

RULES & GUIDELINES FOR CERTIFICATION OF DRUG-FREE WORKPLACE PREMIUM CREDIT PROGRAM

Intent of Legislation: To promote drug-free workplaces in order that employers in Georgia be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work related accidents resulting from substance abuse by employees. (OCGA 34-9-410)

Directions: Please complete the application and return it with a certification fee of \$25.00 in the form of a check payable to the Georgia State Board of Workers' Compensation. The State Board will review this application and determine whether all the criteria for certification have been met. The State Board then either will return this form to you documenting your certified drug-free workplace program, or in the event that all criteria have not been met -- the State Board will require additional information or action.

Documentation of certified drug-free workplace program: For purposes of documenting your certified drug-free workplace program, it is necessary to maintain your policy and the records required by this application in a separate file for review by your insurer or the Georgia State Board upon request.

Notification to insurer: An insured employer must notify its insurer in writing of such certification. When notifying its insurer, the employer should enclose a copy of the certificate received from the State Board documenting a certified drug-free workplace. (OCGA 34-9-40.2 (a)). This notification to insurer must occur annually!

When does the premium credit begin to accrue: The premium discount will be applied pro rata as of the date of certification (the date of approval by the Georgia State Board of Workers' Compensation).

When does the insured actually receive payment for the credit: The insured employer, however, will not receive payment for such credit until after the annual final premium audit under such policy. (OCGA 33-9-40.2 (b) (1))

How long will an insured employer receive the 7-1/2 % discount: The insured employer is entitled to receive the 7-1/2% premium credit for as long as the employer maintains compliance, and submits an application for certification annually. (OCGA 33-9-40.2 (b) (1) and (2))

*****Annual certification required: An employer must be certified annually and must maintain its certified drug-free workplace program during each year the employer receives the discount.*****

The following information and checklist should be used as the rules and guidelines to assist you in implementing a certified drug-free workplace program.

In accordance with the definition of employer in this law, the state or any department, agency, or instrumentality of the state; county or independent school systems; counties or municipal corporations may not apply or qualify for the 7-1/2 % discount. Definitions applicable to the law and to this document have been attached. (OCGA 34-9-411)

If an employer implements a drug-free workplace program substantially in accordance with this checklist, the employer shall qualify for certification for a 7-1/2% premium discount under such employer's workers' compensation insurance policy. (OCGA 34-9-412 through 34-9-421)

If an employer misrepresents compliance, however, with its certified drug-free workplace program, the employer shall be subject to an additional premium for purposes of reimbursement of a previously granted discount AND to cancellation of the policy. (OCGA 33-9-40.2 (c))

If an employer has made a good faith effort to fulfill certain criteria for certification, however, this good faith effort will be taken into consideration when determining whether he or she has complied substantially with certification criteria.

Remember, this law does not require drug-free testing, other forms of testing, or other actions presently allowed under existing law. (OCGA 34-9-415 (a))

Nor does the law preclude random testing, other forms of testing, or other actions presently allowed under existing law. (OCGA 34-9-415 (c))

Also included in this form are examples that should be helpful in explaining the certification requirements.

1-a. Elements of a Drug-Free Workplace Program

(OCGA 34-9-413)

The statute defines the elements of a drug-free workplace program as follows:

- a) A drug-free workplace program must contain the following elements:
 - 1) Written policy statement as provided in Code Section 34-9-414;
 - 2) Substance abuse testing as provided in Code Section 34-9-415;
 - 3) Resources of employee assistance providers maintained in accordance with Code Section 34-9-416;
 - 4) Employee education as provided in Code Section 34-9-417;
 - 5) Supervisor training in accordance with Code Section 34-9-418.
- b) In addition to the requirements of subsection (a) of this Code section, a drug-free work place program must be implemented in compliance with the confidentiality standards provided in Code Section 34-9-420.
- c) A drug-free workplace program may offer and include the optimum level core services of an EAP as described in subparagraph (C) of paragraph (6) of Code Section 34-9-411.

1-b. Policy Statement Required for Certification:

(OCGA 34-9-414 (a) (1))

Your policy statement *must* include the following information outlined below in the form of a checklist.

(For example, see model policy.)

Statement of required types of substance abuse testing.

(OCGA 34-9-414 (a) (1) (A))

1. Job Applicant Testing Required for Certification:

(OCGA 34-9-415 (b))

2. Reasonable Suspicion Testing Required for Certification:

(OCGA 34-9-415 (b))

3. Post Accident Testing Required for Certification:

(OCGA 34-9-415 (b))

(For example, see model policy or add the following paragraph)

"2. When employees have caused or contributed to an on the job injury that resulted in a loss of work time, which means any period of time during which an employee stops performing the normal duties of employment and leaves the place of employment to seek care from a licensed medical provider."

Even though the above is required for certification, an employer still may send employees for a substance abuse test if they are involved in on the job-accidents where personal injury or damage to company property occurs.

4. Post Rehabilitation Testing Required for Certification:
(OCGA 34-9-415 (b))

(For example, see model policy)

5. Routine-Fitness-for-Duty Testing Required for Certification:
(OCGA 34-9-415 (b))

(For example see model policy or add the following)

"When a substance abuse test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group."

A statement of actions employer may take against employee or job applicant on the basis of a positive confirmed test result. (OCGA 34-9-414 (1) (B))

A statement of consequences of an employee's or job applicant's refusal to submit to a drug test. (OCGA 34-9-414 (4))

IMPORTANT: While the law does not mandate specific actions employers are to take upon an employee's or job applicant's testing positive or refusing to submit to a substance abuse test, in the policy statement employers must notify employees and job applicants of what ever the consequences are upon testing positive or refusing to submit to a test-- in other words, the consequences of violating the employer's policy on testing.

(For example, see model policy which declares that violations of the policy statement are subject to discipline up to and including termination. Also, see paragraphs 1 and 2, which explain that testing is a condition of employment for job applicants and employees)

(Whatever consequences the employer chooses in the event of a positive test result or refusal to submit to one, the employer must implement these actions fairly and consistently among all employees. In response to a positive test result or refusal to submit to one, inconsistent or arbitrary actions put employers at risk for being accused of discrimination.)

A statement advising employee or job applicant of the existence of the article outlining a certified drug-free workplace program. (OCGA 34-9-414 (2))

(For example: "The [COMPANY NAME] drug-free workplace program is certified by the Georgia Workers' Compensation Board in accordance with Title 34, Chapter 9, Article 11 of the Official Code of Georgia Annotated.")

A general confidentiality statement. (OCGA 34-9-414 (3))

(For example, "The confidentiality of any information received by the employer through a substance abuse testing program shall be maintained, except as otherwise provided by the law.")

EITHER a statement advising employee of Employee Assistance Program (EAP), if employer offers one.

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. (OCGA 34-9-414 (5))

(For example, see model policy)

A statement advising employee or job applicant 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. (OCGA 34-9-414 (6))

(For example, after the job applicant and employee testing paragraphs, add "Employees and job applicants who have a positive confirmed test result may explain or contest the result to the employer within five (5) working days, after the employer contacts the employee and shows him or her the positive test result as it was received from the laboratory in writing.")

A statement informing an employee or job applicant of the federal Drug-Free Workplace Act, if it applies to you. (OCGA 34-9-414 (7))

(Only applies to companies that have a contract with the Federal Government in the amount of \$25,000 or more annually)

1-c. Notice of Drug-Free Workplace Program Required for Certification: (OCGA 34-9-414 (b) and (c))

Employers must give employees and job applicants a general notice of testing, one time only, prior to testing. (OCGA 34-9-414 (a))

Employees: Employers must distribute the policy statement to employees in the following manner: (OCGA 34-9-414 (a))

EITHER sixty (60) days notice was given prior to implementation of testing.

OR

sixty (60) days notice was not required because implementation of program occurred prior to July 1, 1993. (OCGA 34-9-414 (b))

Job Applicants: Employers must notify job applicants in the following manners: (OCGA 34-9-414 (a))

Notice of substance abuse testing is included on vacancy announcements for positions in which testing is required. (OCGA 34-9-414 (c))

Notice of substance abuse testing is posted in an appropriate and conspicuous location on employer's premises. (OCGA 34-9-414 (c))

Copies of policy are available to employees and job applicants in employer's personnel office or other suitable location. (OCGA 34-9-414 (c))

2. Substance Abuse Testing Required for Certification:

(OCGA 34-9-415 (b))

Employers must conduct the following types of tests in order to become certified. (OCGA 34-9-415 (b))

IMPORTANT: Prior to conducting job applicant and employee substance abuse testing employers should use **consent forms** like those provided with the model policy.

Job Applicant Testing Required for Certification:

(OCGA 34-9-415 (b))

IMPORTANT: 'Job applicant' means a person who has applied for a position and has been offered employment conditioned upon successfully passing a substance abuse test and may have begun work pending the results of the test.

If you wish to limit the job applicants that you test, you may do so if this limitation is based on a 'reasonable classification of job positions.'

NOTE: Employers with a certified drug-free workplace program who use **temporary workers** in positions that require substance abuse testing must use individuals who already have submitted to a substance abuse test for the temporary agencies that actually pay their wages.

For example, the following may be **reasonable classifications for which to test**, if an employer is not testing all job applicants:

[1] Sensitive positions from a safety, health or security standpoint versus all other job applicants for non-sensitive positions.

Sensitive positions as determined by law usually include positions that involve *National Security *health *safety* *functions that require a high degree of trust and confidence *operation of company vehicles, machinery, or equipment-- the mishandling of which may place fellow employees or the general public at risk of serious injury, or the nature of which would create a security risk in the workplace *the handling of hazardous material.

[2] Full time positions versus part time positions

For example, an employee who works twenty hours or less may be considered part time.

[3] Positions in which the employer is responsible for wages and/ or benefits versus positions in which a temporary agency or employee leasing agency is responsible for wages and benefits.

For example, a worker leased from a temporary agency is paid wages by the temporary agency and is covered by the temporary agency's workers' compensation insurance. The temporary agency is the employer for purposes of implementing a drug-free workplace program that qualifies for the 7-1/2 % premium credit. Therefore, it is the temp agency that is responsible for testing its job applicants for those positions in which testing is required.

[4] Other reasonable classifications of job positions.

When determining whether to limit job applicant substance abuse testing, keep in mind that a drug-free workplace program must be implemented fairly and consistently. An employer should not test job applicants in an arbitrary manner.

Reasonable Suspicion Testing Required for Certification:

(OCGA 34-9-415 (b))

IMPORTANT: See attached definition of 'reasonable suspicion testing.' It is essential that reasonable suspicion testing be implemented on a fair and consistent basis.

If a supervisor has reasonable suspicion that the employee may be impaired by substances, i.e., drugs or alcohol, the supervisor must promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. (OCGA 34-9-415 (d) (12))

A copy of this documentation shall be given to that employee upon request and the original documentation shall be kept confidential by the employer and retained by the employer at least one year. (OCGA 34-9-415 (d) (12))

The requirement of Supervisor Training, which is necessary for certification, (see page 22-23 of this form) will teach supervisors how to recognize, document, and corroborate signs of employee substance abuse.

Post-Accident Testing Required for Certification:

(OCGA 34-9-415 (b))

IMPORTANT: An employer must require employees to submit to substance abuse testing if an employee has **caused or contributed to** an on the job injury that resulted in a **loss of work time**.

'Loss of work time' means any period of time during which an employee stops performing the normal duties of employment and leaves the place of employment to seek care from a licensed medical provider.

Post Rehabilitation Testing Required for Certification:

(OCGA 34-9-415 (b))

IMPORTANT: **'Follow-up testing'** is required for any employee who *involuntarily* entered an Employee Assistance Program (EAP) or rehabilitation program **because of a positive confirmed test result**.

When follow-up testing is conducted, the frequency of such testing shall be a **minimum of at least once a year for a two-year period**, after completion of the EAP or the rehabilitation program. Advance notice of the testing shall not be given to the employee.

Routine-Fitness-for-Duty Testing Required for Certification:

(OCGA 34-9-415 (b))

IMPORTANT: If employers require physical examinations for employees in certain job positions, employers also should require employees to submit to a substance abuse test during the examination.

More specifically, **'Routine-fitness-for-duty tests'** are those tests that are performed on eligible employees **as part of physical examinations** (e.g., annual, periodic recurring, or

biennial physical examinations), where the examinations are required by law, regulation, or company policy, or routinely performed pursuant to company or location policy.

(For example, job positions that typically require physical examinations are those in which employees participate in an industry that is regulated to ensure safety, a goal dependent, in a substantial part, on the health and fitness of employees.

For example, employers involved in the transportation industry, which is regulated by the Department of Transportation, are required to have biennial testing of drivers and periodic testing of pilots. Another example is construction industry firms, which often require employees to be tested during routinely scheduled physical examinations.)

Regarding when to test for drugs, alcohol, or both:

IMPORTANT: Regarding drugs: In *all* substance abuse tests, an employer is required to test for any or all of the drugs listed in the definition, and shall not test for any drug not listed in this definition. See definition of 'drug.' (OCGA 34-9-415 (e) (2))

(For example, NIDA and CAP labs offer standard tests that include the drugs listed in this definition. For example, a '5 Panel', or a '10 Panel' are commonly used by employers.)

IMPORTANT: Regarding alcohol: See the definition of 'alcohol'. An employer should test for alcohol, when he or she has reasonable suspicion to believe an employee is using alcohol on the job in violation of the employer's policy.

Employers should keep in mind that according to the definition of reasonable suspicion, 'if an employee has caused or contributed to an accident while at work', reasonable suspicion may arise.

Employers, however, are not limited to reasonable suspicion testing when alcohol is concerned. For example, employers also may want to conduct post-accident testing for alcohol, in addition to drugs.

Because circumstances are different in each instance that an employee is required to submit to a substance abuse test, it is best for the employer to determine when the employee should be tested for both drugs and alcohol.

(For example, in 'job applicant testing', post-rehabilitation testing', and routine-fitness-for-duty testing'-- an employer may decide to test only for drugs. But in 'reasonable suspicion testing' and 'post-accident testing', an employer may decide to test for both drugs and alcohol.

These laboratories also offer standard tests for alcohol. For example, common types of tests for the presence of alcohol include testing the urine, breath, or blood.

The 'threshold detection level' (see attachment definition) of the substance tested in initial and confirmation tests are set by NIDA and CAP laboratories in conformity with federal standards.

2-b. Procedures for Substance Abuse Testing Required for Certification. (OCGA 34-9-415 (d) and (e))

It is important to remember that all information obtained in substance abuse testing should be maintained in a medical file separate from the personnel file.

If an employer has a Medical Review Officer (MRO), the MRO should keep this file.

If an employer does not have an MRO , the employer should appoint a drug-free workplace program coordinator who is responsible for keeping the documentation required by this form, for interpreting test results, and most importantly, for ensuring that confidentiality is maintained.

Specimen Collection Responsibilities Required for Certification:
(OCGA 34-9-415 (d) (1) through (5))

_____ **Collection of job applicant and employee specimen are performed in accordance with the following standards and procedures:**

Standards for Specimen Collection:

- Specimen collection should be conducted in a manner reasonably to protect the privacy of the individual and to prevent substitution or contamination of the specimen.
- Specimen collection should be documented by labeling the containers to prevent erroneous identification of results.

- Specimen collection, storage, and transportation to the testing site should be performed in a manner which reasonably will preclude specimen contamination or adulteration.

Procedures for Specimen Collection:

Who may collect:

A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, a certified paramedic present at the scene of an accident, a person certified or employed by a laboratory certified by National Institute on Drug Abuse, the College of American Pathologists, or the Georgia Department of Human Resources, or a qualified person certified or employed by a collection company.

OR

An employer representative who has been trained to collect specimens in accordance with accepted chain of custody procedures (65 C.F.R. 244)

Chain of custody procedures required:

- Chain of custody procedures must be used by the above individuals to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested.

NOTE: NIDA and CAP laboratories provide the specimen collection packages that include the appropriate forms necessary for chain of custody procedures. These laboratories also may be able to provide training on proper collection procedures.

NOTE: *Proper collection methods are essential in assuring accuracy of test results. As a result, if a specimen is not collected in accordance with the standards as set forth by NIDA and CAP laboratories, these laboratories will not accept the specimen for analysis.*

Procedures regarding prescription and nonprescription medication:

NOTE: Though not required for certification, employers are STRONGLY encouraged to use the services of a Medical Review Officer (MRO) in determining the validity of a Laboratory confirmed drug test result.

If a drug test result is confirmed positive, it is the employer's responsibility to ensure prescription medications, over the counter drugs, or other medical history pertinent to the drug screen could affect the final result of the test.

If the employer does not wish to hire an MRO, the employer may ask the job applicant or employee for evidence of a prescription that may have affected the test result. In addition, NIDA and CAP labs offer technical assistance and MRO's to interpret the results.

IMPORTANT NOTE: The employer should be mindful of the American's with Disabilities Act (ADA) and pertinent liability issues in making the determination in the use of an MRO as part of a comprehensive drug-free workplace program.

A list of prescription and over the counter drugs that may affect test results is attached for your information. This list is included as an educational tool and is NOT exhaustive. In cases where drugs not included on this list appear in a test result, an employer may wish to consult the laboratory, an MRO, a pharmacist, or other expert on the effect that prescription and over the counter drugs have on laboratory test results.

Laboratories that must test specimens:

- NIDT devices (On-Site Kits) may be used for the initial screening for POST OFFER (or new hire) testing ONLY.
- For current employees, (Reasonable Suspicion, Post Accident, Post Rehabilitation, Fit-For-Duty), ALL specimens, initial and confirmation testing, must be tested only by a NIDA or CAP laboratory. (See page 14 of the guidelines of these laboratories. Also attached is information on how to find out NIDA and CAP laboratories in Georgia.)
- All non-negatives from initial screening in Post Offer (New Hire) drug testing must be confirmed by GC/MS method in a NIDA or CAP laboratory.

Employer Responsibilities Required for Certification:

(OCGA 34-9-415 (d) (6) through (12))

_____ **I am complying with the following procedures that are necessary for certification:**

Notification of positive confirmed test results:

- **Within 5 days** after receipt of a positive confirmed test result from the laboratory, an employer **must inform in writing** a job applicant or employee the [1] fact that he or she tested positive, [2] the consequences of testing positive, and [3] the options available to the job applicant or employee.
- If the job applicant or employee requests, the employer shall **provide a copy of the test results.**

- An employer must ensure that all initial tests having a positive result are **verified by a confirmation test.**

If an employer has been trained to collect specimens:

- If an employer has been trained to collect specimens, the employer must use **chain of custody procedures** to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested.

Payment for the initial and confirmation tests required by the employer:

- An employer is *required* to pay the cost of all substance abuse tests, initial and confirmation, that the employer *requires* of employees and job applicants.

Additional tests not required by the employer:

- If a job applicant or employee chooses to have an additional test not required by the employer, then the **job applicant or employee must pay the cost of any additional test.**
- Any additional tests, however, must be conducted on the **same specimen as the original test.**

Documentation of Reasonable Suspicion Testing:

- If testing is conducted based on reasonable suspicion, the employer shall promptly **detail in writing** the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing.
- This documentation shall be kept **confidential** pursuant for **at least one year.**
- A copy of the above reasonable suspicion documentation should be **given to the employee upon request.**

Laboratory Responsibilities Required for Certification

(OCGA 34-9-415 (e))

The laboratory that I am using is complying with the following procedures that are necessary to ensure maximum reliability and accuracy.

NOTE: These standards are required in order to avoid employer and/ or laboratory liability for faulty tests results. These standards and procedures are typical of laboratories approved by NIDA or CAP.

Only laboratories that are approved by the National Institute on Drug Abuse (NIDA) or the College of American Pathologists (CAP) may perform confirmation tests.

Name and address of laboratory_____

Phone number: (____)_____ NIDA or CAP Certification: _____

Chain of custody Procedures Required:

- The laboratory must have written procedures to ensure chain of custody.

Quality Control Procedures Required:

- The laboratory must follow proper quality control procedures including, but not limited to [1] the use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy; [2] an internal review and certification process for test results, conducted by a person qualified to perform that function in the testing laboratory; [3] security measures implemented by the laboratory to preclude adulteration of specimens and test results; [4] other necessary and proper actions taken to ensure reliable and accurate test results.

Disclosure of Test Results:

- A laboratory must disclose to the employer a written test result report within seven (7) working days after receipt of the sample.
- All laboratory reports of test results shall state at a minimum [1] the name and address of the laboratory that performed the test and positive identification of the person tested; [2] positive results on confirmation tests only; [3] negative results may report from initial or confirmation tests; [4] a list of the drugs for which the analyses were conducted; [5] the type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests.
- No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this article.

Technical Assistance Required:

- Laboratories should provide *technical assistance* to the employer and the employee or job applicant for the purpose of interpreting any positive confirmed tests results which could have been caused by prescription or nonprescription medication.

Confirmation Tests Required for Positive Initial Tests:

- An employer is not obligated to seek a confirmation test on *negative* initial tests. But if an initial test is negative, the employer may at its sole discretion seek a confirmation test
- All positive initial tests must be confirmed using the gas chromatography/mass spectrometry (GC/MS) method or an equivalent or more accurate scientifically accepted methods approved by NIDA as such technology becomes available in a cost-effective form.

3. Employee Assistance Required for Certification:

(OCGA 34-9-416)

An employer must provide employee assistance in order to be certified.

(OCGA 34-9-416)

EITHER you have an Employee Assistance Program (EAP):

Employees have been informed of the benefits and services of the Employee Assistance Program (EAP) and have been provided notice of the policies and procedures regarding access to and utilization of the program. (OCGA 34-9-416 a))

IMPORTANT: *See definition of Employee Assistance Program (EAP). A comprehensive EAP provides four of the five components of a certified drug-free workplace program: [1] assistance in policy writing, [2] employee education and awareness, [3] supervisor training, [4] and employee assistance.*

The Statute (OCGA 34-9-411(6)) defines Employee Assistance Program as follows:

- (A) Employee Assistance Program means a worksite focused program designed to assist:
- (i) Employer work organizations in addressing employee productivity issues; and
 - (ii) Employee clients in the identification and resolution of job

performance problems associated with employees impaired by personal concerns, including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal issues that may affect job performance.

- (B) A minimum level of core services must include consultation and training and assistance to work organization leadership in policy development, organizational development, and critical incident management; professional, confidential, appropriate, and timely problem assessment services; constructive intervention and short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up, monitoring, and case management with providers and insurers; employee education and supervisory training; and quality assurance.
- (C) An optimum level of core services must include, in addition to the minimum level core services, the designation of an individual who shall be responsible to administer the employer's Employee Assistance Program and to certify that the employer work organization's drug-free workplace program contains all elements of the drug-free workplace program required by Code Section 34-9-413 and that such program satisfies the annual certification requirements of Code Section 34-9-421; provided, however, that such individual shall have training and experience with Employee Assistance Programs in accordance with rules and regulations prescribed by the State Board of Workers' Compensation.

An EAP is a work-site based service that assists in the identification and resolution of job performance problems associated with employees impaired by personal concerns, including, but not limited to health, marital, family, financial, alcohol, drug, legal, emotional, stress or other problems which may adversely affect employee productively.

While the function of an EAP is much broader than merely addressing problems associated with substance abuse in the workplace, an EAP does play a significant role in a drug-free workplace program. EAP's are frequently able to identify substance abusing employees before costly problems such as accidents, errors, absenteeism and increased insurance utilization occur. Given the time and money it takes to replace an experienced employee dismissed due to a positive test result, an EAP offers employers an alternative to firing a valued employee found to use drugs.

OR you may maintain and post other means of employee assistance:

Maintenance, distribution, and posting of resource information of providers of other means of employee assistance including drug and alcohol abuse programs, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. (OCGA 34-9-416 (b))

The statute (OCGA 34-9-416) provides that:

If an employer does not have an Employee Assistance Program, the employer must maintain a resource file of providers of other employee assistance including drug and alcohol abuse programs, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems and must notify the employee in writing of the availability of this resource file. In addition, the employer shall post in a conspicuous place a current listing of providers of employee assistance in the area. Such listing of available providers shall be reviewed and updated by the employer during the month of July of each year at which time the employer shall, when necessary, correct and revise information on all providers listed. Employers shall take reasonable care to identify appropriate providers and supply accurate telephone numbers and address information on the posted listing of providers at all times.

Employers must notify employees of the availability of the employer's resource file containing the information on employee assistance and update the resource file during the month of July of each year.

For more information on employee assistance resources in your community, contact the 24 hour Drug Abuse Helpline in Georgia at 1-800-338-6745.

Employers should post this number where employees can see it and distribute this number to employees so as to enable them to access assistance confidentially

4. Employee Education Required for Certification:

(OCGA 34-9-417)

REQUIRED FOR THE FIRST YEAR CERTIFICATION as provided by OCGA 34-9-412, an employer must provide employees with TWO HOURS of education on substance abuse, in general, and its effects on the workplace, specifically. (OCGA 34-9-417)

_____ **Hour One of the Employee Education program has been conducted for employees. (Date of program: _____)**

_____ **Hour Two of the Employee Education program has been conducted for employees. (Date of program: _____)**

Length of the Employee Education Program:

IMPORTANT: During the first year of certification, an employer must have completed the **first hour of employee education before qualifying for certification.** The **second hour** of employee education may be completed after certification, **within the next six months** or, in the case of temporary employees, after an employee has completed 1000 hours of work since the first hour of employee education.

If an employer has an Employee Assistance Program (EAP) as defined & explained in this form, the EAP and employer automatically will meet the Employee Education Program criteria necessary for certification.

Nevertheless, an employer must conduct two hours of employee education during the first year of certification and **one hour in the second and subsequent years in order to maintain certification.**

Content of the Employee Education Program:

· **FIRST HOUR CONTENTS** of the Employee Education Program must include but *is not limited to* the following information:

- (1) The employer's policies and procedures regarding substance abuse in the workplace and how employees who wish to obtain a substance abuse treatment can do so.
 - Explanation of the employer's policy against substance abuse and the consequences for violating this policy.
 - If the employer has an EAP: How employees use the EAP and when and for what purposes would an employee use the EAP.
 - If an employer does not have an EAP: Other means of employee assistance that are available to the employees.
 - Explanation of reasonable suspicion.
 - Basic Facts / Statistics
 - Q&A period.

In addition, employers may choose any of the following topics and even combine them in order to comply with the employee education component.

Example Topics:

- The explanation of the disease model of addiction for alcohol and drugs.
 - The disease of addiction.
 - Enabling.
- Abuse versus Abuse.
- Why People Abuse Substances
 - Alcohol Anonymous: Review of 12 steps to recovery.
 - Alcohol Anonymous: History of the AA Program.
 - The recovering employee.
 - Relapse in the workplace.
 - The role of the family in addressing substance abuse and addiction.
 - The role of co-workers in addressing substance abuse and addiction.
 - The role of co-workers in maintaining a drug-free workplace.

(2) The effects and dangers of the commonly abused substances in the workplace:

Example Topics:

- The most abused drugs in the workplace.
- A close look at marijuana, cocaine/crack, inhalants, alcohol, opiates, hallucinogens, or prescription drugs, etc.
- The return of LSD.
- The physical and psychological effects of the above drugs and others.
- Warning signs.
- Stress and the workplace.
- Safety and the workplace.
- Domestic violence and substance abuse.
- Health, medical risks and substance abuse.
- Wellness, exercise, and substance abuse.

AND ¼

(3) Insurance utilization and benefits in the context of substance abuse treatment.

- The role of the family when someone seeks treatment for substance abuse.

- The role of co-workers when someone seeks treatment for substance abuse.
- Legal issues surrounding substance abuse.

How to communicate the Employee Education Program:

Because resources available to employers across the state will vary from community to community, the employee education component of the drug-free workplace is meant to be flexible so that employers may be creative in conducting employee education. For example, employers may utilize speakers, workshops, newsletters, videos, written material, in-house supervisors that have been educated on how to train employees, a combination of the above, and any other means of educating employees for purposes of a drug-free workplace.

For available resources in the community, an employer may wish to contact the following individuals and organizations:

- Georgia 24 Hour Helpline 1-800-338-6745
- The Council on Alcohol and Drugs, Inc. (770) 239-7442
- Prevention Resource Center at the Georgia. Department of Human Resources and those that may be located in your community
- Georgia Employee Assistance Professionals Assoc. (EAPA) (404) 621-5834
- Treatment centers
- Private therapists
- Georgia Addiction Counselors Association
- Occupational Nurse Association
- Psychiatric Nurses Association
- Labor attorneys
- Speakers Bureaus at chambers of commerce or other organizations
- Prevention associations in your community
- Law enforcement officials (e.g., DEA or GBI)
- American Society for Training Development
- Alcoholics Anonymous
- Cocaine Anonymous
- Narcotics Anonymous

How to document the Employee Education Program:

In order to document the completion of employee education, an employer should complete a form like the one on pg. 30 of this document and maintain these records of compliance in a file for this purpose.

SECOND AND SUBSEQUENT YEAR CERTIFICATION REQUIRES
EMPLOYEE EDUCATION IN THE AMOUNT OF ONE (1) HOUR
ANNUALLY.

5. Supervisor Training Required for Certification:
(OCGA 34-9-418))

In addition to the employee education program (two hours 1st year), employers must provide all supervisory personnel with a minimum of two hours of *supervisor training* in the first year of certification and one hour per year thereafter. (OCGA 34-9-418)
(Supervisors should receive a total of four hours of education and training in the first year and two hours (total) in the second and subsequent years).

**Participation of supervisors with employees in the above education program,
AND**

FIRST YEAR REQUIRES two hours of supervisor training on how to recognize signs of substance abuse, how to document and collaborate signs of employee substance abuse, and how to refer substance abusing employees to the proper treatment providers.

IMPORTANT: *Supervisors must have completed the first hour of employee education and at least one hour of annual supervisor training before an employer may qualify for certification. The second hour of supervisor training may be completed after certification, within the next six months (during the first year).*

It is absolutely crucial that supervisors are trained before implementing reasonable suspicion testing and any referrals of employees to the EAP or for treatment.

If an employer has an Employee Assistance Program (EAP) as defined and explained in this form, and the EAP and employer have contracted for the EAP to provide employee education AND supervisor training, the employer automatically will meet the Employee Education Program criteria necessary for certification.

- The Supervisor Training Program should include but not be limited to the following information. Employers may choose any of the following topics and even combine them in order to comply with the supervisor training component.

Example Topics:

- Reasonable suspicion: Building and establishing through observation and measurement .
- EAP referrals: Supervisor referral, voluntary/self referral, last chance agreement.
- How to recognize signs of employee substance abuse.
- How to refer substance abusing employees to the proper treatment
- How family problems affect the employee's performance.
- Enabling employees.
- Intervention.
- Using positive peer pressure.
- Using management to gain support for mutual goals.
- Conducting the performance review.
- When and if to test? Confront? Interview?

How to communicate the Supervisor Training Program:

See page 21 of the guidelines and use the same resources as listed for Employee Education Program.

How to document the Supervisor Training Program:

See page 21 of the guidelines and use the same form as attached for Employee Education Program.

SECOND AND SUBSEQUENT YEAR CERTIFICATION REQUIRES SUPERVISOR TRAINING IN THE AMOUNT OF ONE (1) HOUR ANNUALLY.

6. Confidentiality Required for Certification:

(OCGA 34-9-420)

All information received through substance abuse testing is confidential, but may be used or received in evidence, or obtained in discovery, or disclosed in any civil or administrative proceeding when the information is relevant to the employer's defense, e.g., a workers' compensation hearing.

IMPORTANT: *Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this law shall be inadmissible as evidence in any such criminal proceeding.*

The consent form must contain at minimum:

- [1] The name of the person who is authorized to obtain the information;
- [2] The purpose of the disclosure;
- [3] The precise information to be disclosed;
- [4] The duration of the consent;
- [5] The signature of the person authorizing release of the information.

7. Disclaimers regarding a certified drug-free workplace program.

(OCGA 34-9-419)

- No physician-patient relationship is created between an employee or job applicant and an employer, MRO, or any person performing or evaluating a substance abuse test solely by the establishment, implementation or administration of substance abuse testing.
- Nothing in the law creating a drug-free workplace program and nothing in this form shall be constructed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug related offenses, and taking action based upon a violation of those rules.
- Nothing in the law or in this form shall be constructed to operate retroactively, and nothing in this article shall abrogate the right of an employer under state or federal law to conduct substance abuse tests, or implement employee substance testing.
- Nothing in the law or in this form shall be constructed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to responsibilities. Such screening or tests shall be limited to the specific materials expressly identified in the statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests.
- No cause of action shall arise in favor of any person based upon the failure of an employer to establish or conduct a program or policy for substance abuse testing.

8. Maintenance and Revocation of Certification

- Employers must maintain compliance with the criteria for a certified drug-free workplace during the entire year that certification is granted.

- If at any time an insurer has reason to believe that an insured employer with a certified drug-free workplace program has fallen out of compliance, the insurer has the right to physically review and verify the employer's documentation of its certified drug-free workplace program.

For example, if the insurer receives an unreasonable number of claims which involved employee substance abuse from an employer with a certified drug-free workplace program, such that it appears the employer is not maintaining its drug-free workplace program -- the insurer has the right to physically review and verify employer's documentation of its certified drug-free workplace program.

The policy statement should be made available to the insurer for review.

Employers should use the forms attached for proof of employee education and supervisor training.

Employee Assistance may be verified by proof of the employer's contract with an EAP or by a showing of the maintenance, distribution, and posting of other means Substance abuse testing may be proved by a showing of the employer's bill from the laboratory and/or collection facilities. An employer should not disclose specific employee's test results, as information is confidential. But if a positive confirmed test result is found in relation to post-accident testing, the information obviously becomes relevant to the employer's defense in any proceeding to deny the employee's workers' compensation benefits. When a positive confirmed test result is relevant to an employer's defense, information received in relation to that test result is no longer confidential.

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- If after reviewing the relevant documentation, the insurer finds that an employer has not maintained its certified drug-free workplace, the insurer should contact the Georgia State Board of Workers' Compensation.
- The State Board will investigate the facts and determine on a case by case basis whether to revoke certification.
- The State board has the authority to revoke certification if the State Board finds an employer has not substantially complied with the certification requirements.

Definitions applicable to the law, and rules and guidelines.

(1) **'Alcohol'** means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) **'Chain of custody'** means the methodology of tracking specified materials, specimens, or substances for the purpose of maintaining control and accountability from

initial collection to final disposition for all such materials, specimens, or substances and providing for accountability at each stage in handling, testing, and storing materials, specimens, or substances and reporting test results.

(3) **'Confirmation test' 'confirmed test' 'confirmed substance abuse test'** means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy. GC/MS is the authorized confirmation test under this statute.

(4) **'Drug'** means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualene, opiates, barbituates, benzodiazepines, propoxyphene, or a metabolite of any such substances. An employer may test an individual for any or all of these.

(5) **'Employee'** means any person who works for salary, wages, or other remuneration for an employer.

(6) **'Employee Assistance Program'** means a worksite focused program designed to assist: (i) Employer work organizations in addressing employee productivity issues; and (ii) Employee clients in the identification and resolution of job performance problems associated with employees impaired by personal concerns, including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal issues that may affect job performance. A minimum level of core services must include consultation and training and assistance to work organization leadership in policy development, organizational development, and critical incident management; professional, confidential, appropriate, and timely problem assessment services; constructive intervention and short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up, monitoring, and case management with providers and insurers; employee education and supervisory training; and quality assurance.

An optimum level of core services must include, in addition to the minimum level core services, the designation of an individual who shall be responsible to administer the employer's Employee Assistance Program and to certify that the employer work organization's drug-free workplace program contains all elements of the drug-free workplace program required by Code Section 34-9-413 and that such program satisfies the annual certification requirements of Code Section 34-9-421; provided, however, that such individual shall have training and experience with Employee Assistance Programs in accordance with rules and regulations prescribed by the State Board of Workers' Compensation.

(7) **'Employer'** means a person or entity that is subject to the provisions of this chapter but shall not include the state or any independent school system or any municipal corporation for the purposes of this chapter.

(8) **'Initial Test'** means a sensitive, rapid and reliable procedure to identify negative and presumptive positive specimens including "on-site" testing. All initial tests shall use an immunoassay procedure or an equivalent procedure or shall use a more accurate scientifically accepted method approved by the National Institute on Drug Abuse or by

Georgia law, as such more accurate technology becomes available in a cost-effective form. An employer may also use on-site testing kits for post-offer initial testing of job applicants (NOT current employees).

(9) '**Job applicant**' means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a substance abuse test.

(10) '**Nonprescription medication**' means a drug or medication authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.

(11) '**Prescription medication**' means a drug or medication lawfully prescribed by a physician for an individual and taken in accordance with such prescription.

(12) '**Reasonable suspicion testing**' means substance abuse testing based on a belief that an employee is using or has used drugs or alcohol in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon, but not limited to the following:

(A) Observable phenomena while at work such as direct observation of substance abuse or of the physical symptoms or manifestations of being impaired due to substance abuse;

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

(C) A report of substance abuse provided by a reliable and credible source;

(D) Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer;

(E) Information that an employee has caused or contributed to an accident while at work; or

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

(13) '**Rehabilitation program**' means an established program capable of providing expert identification, assessment, and resolution of employee drug or alcohol abuse in a confidential and timely service. This service shall in all cases be provided by the persons licensed or appropriately certified as health professionals to provide drug or alcohol rehabilitative services.

(14) '**Specimen**' means tissue, blood, breath, urine, or other product of the human body capable of revealing the presence of drugs or their metabolites or of alcohol.

(15) '**Substance**' means drugs or alcohol.

(16) '**Substance abuse test or 'test'**' means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites or of alcohol.

- (17) **'Threshold detection level'** means the level at which the presence of a drug or alcohol can be reasonably expected to be detected by an initial and confirmatory test performed by a laboratory meeting the standards specified in these rules and regulations. The threshold detection level indicates the level at which a valid conclusion can be drawn that the drug or alcohol is present in the employee's specimen.

Appendix A

Information on NIDA and CAP laboratories:

NIDA Laboratories:

For more information on whether a laboratory has been certified pursuant to federal minimum standards contact Donna Bush, Ph.D. at the National Laboratory Certification Program (NLCP), (301) 443-6014. Also, a list of federally approved laboratories can be found during the first week of each month in the Federal Register.

The federal agency called the National Institute on Drug Abuse (NIDA) has been renamed the Substance Abuse and Mental Health Services Administration. Laboratories that were certified by NIDA now have certification by the Substance Abuse and Mental Health Services Administration, under the federal Department of Health and Human Services (HHS).

This name change occurred after the Georgia General Assembly passed the law creating the premium discount for certified drug-free workplaces. The name change does not affect whether a lab is certified pursuant to federal minimum standards. If a lab used to have 'NIDA certification', it now has 'HHS' certification. Next year, during the legislative session, the name change will be incorporated into the existing law.

CAP Laboratories:

For all information on whether a laboratory has CAP certification, contact the College of American Pathologists at (708) 446-8800.

Appendix B

Form documenting completion of Employee Education and Supervisor Training Program.

Fill out this form and attach a list of attendee's signatures to document their participation. Keep this documentation in a file for your review by your insurer or the Georgia State Board of Workers' Compensation Board upon request.

1. Check one:

_____ First Hour of Employee Education Program must be completed
(Date of completion: _____) before certification

_____ Second Hour of Employee Education Program **Or N/A if in 2nd year.**
(Date of completion: _____)

_____ First Hour of Supervisor Training Program must be completed
(Date of completion: _____) before certification

_____ Second Hour of Supervisor Training Program **Or N/A if in 2nd year.**
(Date of completion: _____)

2. Has employer contracted with an Employee Assistance Program (EAP):
yes _____ no _____

3. Title and Description of Program: _____

4. Length of Program: _____

5. Means of communication used to teach the employees and/or supervisors:

6. Number of employees/ supervisors (circle one): _____

7. Number of employees/ supervisors participating in program (circle one): _____

8. Signature of trainer or supervisor who conducted this program:

_____ Date: _____

Appendix C

OVER-THE-COUNTER AND PRESCRIPTION DRUGS THAT MAY ALTER OR AFFECT THE OUTCOME OF A DRUG TEST

*This information is included only to assist employers in evaluating positive test results in relationship to prescription or over the counter drugs reported by employees.

*Please note this list is not exhaustive. In cases of drugs not included on this list, an employer may wish to consult with the laboratory, a MRO, a pharmacist, or other expert for further assistance.

Alcohol

All liquid medications containing ethyl alcohol (ethanol). Please read the label for content. As an example, Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contac Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is 26.9% (54 proof).

Amphetamines

Obetrol, Biphedamine, Desoxyn, dexedrine, Didrex

Cannabinoids

Marinol (Dronabinol, THC)

Cocaine

Cocaine HCl topical solution (Roxanne)

Phenecyclidine

Not legal by prescription.

Methaqualone

Not legal by prescription.

Opiates

Paregoric, Parepectolin, Donnagel PG, Morphine, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Rubitussin AC Guaiatuss AC Novahistine DH, Novahistine Expectorant, Dilaudid (hydromorphone), M-S contin and Roxanol (morphine sulfate), Percodan, Vicodin, etc.

Barbituates

Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fioricet, Esgic, Butisol, Mebaral, Butabarbital, Butabital, Phrenilin, Triad, etc.

Benzodiazepines

Ativan, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranxene, Valium Verstram, Halcion, Paxipam, Restoril, Centrax.

Methadone

Dolophine, Methadose

Propoxyphene

Darvocet, Darvon N, Dolene, etc.