

# **WORKERS' COMPENSATION: DRUG-FREE WORKPLACE PREMIUM CREDIT PROGRAM**

## ***EXPLANATORY MEMORANDUM***

### **PURPOSE:**

The purpose of this memorandum is to establish a 2.5% premium credit provision, not to exceed 4 policy years, for North Carolina employers establishing a drug-free workplace supported by drug testing.

### **BACKGROUND:**

There have been a significant number of studies concerning how drugs and alcohol affect an employers' workplace. The National Institute on Drug Abuse (NIDA) estimates that approximately 70 percent of all drug abusers are employed. One in every 12 employees abuses drugs and/or alcohol. These controlled substance abusers are involved in three times more on-the-job accidents and are five times more likely to file a workers' compensation claim. A recent National Council on Compensation Insurance (NCCI) article on alcohol consumption states that "a 10 percent reduction in alcohol consumption would reduce total workers' compensation costs by 5.6 percent: a 4.1 percent reduction in frequency and a 1.5 percent reduction in severity".<sup>1</sup> Likewise, given all these facts, a drug-free workplace has the potential to reduce the cost of workers' compensation claims by approximately 20 percent.<sup>2</sup> Consequently, a drug-free workplace is an essential loss prevention program.

Many large companies have already recognized that drugs and alcohol abuse are a problem in the workplace. In fact, over 60 percent of businesses with more than 500 employees have established drug testing programs versus 20 percent for medium size businesses and only three percent for companies with less than 100 employees.<sup>3</sup> It is critical for smaller companies to follow suit, not only to increase productivity and make their workplaces safer, but to prevent a trickle-down of rejected workers from the larger companies that drug test.

Given all these facts, many companies still view a drug-free workplace program as too expensive to implement. Therefore, to entice customers to adopt a drug-free workplace program and to help offset the costs of the program to employers, AmGUARD/EastGUARD/NorGUARD Insurance Companies propose a five percent premium credit for its customers who adopt the program. As to not create redundancy of credit for a Drug-Free Workplace and an enhanced experience modification factor, the 2.5% credit will apply for no more than four policy years.

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<sup>1</sup> Durbin, David L., NCCI Digest "Alcohol Consumption and Workplace Accidents" Volume VI, Issue IV, December, 1991, p.39

<sup>2</sup> Assuming an 8.3% positive rate prior to drug testing, a 3% positive rate after implementing drug testing, drug abusers being involved in 4 times more accidents and these accidents being 1.5 times more sever.

<sup>3</sup> National Institute on Drug Abuse *Drugs in the Workplace: Research and Evaluation Data* Volume II, 1990, p. 180

## **REQUIREMENTS:**

AmGUARD/EastGUARD/NorGUARD Insurance Companies define a drug-free workplace as follows:

1. All employees must be given a written policy statement notifying them of the details of the program, including the consequences of testing positive for controlled substances. Advance notice must be given to current employees prior to initiating drug testing to explain the effects of drugs, available employee assistance programs and the company policy.
2. An employer must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire the job applicant. A notice should be posted or provided to each job applicant that a negative drug test is required for employment. A "job applicant" is defined as a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a drug test.
3. An employer must require an employee to submit to a drug test based on a reasonable suspicion that the employee is under the influence of alcohol or drugs.
4. An employer must require an employee to submit to a drug test within 32 hours of all on-the-job accidents, which require outside medical attention, where legally allowed by the state.
5. An employer must require all employees to partake in random urinalysis drug testing, where legally allowed by the state. A minimum of 50% of the total number of employees will be tested each year. A proportional number of employees should be selected via computer and drug tested each month.
6. If, in the course of employment, a worker enters an employee assistance program or a rehabilitation program for drug-or alcohol-related problems, the employer must require the employee to submit to a drug test as a follow-up to the program on a quarterly, semi-annual or annual basis for up to two years thereafter.
7. Specimens must be collected with due regard to the privacy of the individual and in a manner reasonably calculated to prevent substitution or contamination of the specimens.
8. Specimen collection must be documented with specimen containers labeled to reasonably preclude the likelihood of erroneous identification of test results. In addition, a form on which the employees or job applicants can provide any information they consider relevant to the test must be provided.
9. Each initial and confirmation test conducted (excluding the taking or collection of a specimen to be tested), must be conducted by a laboratory licensed and approved by NIDA. The confirmation test must be performed using gas chromatography and mass spectrometry methodology, or a methodology that is determined to be as or more reliable.
10. Within five working days after receipt of a positive, confirmed test result from the testing laboratory, the employee or job applicant must be informed of the test results.

11. Within five working days after receiving notice of a positive, confirmed test result, the employee or job applicant may submit information to the designated Medical Review Officer (MRO) explaining or contesting the test results. All results and documentation must be kept confidential by the MRO and employer and retained for at least one year.
12. Within 180 days after receiving notification of a positive test result, an employee or job applicant can ask to have a portion of the specimen retested at another NIDA-certified laboratory. The second laboratory must test the specimen at the same or greater sensitivity for the drug in question. The first laboratory is responsible for transferring a portion of the original specimen for the re-test and for the integrity of the chain-of-custody during the transfer.
13. If testing is conducted based on reasonable suspicion, the employer must promptly detail in writing the circumstances that formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation must be given to the employee upon request and the original kept confidential by the employer and retained for at least one year.
14. AmGUARD/EastGUARD/NorGUARD Insurance Companies, employers, laboratories, employee assistance programs, drug and alcohol rehabilitation programs and their agents who receive or have access to information concerning drug-test results must keep all information confidential.

## **PROPOSAL:**

Berkshire Hathaway Guard Insurance Companies will receive information relevant to the compensability of a workers' compensation claim. If an employee tests positive for a drug or alcohol, and the claim is filed and disputed to the proper regulatory agency with jurisdiction over disputed claims, the employee may be required to forfeit workers' compensation benefits, or have these benefits reduced.

Although the drug-free workplace program does not obligate the employer to provide an employee assistance program to workers with substance-abuse problems, an employer may not discriminate against employees who voluntarily enter such a program.

Employers may receive a 2.5 percent credit, applied for no more than four policy years, on the oral commitment that they will implement a drug-free workplace program. The employer must within 60 days of this oral commitment establish a written policy and begin drug testing. An employer, who has certified to Berkshire Hathaway Guard Insurance Companies that it is providing a drug-free workplace in accordance with the rules listed above; and that of the state and is later determined, through physical verification or other evidence, to not be in compliance with the rules shall have its credit revoked retroactive to the date the credit was received. The employer will be subject to billing for additional premium and cancellation provisions under the policy.

It is proposed this program become effective 12:01 AM, September 1, 2015.

# **WORKERS' COMPENSATION DRUG-FREE WORKPLACE PREMIUM CREDIT PROGRAM**

## ***RATING PROCEDURE***

1. The premium for a risk may be reduced by 2.5% for an employer who has orally committed that it will establish a drug-free workplace in accordance with rules outlined in the attached memorandum. The insured then has 60 days to distribute a written policy to its employees and begin drug testing.
2. The premium credit shall be applied to a risk in a multiplicative manner, after the application of the experience modification, and before the application of premium discounts and the expense constant.
3. There shall be an annual report to the National Council on Compensation Insurance illustrating the total dollar amount of the drug-free workplace premium credit.
4. Standard earned premium figures reported to the National Council on Compensation Insurance on the aggregate calls for experience (e.g. policy year, calendar year, etc.) must exclude the effects of the credits. Net earned premium reported on these calls, must include the effects of the premium credits.

The drug-free workplace premium credits must be reported under the classification code 9846 on unit statistical reports submitted to the National Council on Compensation Insurance.

5. The premium credit shall be applied for a period not to exceed four policy years. Certification is required for each subsequent year in which a premium credit is permitted under this program. The premium credit will be awarded based on an oral commitment in the first year of the program, contingent on written documentation within 60 days.
6. The insured's policy is subject to additional premium, for reimbursement of premium credit, and cancellation provisions of the policy if it is determined that the insured misrepresented its compliance with the drug-free workplace rules as described in the attached memorandum.