

## TN Drug Free Workplace Program – LGIP Program Requirements

Compliance with TN Drug Free Workplace Program (DFWP) rules allows insurance providers the ability to offer premium credit, because the risk of claims decreases both in frequency and severity when a strong DFWP policy is in place. The TN DFWP statute applies to both public and private sector. The statutes do recognize the constitutional limitations on testing public employees.

LGIP's guidelines for a DFWP policy that must be met and consistent throughout all departments whose employees are covered under the county's Workers' Compensation Policy, in order to qualify for the premium credit are as follows:

1. Pre-employment screening for at least **Safety Sensitive** positions. However, if the county or a department adopts a DFWP policy for pre-employment screening for other than safety sensitive positions, it should be consistent for all applicants.
  - As defined in your DFWP policy.\*( T.C.A 50-9-103 (16) below)
2. Random tests for **Safety Sensitive** Positions Only.
  - As defined in your DFWP policy.\* (T.C.A 50-9-103 (16) below)
3. Post-Accident for **All** employees filing a Workers' Comp claim (except Poison Ivy/Oak Claims):
  - Under the TN Drug Free Workplace Program, the insurance company has the right to deny WC benefits if an employee was under the influence of drugs/alcohol at the time of an accident causing bodily injury to them. Or if they refuse testing at the time of an accident it qualifies as a positive drug screen in the absence of one and WC benefits, medical and lost wages are forfeited.

After an accident which results in an injury, the employee is to submit to a drug or alcohol test in accordance with these rules:

- An employee injured at the workplace and required to be tested shall be taken to a medical facility for immediate treatment of injury. Specimens shall be obtained at the treating facility or a designated collection site under the procedures set forth under these rules and transported to an approved testing laboratory.
  - No specimens shall be taken prior to the administration of emergency medical care. Once this condition has been satisfied, an injured employee must submit to testing.
  - In the case of non-emergency injuries reported to the covered employer after the fact, the injured employee must submit to testing at the time the injury is entered into the covered employer's OSHA 200 Log or any authorized or required replacement for the OSHA 200 Log.
  - The only exemption to this is for cases involving poison oak or ivy.
4. Suspicion for **Safety Sensitive** positions Only: \*\* (T.C.A 50-9-103 (15) below)
    - Supervisors should have authority to request a drug/alcohol screen be performed on an employee showing suspicious behavior where there are concerns that they could cause harm to themselves or someone else. This should be included in your DFWP policy and procedures followed in a consistent manner. The individual making the determination should be properly trained on identifying employees with suspicious behavior.

5. Back to Work:

- If an employee is allowed to return to work (based on policy) after an accident involving a positive drug screen or the result of a positive random screening, the employee must be re-tested for a negative result prior to returning to work.

6. Important: Follow the County's DFWP policy consistently.

\* The definition of Safety Sensitive will vary by county but it needs to make sense to protect employees and the public and be as consistent throughout the county as possible. Because overall operations differ from county to county a "one size fits all" policy won't work, so it's incumbent on each county to develop their own policies to apply to their own work environment. That is what we recommend, and we can't write the policies for members for obvious reasons – every county is different and need to make their own determination.

**T.C. A. 50-9-103. Chapter definitions.**

\* **(16) (A)** "Safety-sensitive position" means a position involving a safety-sensitive function pursuant to regulations governing drug or alcohol testing adopted by the United States department of transportation. For drug-free workplaces, the commissioner is authorized, with the approval of the advisory council on workers' compensation, to promulgate rules expanding the scope of safety-sensitive position to cases where impairment may present a clear and present risk to co-workers or other persons;

**(B)** "Safety-sensitive position" means, with respect to any employer, a position in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety, such as a 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; or a position in which a momentary lapse in attention could result in injury or death to another person;

\*\* **(15)** "Reasonable-suspicion drug testing" means drug or alcohol testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, the facts and inferences may be based upon:

**(A)** Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;

**(B)** Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

**(C)** A report of drug or alcohol use, provided by a reliable and credible source;

**(D)** Evidence that an individual has tampered with a drug or alcohol test during employment with the current covered employer;

**(E)** Information that an employee has caused, contributed to or been involved in an accident while at work; or

**(F)** Evidence that an employee has used, possessed, sold, solicited or transferred drugs or used alcohol while working or while on the covered employer's premises or while operating the covered employer's vehicle, machinery or equipment;