

Effective November 26, 2007

## **Rules, Regulations and Fee Schedules of the Wyoming Workers' Safety and Compensation Division**

### **CHAPTER 2 - EMPLOYER COVERAGE AND COMPLIANCE**

#### **Section 7. Safety Programs: Employer Discount.**

(a) New safety programs must be submitted to the Division before December 15 to be eligible for review and approval for the subsequent rating period. Plans shall be submitted on a form provided by the Division and including such information as prescribed by the Division. The plan shall address:

- (i) a formal declaration, in writing of a company-wide loss prevention and loss control policy;
- (ii) a formal creation of a risk assessment (safety) committee or coordinator;
- (iii) clearly defined and posted loss prevention (accident prevention) rules;
- (iv) all employees have undergone loss prevention training;
- (v) a substance abuse training plan;
- (vi) written policies/procedures on claims management; and
- (vii) written policies/procedures establishing a drug-free workplace, which may include an employee assistance program to assist employees with alcohol or other drug problems. These policies shall be posted in a conspicuous place where they may be regularly viewed by employees:

(A) The policy shall:

(I) establish that the unlawful use, possession, transfer or sale of illegal drugs or controlled substances and the misuse of alcohol by employees during work hours are prohibited;

(II) provide an explanation of the consequences of violation of the employer's drug-free policy, which may include a referral for therapeutic help, discipline and/or discharge.

(III) encourage the designation of totally or partially smoke free workplace.

(B) Employers shall post a list of community resources that provide substance abuse treatment and prevention services in a conspicuous place where they may be regularly viewed by employees. The Department of Health shall provide the list on the website of the Substance Abuse Division or in hard copy to employers requesting the list.

(C) Employers are not required to pay the costs of treatment or any other intervention to qualify for the safety discount program.

(D) Employers enrolled in an approved safety discount program on the effective date of these rules shall have one year from the effective date of these rules to comply with the drug-free workplace requirements.

(E) Employers enrolling on or after the effective date of these rules shall comply with the drug-free workplace requirements upon enrollment.

(viii) a goal for improvement in the employer's loss ratio of 10%, except that those employers eligible for the maximum claims experience adjustment at the time of the plan approval will be eligible for the maximum discount if they maintain a zero claims record during the applicable experience rating period.

(b) Discounts will be calculated only after a safety program has been in effect for one year following approval by the division. Discounts will be awarded for the following year, and will be awarded only to those employers who achieve the loss ratio goal. Discounts will be recalculated annually. Maximum allowable discounts from the base rate are 3.33 percent (3.33%) after the first year if loss ratio goal is achieved, 6.66 percent (6.66%) after the second consecutive year of achieving the loss ratio goal, and 10 percent (10% after the third year of achieving the loss ratio goal.

(c) Safety Incentive. To be eligible for the safety discount, an employer must have submitted its payroll reports and paid full premium for all prior reporting periods.

**Section 8. Drug and Alcohol Testing Program; Employer Discount**

(a) Pursuant to W.S. § 27-14-201(o) employers may receive a premium base rate discount, as determined through the Division's premium rate setting process for their employment classification, by participating in a drug and alcohol testing program approved by the Division.

(i) Applications to participate in the drug and alcohol testing program may be submitted to the Division at any time and upon approval shall be implemented in the subsequent calendar quarter.

(ii) Upon receipt of a completed application, the Division shall review the application for compliance with these rules and either approve or deny the application. The

Division shall deny an application if an applicant fails to meet all of the requirements of these rules. The Division shall also refuse to renew an application if the employer no longer meets or has violated any provision of these rules.

(iii) After approval or renewal, the applicable premium base rate discount shall be applied to the following four (4) calendar quarters unless revoked pursuant to these rules.

(iv) Applications are approved for four (4) calendar quarters and shall be submitted annually.

(b) Applications shall include the employer's name, printed name and title of the officer/owner, signature of the officer/ owner, date, and a notarization that the information is a true and factual representation of the drug-free workplace program. A drug-free workplace program *shall* contain all of the following:

(i) A written policy, which shall include all of the following:

(A) A statement providing for inclusion of all Workers' Compensation covered employees in the substance abuse testing program.

(B) A statement of required types of substance abuse testing.

(C) A statement of actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result.

(D) A statement of consequences of an employee's or job applicant's refusal to submit to a drug test.

(E) A general confidentiality statement.

(F) A statement advising employee who receives a positive confirmed test result that he or she may contest or explain the result to the employer within five (5) working days after written notification of the test result.

(G) A statement informing an employee or job applicant of the federal Drug-Free Workplace Act, if applicable.

(H) A statement affording provision of 60 days notice prior to implementation of substance abuse testing.

(I) A statement that substance abuse testing is required to be on vacancy announcements for which testing is required.

(J) A statement that notification of substance abuse testing is posted in an appropriate and conspicuous location on employer's premises.

(K) A statement informing employees and job applicants that copies of policy are available in the employer's personnel office or other suitable location.

(ii) Substance abuse testing, to the extent permitted by law, which shall include all of the following:

(A) Pre-employment, random, reasonable suspicion, and post-accident testing.

(B) Drug and alcohol testing protocols as specified in Chapter 10, Section 2 shall apply to all random, reasonable suspicion and post-accident testing.

(I) Pre-employment substance abuse testing is exempt from the protocol as specified in Chapter 10, Section 2 and alcohol testing is not required for job applicants.

(II) For random and reasonable suspicion testing, a commercially available onsite urine drug test consisting of Amphetamines; Marijuana; Cocaine; Opiates and PCP with specific gravity incorporating SAMHSA cutoff levels may be utilized by a Third Party Administrator. A negative test shall require no further testing unless use of another drug not included on the onsite test is suspected, in such case the sample would be processed as if it were a positive onsite test. A positive drug or low specific gravity onsite urine test shall be immediately processed pursuant to Chapter 10, Section 2. Protocol shall require transfer of the specimen in front of the employee to a container supplied by a certified laboratory, and sealed per instruction with the employee initialing the evidence seal.

(III) Post-accident testing shall be exclusively processed per Chapter 10, Section 2 with strong recommendation that the specimen be a blood sample.

(C) To the extent permitted by law, random testing shall be conducted, at a minimum, on 20% of the average staff on an annualized basis.

(iii) Resources available for employee assistance.

(A) To include either a statement-advising employee of an Employee Assistance Program (EAP) or a statement-advising employee of employer's resource file of assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavior problems.

(iv) Employee education

(A) The employer shall provide at least 1 hour of employee substance abuse education training per year. Employers shall retain records, to include attendee's signatures, dates and training topics, to document employee participation in education.

(v) Supervisor training

(A) The employer shall provide at least 2 hours of substance abuse education training per year. Supervisors shall receive training to encompass at least 60 minutes on alcohol misuse and at least 60 minutes on drug use. Training shall incorporate physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs. Employers shall retain records, to include attendee's signatures, dates and training topics, to document supervisory participation in training.

(c) Drug-free workplace program compliance and revocation.

(i) An employer shall maintain compliance with their drug-free workplace program during the time period for the discount program.

(ii) An employer shall be responsible for document retention to substantiate compliance with the substance abuse testing provisions in the employer's approved annual drug-free workplace program. An employer shall preserve such records for a period of four years after the calendar year in which the respective program was approved by the Division.

(iii) Pursuant to W.S. § 27-14-803 and in accordance with Chapter 2, Section 5. Audits, the Division may investigate and examine the employer's documentation as pertains to compliance with their approved drug-free workplace program(s). If the Division finds the employer to be in noncompliance after reviewing the relevant documentation, participation in the employer base rate discount program for alcohol and drug testing will be revoked. Employers shall have their premium rates reinstated at the full industry base rate, retroactive to the period in which the employer first became noncompliant.

(iv) Upon revocation of an employer's approved drug-free workplace program, the employer shall be required to reimburse all previously granted premium discount amounts to the Division for each year or portion thereof of noncompliance.