

Proposed Rule Amendments  
Of  
The Tennessee Department of Labor and Workforce Development  
Division of Workers' Compensation

Chapter 0800-02-12  
Drug Free Workplace Programs

Presented herein are proposed rules' amendments of the Tennessee Department of Labor and Workforce Development submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Labor and Workforce Development to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Workers' Compensation Division, 220 French Landing Dr., Nashville, TN 37243 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rules' amendments, contact: James W. Farmer, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, 220 French Landing Dr., Nashville, TN 37243, telephone (615) 532-1321.

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The text of the rules' amendments is as follows:

Amendments

0800-2-12-.02 Policies

Paragraph (5) of rule 0800-02-12-.02 Policies is amended by adding the sentence "In order to continue to receive the premium discount, an employer must renew annually the application for the Tennessee Drug-Free Workplace Premium Credit Program" at the end of the current paragraph, so that as amended the new paragraph shall read:

- (5) Employers who implement a drug-free workplace program pursuant to these rules will begin to accrue the premium discount on a pro rata basis as of the date of certification (the date of approval by the Tennessee Department of Labor, Division of Workers' Compensation). The covered employer's workers' compensation insurance company or self-insured pool program administrator will be notified by the Tennessee Department of Labor when an employer's drug-free workplace program has been certified. The covered employer's workers' compensation insurance company or self-insured pool program administrator must apply to such policy the premium credit granted under this program directly upon receipt of notification from the Tennessee Department of Labor or make payment for such credit effective after the annual final premium audit has been completed. In order to continue to

receive the premium discount, an employer must renew annually the application for the Tennessee Drug-Free Workplace Premium Credit Program.

Authority: T.C.A. §§ 4-5-202, 50-9-101, 50-9-104 and 50-9-111.

0800-2-12-.03 Definitions

Parts 1. and 2. of subparagraph (a) of paragraph (17) of rule 0800-02-12-.03 Definitions are amended by deleting the Opiate levels of “300 ng/mL” and replacing them with Opiate levels of “2,000 ng/mL”, so that as amended the new subparagraph shall read:

(17)

(a) “Prohibited Levels” for a drug or a drug’s metabolites means cut-off levels on screened specimens which are equal to or exceed the following shall be considered to be presumptively positive;

1. Cut-off levels on initially screened specimens:

Amphetamines .....	1,000 ng/mL
Marijuana (cannabinoids) .....	50 ng/mL
Cocaine (benzoyllecgonine) .....	300 ng/mL
Opiates (codeine, morphine, heroin) .....	2000 ng/mL
PCP (phencyclidine) .....	25 ng/mL

2. Cut-off levels on confirmation specimens:

Amphetamines .....	500 ng/mL
Marijuana (cannabinoids) .....	15 ng/mL
Cocaine (benzoyllecgonine) .....	150 ng/mL
Opiates (codeine, morphine, heroin) .....	2000 ng/mL
PCP (phencyclidine) .....	25 ng/mL

Part 1 of Subparagraph (b) of paragraph (17) of rule 0800-02-12-.03 Definitions is amended by deleting the (.10%) after “alcohol...” and replacing it with (.08%), so that as amended the new part shall read

1. Alcohol...(0.08%) by weight blood alcohol concentration for non-safety sensitive positions.

Authority: T.C.A. §§ 50-9-103, 50-9-106 and 50-9-109, 50-9-111

Paragraph (3) of Rule 0800-02-12-.05 Types of Testing is amended by designating the previously undesignated subparagraphs as Subparagraphs “(a)” and “(b)”. Newly designated subparagraph (b) is further amended by deleting the word “a” after “include” and before “drug and alcohol testing” in the first sentence, so that as amended the new Paragraph (3) shall read:

(3) Routine Fitness-for-duty drug or alcohol testing.

(a) A covered employer must require an employee to submit to a drug or alcohol test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination where the examinations are required by law or regulation,

are part of the covered employer's established policy, or one that is scheduled routinely for all members of an employment classification group

- (b) This Rule does not require a drug or alcohol test if a covered employer's current personnel policy does not include drug or alcohol testing as part of a routine fitness-for-duty medical exam. If such testing is included, it must be done on a nondiscriminatory basis for all employees. Routine fitness-for-duty drug or alcohol testing of employees would not apply to programs mandated by governmental agencies, volunteer employee health screenings, employee wellness programs, or medical surveillance procedures.

Authority: T.C.A. §§ 50-6-101, 50-6-419, 50-9-106, and 50-9-111.

Paragraph (5) of rule 0800-02-12-.05 Types of Testing is amended by deleting the word "may" after the word "employer" and before the word "require" and replacing it with the word "shall", so that as amended the new paragraph shall read

- (5) Post-accident testing. After an accident which results in an injury, the covered employer shall require the employee to submit to a drug or alcohol test in accordance with these rules:**

Authority: T.C.A. §§ 50-6-101, 50-6-419, 50-9-106, and 50-9-111.

#### 0800-2-12-.07 Testing

Paragraph (10) of rule 0800-02-12-.07 Testing is amended by deleting the reference to T.C.A § 50-9-103(4) and replacing it with a reference to T.C.A § 50-9-103(6) in the last sentence, so that as amended the new paragraph shall read

- (10) A covered employer may test a job applicant for alcohol or for any drug described in T.C.A. § 50-9-103; provided, that for public employees such testing shall be limited to the extent permitted by the Tennessee and Federal Constitutions. [A covered employer may test an employee for any drug defined in T.C.A. §50-9-103(6) and at any time set out in T.C.A. § 50-9-106.

Authority: T.C.A. §§ 50-9-101(a) and (b), 50-9-104, 50-9-106(a) (1), 50-9-107(a) and (c), 50-9-110, and 50-9-111.

#### 0800-2-12-.08 Collection Procedures

Paragraph (3) of rule 0800-02-12-.08 Collection Procedures is amended by deleting the word "developed" after the word "form" and before the word "by" and replacing it with the word "approved" so that as amended the new paragraph shall read

- (3) It is a requirement that covered employers must use the chain of custody form approved by the Department of Labor specifically for the Tennessee Drug-Free Workplace Program.

Authority: T.C.A. §§ 50-9-107(a) and (c), 50-9-111

#### 0800-2-12-.13 Substance Abuse Education/Awareness

Subparagraph (c) of Paragraph (2) of Rule 0800-02-12-.13 Substance Abuse Education/Awareness is amended by designating the previously undesignedated part 1. as "1.". Newly designated part 1. is further

amended by deleting it in its entirety and substituting the following language so that as amended the new subparagraph (c) shall read:

- (c) Because resources available to employers across the state will vary from community to community, the employee education/awareness and supervisory training component of the drug-free workplace program is meant to be flexible so that employers may be creative in conducting these programs. For example, employers may utilize speakers, workshops, videos, written material, in-house supervisors that have been educated on how to train employees and/or supervisors regarding aspects of workplace substance abuse, any combination of the above, and/or other means of educating employees about the benefits of a drug-free workplace.
  - 1. Important: Covered employers should keep appropriate records in order to document the completion of the employee education/awareness program and supervisor training requirements.

Authority: T.C.A. §§ 50-9-101, 50-9-111.

The proposed rules' amendments set out herein were properly filed in the Department of State on the 15th day of September, 2008, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2009. (FS 09-13-08; 3247)

#### STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. Name of Board, Committee or Council: Department of Labor and Workforce Development, Division of Workers' Compensation
2. Rulemaking hearing date: None because these are proposed rules.
3. Types of small businesses that will be directly affected by the proposed rules: Employers, insurers and employees in the Drug Free Workplace Program.
4. Types of small businesses that will bear the cost of the proposed rules: There are no anticipated additional costs associated with these rule amendments.
5. Types of small businesses that will directly benefit from the proposed rules: All employers and injured employees throughout the state of Tennessee.
6. Description of how small business will be adversely impacted by the proposed rules: They will not be adversely affected.
7. Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome and why they are not being proposed: None
8. Comparison of the proposed rule with federal or state counterparts: No other similar rules' amendments exist in this state or on the federal level.