MODULE 2: LAWS AND AUTHORITIES IMPACTING YOUR DRUG-FREE WORKPLACE POLICY AND PROGRAM

Developing a drug-free workplace (DFWP) policy and program requires careful consideration of many laws and legal authorities. These laws and authorities form a hierarchy ranging from constitutional law, followed by federal laws and authorities, then those at the state level, and finally municipal laws and authorities. When the laws or authorities don't apply to your business, you have your own workplace issues -- including logistics, personal preferences of your decision-making team, and of course budget -- that will guide your program choices.

Hierarchy of Laws and Authorities



- 4th Amendment

- U.S. Departments of Labor (DOL) and Transportation (DOT)
- National Labor Relations Act (NLRA)
- Occupational Safety and Health Act (OSHA)
- Family Medical Leave Act (FMLA)
- Americans with Disabilities Act (ADA)

- Drug Testing per se Laws
- Employment Law
- Opportunities for Workers' Compensation Premium Credit
- Marijuana Laws
- Industry-Specific Requirements
- State Health Codes

- Administrative logistics
- Personal preferences
- Budget

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Confidentiality and Discrimination

Issues of confidentiality and discrimination should be key concerns when crafting DFWP policies and procedures, and in training supervisors in their roles and their responsibilities in implementing the policy.

To protect confidentiality:

- Employers need to secure sensitive information – especially test results and reports from a counselor – so it's only accessible to those with a need to know. This information should be secured separately from other personnel data and made available only with the written signature of the employee or as required in court proceedings or under law.
- Supervisors need to be trained on when and with whom they should share information about an employee's use – or alleged use – of a prohibited substance, and other violations of the DFWP program.

To help avoid discrimination:

- Employees should be given fair notice about all elements of the program – especially their rights and consequences for program violations.
- If there are differences between who is subject to certain testing or consequences, be sure these differences are rooted in objective business factors, such as productivity, proper conduct or safety concerns.
- Any policy and procedural differences should be in writing and consistently applied.
- Documentation is critical to safeguard against discrimination. Each "first" sets a precedence. As such, when selecting a "first-time" response, it needs to not only be supported by policy, but also be one that the employer can live with if faced with a similar situation in the future.

Together Arkansas, including the course and these resource materials, has been developed to raise awareness with businesses about how to respond to the risks associated with the misuse of opioids and other drugs. The content is meant for educational purposes only and not for the purpose of providing legal advice or replacing the work needed to develop a responsible drug-free workplace policy and program. As such, it should not be used as a substitute for consultation with a legal professional or other competent advisor. If you have questions about this course or the information presented here, please reach out Contact@TogetherArkansas.com.

To view the other modules in this course, visit www.TogetherArkansas.com.

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