

THE DRUG FREE WORKPLACE ACT: AN OVERVIEW

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As of March 18, 1989, all organizations private and public, business, governmental as well as not-for-profits, that are recipients of federal grants in any amount or who are the recipients of federal contracts of \$25,000 **must** certify that they are providing a "drug-free" work place. This is part of the omnibus drug legislation enacted November 18, 1988, the Drug-Free Workplace Act of 1988 (Pub. Law 100-690, (21 USC 1501) Title V, Subtitle D; Federal regulations were published in the **Federal Register**, vol. 54, No. 19, Tuesday, January 31, 1989, Part II, pp. 4946-4971.). Interesting enough the short title of this act is "Anti-Drug Abuse Act of 1988".

Further most organizations, governmental and not-for-profits, must receive their drug-free certification before receiving "new" federal funds; existing federal contracts are not subject to certification unless modified after March 14, 1989 in such a way as to be considered a new commitment. The certification requirement only applies to direct, not indirect or pass-through, funds. If a federal agency provides financial assistance to a state agency, which then passes through the assistance to the local level, the state agency is considered the grant recipient for purposes of certification.

To qualify as a drug-free work place, an employer must:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place and specifying the actions that will be taken against employees for violation of such prohibition.
2. Employees engaged in the performance of the grant are to receive a copy of the statement, see above;
3. Conditions of employment must include: (a) compliance with the statement and (b) notification within five days to the employer of any criminal drug conviction that occurs in the work place;
4. Require workers to notify their employer if convicted of any work-place drug crime within 10 days of/from the notice of conviction;
5. Establish a "drug-free awareness program" to tell workers about drug counseling programs (which must discuss the dangers of drug abuse in the workplace, the grantee's drug-free workplace policy, any available drug counseling, rehabilitation and employee assistance programs, and penalties for drug abuse violations in the workplace);
6. Impose a sanction or require satisfactory participation in a drug abuse, assistance or rehabilitation program by any employee with a work place criminal drug conviction;

7. Establish a drug-free awareness program; and
8. Make a good faith effort to continue to maintain a drug-free work place through implementation of all points previously mentioned.

The penalties under the Act include suspension, "disbarment," which may be triggered in two ways: (1) by failing to comply with a specific provision of the Act; or (2) by a determination by the agency that a good faith effort has not been made towards compliance. The Act gives agencies the authority to make this determination upon notification of a high number of work place drug convictions. Upon disbarment, the employer shall become ineligible for awards of any grants or contracts from any agency for a specified period of not more than five years. The Act does provide for a review process of such a determination and allows the head of the agency to waive such penalties under specific conditions.

In summary: A specific explicit drug policy must be implemented and publicized to its employees. The organization must require notification by employees of any work place drug conviction. Personnel policies and procedures must address drug use and the consequences of such on an employee's continued employment. Moreover, this Act puts an affirmative duty on federal grantees to provide information to employees concerning drug abuse and encourages municipalities to develop employee assistance programs to include drug counseling and rehabilitation. One notable feature not required by the Act is drug testing.

The implications are clear for an organization that wishes to receive federal grants or be awarded federal contracts, it must address the drug issue!