

# Employer Education

## Florida Drug-Free Workplace Program and Premium Credit

Loss Prevention Department



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MEMBER OF GREAT AMERICAN INSURANCE GROUP

# Florida Drug-Free Workplace Program and Premium Credit

## Learning Objectives

- 1. Understand the advantages of implementing a drug-free workplace program.
- 2. Discover the cost savings associated with a drug-free workplace program.
- 3. Identify the application guidelines and program maintenance requirements.

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## Advantages of implementing a drug-free\* workplace program

The ultimate goal of any business should be to provide a safe, productive and drug-free environment for its employees. Having a drug-free workplace program can help prevent workplace injuries and keep safety a top priority. A properly maintained drug-free workplace program can offer the following benefits.

- Improve employee morale and motivation
- Reduce absenteeism, tardiness and sick leave
- Improve customer satisfaction
- Improve company image in the marketplace and to potential employees
- Fewer employee discipline problems
- Increase productivity
- Can work to your advantage in a litigated workers' compensation claim
- Reduce workers' compensation premium costs with a 5 percent premium credit

See Fla. Div. of Work. Comp. *An Employer's Guide to a Drug-Free Workplace*. Sept. 2020, [myfloridacfo.com/Division/wc/pdf/DFWPman.pdf](https://myfloridacfo.com/Division/wc/pdf/DFWPman.pdf) (Accessed June 14, 2021).

If you do not have a drug-free workplace program established, Summit is here to help. You will find sample programs on our website at [summitholdings.com](https://summitholdings.com) under **Safety, Drug-Free Workplace Program** or by clicking [here](#).

\*The term "drug" includes alcohol.

## Elements of a drug-free workplace program

Your drug-free workplace program must include the following items.

- Consistent program implementation and enforcement
- Confidentiality guidelines
- When drug testing is required
- Types of drugs tested
- Drug testing procedures, i.e., chain of custody, etc.
- Types of drug testing required
  - Job applicant
  - Reasonable suspicion
  - Observation of drug use, symptoms or manifestations at work
  - Abnormal conduct or erratic behavior at work
  - Evidence of tampering with a prior drug test
  - Post work injury

- Evidence that the employee used, possessed, sold, solicited or transferred drugs while at work
- Routine fitness for duty
- Follow-up post-rehabilitation
- Reporting employee use of prescription/non-prescription medications
- Repercussions against employee/applicant for a positive test or test refusal
- Explanation of employee assistance and/or drug rehabilitation programs
- Procedures for distributing the drug-free workplace program to all employees and job applicants
  - Employee signed acknowledgement of the program
  - Posted notice of your drug-free workplace program
  - Drug-Free Workplace posters are available on our website at [summitholdings.com](https://summitholdings.com) under **Safety, Safety Training Resources, Safety Posters and Brochures**
- Education procedures
  - Training of managers, supervisors and employees on the drug-free workplace program
  - Plan introduction at employee orientation
  - Frequency of program training sessions

A Florida drug-free workplace program should be in compliance with sections 440.101 and 440.102, Fla. Stat., and sections 59A-24.003-008, Fla. Admin. Code.

## Premium credit application requirements<sup>1</sup>

The drug-free workplace premium credit application is reviewed by Summit and will ask for information on the following topics.

Click [here](#) for Florida's drug-free workplace premium credit application.

## Testing procedures

Procedures for conducting drug testing must be established for the following scenarios.

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

Fla. Stat. Ann. § 440.102(4) (West 2021).

## **Notice of employer's drug testing policy**

The following steps must be taken to inform employees of your drug testing policy.

- One time only, distribute copy of the policy statement to all employees and job applicants prior to testing
- Conspicuously post policy on business premises
- Show notice of drug testing on vacancy announcements
- Have copies available in your personnel office or other suitable locations
- Give general notice 60 days prior to testing, when first implementing Fla. Stat. Ann. § 440.102(3) (West 2021).

## **Education**

The following educational information must be provided to your employees.

- Resource file of rehabilitation providers
  - Employee assistance program
  - Program education
- Fla. Stat. Ann. § 440.101(2) (West 2021).

## **Approved testing laboratory**

Once your testing plan is outlined, you must select a laboratory “certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care Administration (AHCA)” to conduct and process drug or alcohol testing for employees. See § 440.102(1)(a)(e) Fla. Stat. The laboratory should provide you with chain of custody and confidentiality forms and a method for submitting the forms electronically. Id.

You can search for an approved laboratory in your local area or collection site affiliated with an approved laboratory through the following sources.

- AHCA licensed testing labs
  - [www.floridahealthfinder.gov/facilitylocator/facloc.aspx](http://www.floridahealthfinder.gov/facilitylocator/facloc.aspx)
- U.S. Department of Health and Human Services
  - [www.govinfo.gov/content/pkg/FR-2021-02-09/pdf/2021-02100.pdf](http://www.govinfo.gov/content/pkg/FR-2021-02-09/pdf/2021-02100.pdf)

## **Medical review officer**

You must identify a medical review officer to include in your drug-free workplace program. See § 440.102(1)(k). A medical review officer is a doctor, employed with or contracted with the employer, who interprets the drug and alcohol test results and consults with the employer and employee. See §§ 440.102(1)(k) and (3). Once you are contracted with a laboratory, a medical review officer is assigned by the laboratory. The name of the medical review officer can be found on the chain of custody form or by contacting the collection site and/or laboratory.

If you're unsure of your medical review officer's name, contact your laboratory or collection site to obtain the name. It must also be included on your chain of custody forms.

### **Introducing the Program and providing training**

Before introducing your drug-free workplace program, you will need to designate a program coordinator so that employees have a point of contact. A human resource manager, department manager or supervisor are good options. Training on the drug-free workplace program is recommended at new employee orientation, manager and supervisor meetings and employee training meetings.

### **Confidentiality**

"[A]ll information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except" when the employer uses this information when consulting with legal counsel in connection with legal actions involving the drug-free workplace defense. Fla. Stat. Ann. § 440.102(8)(a), (d) (West 2021). "Information on drug test results shall not be used in any criminal proceeding against the employee or job applicant." Fla. Stat. Ann. § 440.102(c) (West 2021).

### **Applying for a premium credit**

Once you establish your drug-free workplace program, you'll need to complete and submit the Drug-Free Workplace Premium Credit Application. You will find the application on our website at [summitholdings.com](https://summitholdings.com) under **Safety, Drug-Free Workplace Program** or by clicking [here](#).

With your application, you will also need to provide a copy of your written drug-free workplace program for review and verification. Summit follows Florida Statute 440.102, drug-free workplace program requirements.

Once your application is complete, you can submit your application and a copy of your program by email to [dfwspcreditadmin@summitholdings.com](mailto:dfwspcreditadmin@summitholdings.com), by fax to 863-668-7566 or by mail to PO Box 988, Lakeland, FL 33802.

### **Maintaining your premium credit**

It's important to remember that before your policy renewal date, a new completed and signed application for program premium credit is required. See § 627.0915. An application is mailed to employers who have a drug-free workplace premium credit on their current policy 90 days prior to their renewal date. The completed application, signed by an officer/owner, can be

returned to our Loss Prevention department by email to [dfwspcreditadmin@summitholdings.com](mailto:dfwspcreditadmin@summitholdings.com), by fax to 863-668-7566 or by mail to PO Box 988, Lakeland, FL 33802. See subsection 440.102(2) (“ . . . If an employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the employer is ineligible for discounts under s. 627.0915. . .”).

## Ways to save on workers’ comp costs

Injury prevention is one of the best ways to keep your workers’ compensation costs down. Having a drug-free workplace program can help achieve this goal since sober workers tend to get hurt less often in the workplace. Any injury that can be prevented will help protect your experience modification factor (mod) and your premium cost. Educating employees on your drug-free workplace program is a crucial step in keeping your workers safe. See Fla. Div. of Work. Comp. *An Employer’s Guide to a Drug-Free Workplace*. Sept. of 2020, [myfloridacfo.com/Division/wc/pdf/DFWPman.pdf](http://myfloridacfo.com/Division/wc/pdf/DFWPman.pdf) (Accessed June 14, 2020).

If your business experiences an employee incident or a near-miss—an incident that occurs with no injuries—you should always conduct an incident investigation. You can access our Incident Investigation kit on our website at [summitholdings.com](http://summitholdings.com) under **Safety, Incident Investigation** or by clicking [here](#). It will walk you through the steps you need to take to get to the bottom of what caused the incident.

It’s important to report all injuries to us quickly by:

- Calling 1-800-762-7811
- Emailing the injury report to [SummitInjuryReporting@summitholdings.com](mailto:SummitInjuryReporting@summitholdings.com)
- Visiting our website at [summitholdings.com](http://summitholdings.com) (login required)
- Faxing your report to 863-667-1871

## Frequently asked questions

### What is a chain of custody form?

A chain of custody form is a federal form published by the Substance Abuse and Mental Health Services Administration (SAMHSA) that is given to the employee by the employer to take to the collection site for a drug test. See 59A-24.005(2), Fla. Admin. Code. A link to an electronic form may also be provided to the employee. It includes the collection, transfer, receipt, analysis, storage and disposal of the sample. The form is provided to employers by the testing laboratory.

### **Who is our medical review officer?**

A medical review officer is a doctor who interprets the drug and alcohol test results and consults with the employer and employee. See subsection 440.102(1)(k), Fla. Stat. A medical review officer is often designated by the collection site or laboratory. The name of your medical review officer can be found on the chain of custody form or by contacting the collection site and/or laboratory.

### **What is the difference between a collection site and laboratory?**

A collection site is a facility that collects a drug test specimen such as a walk-in clinic or a licensed testing laboratory. See 59A-24.003(4), (5), Fla. Admin. Code. A collection site collects and sends the specimen to an approved lab for testing. See 59A-24.003(8), Fla. Admin. Code.

You can find a listing of the Agency for Health Care Administration's licensed testing labs in Florida by visiting [www.floridahealthfinder.gov/facilitylocator/facloc.aspx](http://www.floridahealthfinder.gov/facilitylocator/facloc.aspx). Once on the site, click **Search by Facility Type / Location**, go to drop-down menu for **Facility / Provider Type** and choose **Forensic Toxicology Laboratory**. Scroll to the bottom and click on **Search**.

### **What if my business does not offer an employee assistance program?**

When an employee assistance program is not offered, a list of local providers of drug and alcohol treatment and family services must be provided to employees. You can create a provider list by visiting the [Substance Abuse and Mental Health Services Administration's](#) website. Enter your company's zip code and a list of providers will be created. You can make the list available to employees without company involvement.

### **When is follow-up testing required?**

If you require 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, you 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. See subsection 440.102(2)(a)(4), Fla. Stat. 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. Follow-up testing is required once a year for a two-year period after an employee involuntarily enters into and completes a rehabilitation program.

### **Can my business conduct on-site testing?**

Your company must be set up with an authorized lab to conduct on-site testing. See 59A-24.003(4), Fla. Admin. Code. You must follow the on-site testing procedures which include



chain of custody. Chain of custody forms are provided by the contracted laboratory for drug testing. All positive drug tests must be confirmed by an approved lab.

To locate a drug-free workplace AHCA licensed testing lab [click here](#). Select **Search by Facility/Location** and click the drop-down menu for **Facility/Provider**

**Type**. Choose **Forensic Toxicology Laboratory**, scroll to the bottom and click **Search**. You can also visit our website at [summitholdings.com](http://summitholdings.com) and go to the **Safety** tab. Click on **Drug-Free Workplace Program** and select **Florida**.

### **How does a marijuana card affect my drug-free workplace premium credit?**

There are several important points to remember when an employee has a marijuana card. If you have a drug-free workplace premium credit applied, you should follow your drug-free workplace policy regardless of whether an employee has a marijuana card or not. See Fla. Stat. Ann. § 381.986(15)(a)-(c)(f) (West 2021) (“Applicability.-- (a) This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy. (b) This section does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana. (c) This section does not create a cause of action against an employer for wrongful discharge or discrimination. \* \* \* (f) Marijuana, as defined in this section, is not reimbursable under chapter 440.”). If you do not have a drug-free workplace premium credit applied, you should seek guidance from your human resources department or legal counsel.

### **How do we test an employee with a marijuana card to determine if they’re over the legal limit?**

Drug/alcohol tests should be performed by an AHCA (Agency for Health Care Administration) licensed testing lab. The lab will determine if the employee’s drug/alcohol test identifies any of the applicable drugs/alcohol named in the Florida Administrative Code, above the level specified for that particular drug/alcohol; which will be reviewed by your medical review officer to determine if test results are positive or negative.

Refer to subsections 440.102(9), (10), Fla. Stat. r. 59A-24.006 Fla. Admin. Code; and [www.floridahealthfinder.gov/facilitylocator/facloc.aspx](http://www.floridahealthfinder.gov/facilitylocator/facloc.aspx)

### **Does having a drug-free workplace program transfer the burden of proof related to a litigated workers’ comp claim?**

A properly implemented drug-free workplace program can work to your advantage in a litigated claim. When workers’ comp claims involving drug or alcohol use go to court, the decisions that go in favor of the employee often come down to a drug-free workplace program that was not adequately enforced by the employer. See 440.09(7)(b) (“ . . . However, if, before the accident, the employer had actual knowledge of and expressly

acquiesced in the employee's presence at the workplace while under the influence of such alcohol or drug, the presumptions specified in this subsection do not apply.”).

For example, a good drug-free workplace program will require reasonable-suspicion drug testing, which includes testing employees involved in an accident while at work. An employer should be consistent and prompt in such testing, because a late or nonexistent drug test can result in a judge ruling in favor of the employee. This is important because most states have laws that shift the burden of proof to the employee to prove that the drug did not contribute to the accident if he or she failed a properly administered drug test.

In Florida, if the employer has implemented a drug-free workplace program, then the failed drug test by the employee “may be rebutted only by evidence that there is no reasonable hypothesis that the intoxication or drug influence contributed to the injury.” See § 440.09(7)(b), Fla. Stat. “In the absence of a drug-free workplace program, this presumption may be rebutted by clear and convincing evidence that the intoxication or influence of the drug did not contribute to the injury.” *Id.*

For additional frequently asked questions, please see also Fla. Div. of Work. Comp. *An Employer’s Guide to a Drug-Free Workplace*, page 16. Sept. of 2020, [myfloridacfo.com/Division/wc/pdf/DFWPman.pdf](http://myfloridacfo.com/Division/wc/pdf/DFWPman.pdf) (Accessed June 14, 2020).

## Contact us

If you or your staff has additional questions about your drug-free workplace program or premium credit, you may reach us by phone at 1-800-282-7648 or by emailing [dfwspcreditadmin@summitholdings.com](mailto:dfwspcreditadmin@summitholdings.com).

## Summary

Having a deeper understanding of the drug-free workplace program credit in Florida can help:

1. Understand the advantages of implementing a drug-free workplace program.
2. Discover the cost savings associated with a drug-free workplace program.
3. Identify the application guidelines and program maintenance requirements.

## Footnote

1. See Summit's website for a sample Florida drug-free workplace premium credit application: [www.summitholdings.com/site/tp/DRUGFREE\\_WORKPLACE](http://www.summitholdings.com/site/tp/DRUGFREE_WORKPLACE)); and Fla. Div. of Work. Comp. An employer's Guide to a Drug-Free Workplace. Sept. 2020, [myfloridacfo.com/Division/wc/pdf/DFWPman.pdf](http://myfloridacfo.com/Division/wc/pdf/DFWPman.pdf) (Accessed June 14, 2021).

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