcohol or Other Drug-Related Activity to Qualify for State Grant or Contract.

No state agency may enter into a contract within the state or make a grant within the state with any individual for a stated or estimated value of [fifty thousand] dollars or more unless the contract or grant includes a certification by the individual that the individual will not engage in the manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of drugs or unlawful driving while under the influence of alcohol and/or other drugs, during the performance of the contract.

COMMENT

This section requires similar drug-free workplace notification by individuals who contract with or receive grants valued at fifty thousand dollars or more from a state agency.

Section 7. Required Response to Employee's Conviction of an Alcohol- or Other Drug-Related Offense.

(a) A grantee, contractor, or subcontractor shall, within thirty days after receiving notice from an employee of a conviction pursuant to the [state drug control act and/or state alcohol code]:

- (1) Refer the employee to an employee assistance program and/or require the employee to actively engage in an alcohol or other drug abuse assistance or rehabilitation program licensed and/or approved for the purposes by the [single state authority on alcohol and other drugs]; and/or
- (2) Take appropriate personnel action against the employee that may include, among other actions, the following:
 - (A) Suspension of the employee, with or without pay, for a designated period of time;
 - (B) Termination of employment; or

(C) Other action in conformance with the employer's written policy and procedures, including any applicable collective bargaining agreement provisions.

(b) Failure of an employee to give notice to his or her employer of a conviction pursuant to the [state drug control act and/or state alcohol code] shall result in termination of employment.

COMMENT

The Commission strongly recommends that employers allow those employees, contractors, or subcontractors who are convicted of a drug abuse violation or unlawful driving while under the influence of alcohol or other drugs to be given an opportunity to seek assistance and rehabilitation through an EAP and other counseling and treatment resources, rather than solely taking disciplinary action. Disciplinary action and treatment often go hand in hand. There is ample evidence that disciplinary action can reinforce positive treatment outcomes.

Section 8. Conditions Justifying Suspension or Termination of State Grant or Contract.

Each contract or grant awarded within the state by a state agency is subject to suspension of payments or termination or both, and the contractor, subcontractor, or grantee under the contract or grant or the individual who entered the contract with or received the grant from the state agency or contractor, as applicable, is subject to suspension or debarment in accordance with [cite appropriate state code] if the appropriate [chief procurement officer], as defined in [cite appropriate state code] determines that:

- (a) The contractor, subcontractor, or grantee has made a false certification under Section 5 or Section 6 of this [Act];
- (b) The contractor, subcontractor, or grantee violates the certification by failing to carry out the requirements of Section 5;
- (c) The contractor, subcontractor, or grantee does not require that the employees convicted of alcohol or other drug offenses to enter into an appropriate treatment or education program, and/or does not take appropriate disciplinary action against employees convicted of alcohol or other drug offenses, as specified in Section 7; or
- (d) The number of employees of the contractor, subcontractor, or grantee who have been convicted of vio-

lations of criminal drug statutes occurring in the workplace reasonably indicates that the contractor, subcontractor, or grant recipient has failed to make a good faith effort to provide a drug-free workplace as required by this [Act].

Section 9. Duration of Debarment.

Upon issuance of any final decision under this [Act] requiring debarment of a contractor, subcontractor, grantee, or individual, the contractor, subcontractor, grantee, or individual is ineligible for award of any contract or grant by any state agency for a period specified in the decision of at least one year, but not to exceed five years.

Section 10. Technical Assistance with Implementations.

Upon request, the [single state authority on alcohol and other drugs] shall provide technical assistance to any state agency to assist with the implementation of this [Act]. Additionally, upon request, the names and addresses of contractors, subcontractors, and grantees providing a drug-free workplace pursuant to this [Act] must be provided to the [single state authority on alcohol and other drugs].

Section 11. Absence of Cause of Action.

No cause of action arises in favor of any individual against any person based upon the failure of the person to comply with any provision of this [Act].

Section 12. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end, the provisions of this [Act] are severable.

Section 13. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].