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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Johnson

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SUMMARY

- Requires the Administrator of Workers' Compensation, within 180 days after the bill's effective date, to establish the Bureau of Workers' Compensation (BWC) Drug Free Workplace Program to provide a premium rate discount to participating employers.
- Prohibits the Administrator from establishing any other drug free workplace program that incentivizes a participating employer to create a drug free workplace.
- Requires an employer participating in the program to have a written substance use policy and meet requirements for employee drug and alcohol testing and employee and supervisor training to receive a premium rate discount.
- Allows a contractor or subcontractor on a state public improvement project to receive a premium rate discount for participating in the BWC Drug Free Workplace Program or a comparable program under a public improvement contract.
- Makes changes to the requirements for a contractor or subcontractor on a state public improvement project when conducting preemployment and random drug and alcohol tests under a public improvement contract.
- Requires the Administrator to prepare and submit an annual report to the General Assembly that includes information on employer participation in and positive employee drug tests under the program.

DETAILED ANALYSIS

Bureau of Workers' Compensation Drug Free Workplace Program

The bill requires the Administrator of Workers' Compensation to establish the Bureau of Workers' Compensation (BWC) Drug Free Workplace Program within 180 days after the bill's effective date. An employer participating in the program receives a discount on the employer's

premium rate for complying with the program’s requirements for employee drug and alcohol testing and employee and supervisor training on substance use.¹ The Administrator is prohibited from establishing any other drug free workplace program that incentivizes a participating employer to create a drug free workplace.²

BWC operates a similar program established in current administrative rule, the Substance Use Prevention and Recovery (SUPR) Program. An employer participating in SUPR may receive a premium rate discount for meeting requirements that are similar to the bill’s requirements, as well as providing accident analysis training and reporting accidents online. An employer may also apply to BWC for reimbursement of costs to manage substance use in the workplace under SUPR.³

Program requirements for participating employers

Under the bill, an employer may participate in the BWC Drug Free Workplace Program at a basic program level or advanced program level. At the advanced program level, a participating employer must meet all of the requirements for the basic program level and the additional requirements specified in the bill. The requirements for the basic and advanced program levels are as follows:⁴

Program requirements

Basic program level	Advanced program level (Basic program requirements plus the following requirements)
Adopt a written substance use policy specifying that no employee be at work with alcohol or any drug in the employee’s system and the consequences for violating the policy	Ensure the substance use policy addresses random drug testing and employee assistance
Conduct employee drug and alcohol testing before employment, after an accident, after reasonable suspicion, and on return to duty	Conduct random drug testing of at least 15% of employees each program period
Implement an employee assistance plan	Provide and pay for employee substance assessments, as needed

¹ R.C. 4123.346(B).

² R.C. 4123.347(A).

³ Ohio Administrative Code 4123-17-58 and Ohio Bureau of Workers’ Compensation, [Substance Use Prevention and Recovery \(SUPR\) Program](#).

⁴ R.C. 4123.346(A), by reference to R.C. 153.03 and 4123.347(B).

Basic program level	Advanced program level (Basic program requirements plus the following requirements)
Require employees to complete at least one hour of annual training to deter substance use and provide information on the employee assistance plan	Agree not to discharge an employee from employment for the employee's first positive drug test, who indicates the employee has a substance use problem or is referred by a supervisor for a substance assessment and agrees to participate in the assessment
Require supervisors to complete an annual two-hour training on how to enforce the substance use policy and how to observe and document employee behavior and intervene if reasonable suspicion exists of an employee's substance use	

A supervisor may conduct the supervisor skill-building training described above if the supervisor completes a training program developed by the Administrator on how to conduct the training. The bill also requires the Administrator or a vendor contracted by the Administrator to annually update the education and training materials used in the employee and supervisor training to reflect best practices in preventing workplace accidents and injuries attributed to the use of alcohol and drugs.⁵

Additionally, the bill permits a contractor or subcontractor working on a state public improvement project (see "**State public improvement projects**," below) to receive a premium rate discount for participating in the BWC Drug Free Workplace Program or a comparable program under a public improvement contract.⁶

Employer premium rate discounts

The bill requires the Administrator to calculate a premium discount under the program based on the program level the employer is participating in. The Administrator must calculate the discount as follows:

Premium rate discount

Program level	Discount multiplier
Comparable program	5%
Basic program level	10%
Advanced program level	15%

⁵ R.C. 4123.547(B) and (C).

⁶ R.C. 153.03 and 4123.346(A).

The Administrator must allow an employer to combine the employer's premium rate discount under the program with a discount available under any other loss prevention or workplace safety program the Administrator has established.⁷

Annual report

The bill requires the Administrator to prepare and submit to the General Assembly, by June 1 of each year, a report regarding the BWC Drug Free Workplace Program. The Administrator must include the following information in the report:

- The number of employers that participated in the program during the previous year;
- The percent change in the number of employers that participated in the program from year to year during the previous biennium;
- The number of drug tests on which employees tested positive that participating employers reported to the Administrator during the previous year;
- The percent change in the number of positive drug test reports from year to year during the previous biennium;
- Information regarding each type of substance detected by positive drug tests reported during the previous year, including the amount of each substance detected as a percentage of the total number of reported tests;
- Information regarding the expenses the Administrator incurred in administering the program during the previous year.⁸

State public improvement projects

Under continuing law, a contractor or subcontractor working on a state public improvement project must be enrolled in and be in good standing in the BWC Drug Free Workplace Program or a comparable drug free workplace program approved by BWC. Similar to the bill's requirements, an employer enrolled in a comparable program must develop a written substance use policy, conduct employee drug and alcohol tests under certain conditions, and provide employee and supervisor training.

A contractor or subcontractor must conduct drug and alcohol tests before an individual's employment or, under the bill, after an employee's probationary period ends, rather than during the probationary period as under current law. The bill requires the contractor or subcontractor to conduct the tests within 30 days after the employee's probationary period ends. Under current law, the contractor or subcontractor must conduct the tests within 120 days of the beginning of the employee's probationary period. Additionally, an employer must test not less than 10% of

⁷ R.C. 4123.346(B) and (C) and 4123.347(B).

⁸ R.C. 4123.221.

the total number of the employer’s employees providing labor or on-site supervision for a public improvement project when conducting random drug and alcohol tests under continuing law.⁹

HISTORY

Action	Date
Introduced	02-02-26

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⁹ R.C. 153.03.