



# Mississippi Workers' Compensation Commission

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## **NOTICE CONCERNING THE 1997 DRUG-FREE WORKPLACE WORKERS' COMPENSATION PREMIUM REDUCTION ACT**

### Introduction and Summary

The Drug-Free Workplace Workers' Compensation Premium Reduction Act, Miss. Code Ann. §71-3-201 through 225 (Supp. 1998), became effective July 1, 1997. The following is a summary of this Act:

- # The Act applies to any employer subject to the Workers' Compensation Law;
- # By implementing a drug-free workplace program which complies with the requirements of this Act, an employer qualifies for a 5% premium discount on its workers' compensation insurance. Implementation of a program in compliance with this Act is not mandatory;
- # It is discretionary with the carrier or insurer whether to offer a 5% discount under the Act. If a carrier or group does not elect to offer such a discount, then it is not otherwise available, even if you have a compliant drug-free workplace program;
- # The discount authorized by this Act may be offered only for coverage which is issued or renewed on or after July 1, 1997. Retroactive application of the Act is specifically prohibited;
- # Employers will apply for this discount through a process referred to in the Act as "self-certification." This means that employers will make application directly to their insurer for the 5% premium discount, and in the process will be certifying to their insurer that they have a substantially compliant anti-drug program. Certification is required for each year during which the discount is sought or granted;
- # A previously granted premium discount may be revoked, and reimbursement required, if it is later determined that the employer is not in compliance with the requirements of the Act;
- # In order to meet the requirements of the Act, and hence to qualify for the 5% premium discount if offered by the insurer, the employer must have a drug-free workplace program which meets the following requirements:

- a. The employer's anti-drug program must contain a written policy statement (i) which sets forth the employer's policy against drug use in the work place, (ii) which advises employees of the existence of the Drug-Free Workplace Workers' Compensation Premium Reduction Act, (iii) which addresses confidentiality, (iv) which advises employees of the availability of assistance through internal or external assistance programs, and (v) which informs employees about the federal Drug Free Workplace Act, if applicable to the employer;
- b. The employer's anti-drug program must comply with the substance abuse testing procedures set forth in the separate Drug and Alcohol Testing of Employees Law, Miss. Code Ann. §71-7-1 through 71-7-33 (Rev. 1995);
- c. The employer's anti-drug program must offer employee assistance and explain the benefits of such services as well as the policies and procedures regarding access to an assistance program. An employee assistance program may be offered directly by the employer; if not, the employer must maintain a resource file of employee assistance providers such as alcohol and drug abuse programs, mental health providers and other persons or entities available to assist employees with personal or behavioral problems. The existence of this resource file and a summary of its contents must be made available to employees so as to permit access to these providers and services;
- d.
  - (i) The employer's anti-drug program must provide all employees with an education program on alcohol and drug abuse prior to the implementation of a drug-free workplace program in accordance with this Act. Following initial education and implementation of the drug-free workplace program, the employer must provide employees with annual education on alcohol and drug abuse in the workplace. This annual education program must at a minimum provide one (1) hour of instruction on the disease of addiction, the effects and dangers associated with commonly abused substances in the workplace, and the employer's policies and procedures on drug use as well as the availability of treatment;
  - (ii) The employer must also provide all supervisory personnel with a minimum of two (2) hours of education prior to implementation of the program and then at least annually thereafter. Supervisory personnel must be instructed on the recognition of drug and alcohol abuse, the proper documentation of abuse, the referral of abusers to treatment providers, the benefits of recognizing and treating abuse, and the availability of any health insurance or other benefits which would help defray the costs of treatment for employees.

# It is the insurer's obligation to determine whether the employer's drug-free workplace program is substantially in compliance with the Act so as to qualify for the premium discount;

# All information, interviews, reports, statements, etc. received by the employer through its substance abuse program will be considered confidential communications insofar as they pertain to the employee, and these communications may not be used or received into evidence, obtained in discovery, or otherwise disclosed in any public or private proceedings, except as otherwise provided by the Drug and Alcohol Testing of Employees Law, Miss. Code Ann. §71-7-1 et seq., or unless the release thereof has been voluntarily consented to by the employee in writing, or unless release thereof has been compelled by a court or state agency of competent jurisdiction, or unless

the release thereof has been deemed appropriate by a professional or occupational licensing board in the context of a related disciplinary proceeding;

- # Finally, no cause of action shall arise in favor of any person against an employer based upon the failure of the employer to establish a substance abuse program in accordance with this Act.

#### MWCC Obligations

Under the Act, the Workers' Compensation Commission "shall promulgate appropriate forms and procedures to allow self-certification by an insured to its insurer." The Commission also is authorized, but not required, to promulgate rules and regulations necessary for the implementation and enforcement of this Act.

There is, importantly, no duty on the Commission's part to inspect and/or certify these programs for compliance. The Commission's minimum obligation is simply to prescribe the form and procedure to be followed by employers in making application for the discount.

#### MWCC Response

After careful study and review of the Drug-Free Workplace Workers' Compensation Premium Reduction Act, the Commission has determined that, pending further study, no formal rules, regulations, procedures or forms should be adopted by the Commission at this time. Therefore, until such time as specific forms and procedures are adopted by the Commission, employers who wish to apply for the discount allowed by this Act should make application to their insurer for this discount in such manner and form as may be prescribed by the insurer. In the case of employers who are insured by membership in an approved self-insurance group, application should be made to the administrator of the group in such manner and form as may be prescribed by the administrator.

The Commission believes that this Act is predominantly self-executing and may be fully implemented without any formal regulatory action being taken by the Commission. The Commission also believes insurers are generally familiar with and capable of administering the provisions thereof, especially in light of the fact that similar programs are in effect in several other states. The Commission believes further that the experiences of employers and insurers under this Act will ultimately determine whether any specific rules and regulations become necessary. For these and other reasons, the Commission has not undertaken any formal rule making action at this time, pending further study and evaluation of this Act and its effects in the market place.