

Risky Business

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V&A RISK SERVICES

Workers' Compensation Services

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BWC extends grace period for Payroll True Up

Private employers who missed the August 15, 2016 deadline for the Payroll True Up Report, have some extra time. The BWC has extended a grace period and employers now have until Thursday, September 29th to complete the process.

Completing the True Up Report is required of all private employers in the state fund workers' compensation system. Please take this deadline seriously. Missing the deadline can significantly increase the costs for employers and include:

- Removal from current rating and discount programs.
- Ineligibility for refunds due from prior year programs.
- Denial for enrollment in future discount programs.

To complete the process, visit the BWC website: [File Payroll True Up Report](#).

What OSHA's New Rule Means for Post Accident Drug Testing

By Dee Mason, [Working Partners](#)

The Occupational Safety & Health Administration (OSHA) announced a rule establishing new regulations to improve the rate and accuracy of injury and illness reporting in May. In the rule's commentary, OSHA addresses post-accident drug testing, challenging the role this type of testing could play in discouraging employees from reporting work-related injuries and illnesses.

The main objective of the new rule – “Improve Tracking of Workplace Injuries and Illnesses” – is to ensure that employees understand their right to report work-related injuries and illnesses free from discouragement, retaliation or perception of punishment. The rule's commentary suggests that post-accident testing should only occur when “employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.” Examples of injuries and illnesses not likely caused by drug abuse include allergic reactions, animal or insect bites, back or muscle strains caused by over exertion, carpal tunnel syndrome, injury caused by the lack of machine guarding or a machine or tool malfunction, and diabetic episodes.

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Important Dates

September 30

**Drug Free Annual
Report Due
(Public Employers)**

October 31

**Notice of estimated
annual premium
mailed for PY 2017
(Public Employers)**

November 21

**Group Rating Roster
Filing Deadline**



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Rule Changes in Installment Plans

Ohio's Bureau of Workers' Compensation transitioned to prospective billing effective July 1, 2015 for private employers and January 1, 2016 for public employer taxing districts. The BWC has recently updated and clarified the rules for installment payments under the prospective billing program.

- Public employers may elect to defer payment of installments for the upcoming policy year.
- A discount of 2 percent will be available to private and public employers who pay the full twelve-month estimated premium by the due date for the first installment for each policy year. The employer must be in an active policy status as of the due date for the first installment to be eligible for the discount.

For more information, please contact the V&A offices.

Medical Marijuana law and the Impact for Ohio Employers

On September 8, 2016, the use of marijuana, when recommended by a physician for certain medical conditions, becomes legal in Ohio. The new law allows edibles, oils, vaporization, patches, plant material and tinctures but does not allow smoking. Home grow is also prohibited. Many of the law's details will be crafted by a 13 member advisory committee with the program becoming fully operational within two years.

In the workplace, the law does not affect the Drug Free Safety Program or require the employer to accommodate an employee's use of medical marijuana. Nor is the employer prohibited from refusing to hire or discharging a current employee for use. Injured workers found to be under the influence of marijuana at the time of his/her injury are not eligible for workers' compensation, even when use is recommended by a physician.

Ahead of September 8, employers choosing to prohibit marijuana, should review and update their company policy, ensuring that marijuana is listed as a prohibited drug. Under the new law, employers also must clearly communicate the policy to their employees before enforcing. For more information, please visit: [Employers Should Address Medical Marijuana By September](#).

[First Connect Corporate Services](#) is an Ohio based workers' compensation and healthcare cost control company, specializing in drug free, transitional work and onsite medical programs with services available nationally.

What OSHA's New Rule Means for Post Accident Drug Testing

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Confusion about OSHA's Rule

The rule's commentary explicitly states that the new rule will not impact post-accident testing mandated by federal regulations (e.g., Department of Transportation) or directed by state workers' compensation laws. However, it also raises other concerns which OSHA will hopefully address in forthcoming compliance directives:

- The commentary states that reasonable suspicion is not required for post-accident testing, but it is unclear what is meant by the phrase, "reasonable possibility" that drugs were a contributing factor to the incident or accident. Providing examples of injuries or illness with no plausible connection to drug and alcohol abuse is helpful and makes sense that drug testing not occur. But what about injuries that clearly *could have been caused by* an employee if he or she was under the influence of a prohibited substance?
- OSHA's comment that the post-accident test should, "... accurately identify impairment caused by drug use" is confusing. Urine testing, long considered the gold standard in scientific analysis and legally defensible, only detects use, not impairment. In fact, one of the challenging conundrums about all *drug* testing is the lack of evidence-based, scientific, standardized levels which unilaterally constitute impairment. These standards have only been established for *alcohol* testing.
- OSHA is concerned that an employer's broad application of post-accident testing may be perceived by some employees as punitive. Yet, if it is a universally and objectively applied method of operation against written practices at a company and, therefore, non-discretionary, couldn't the new rule open the door to a cry from employees about discrimination? What's stopping an employee who knows he or she will test positive from crying, "punitive" when asked to take a test following an incident or accident?

Implementation

Initially set to take effect in August, concerns around the change in post-accident drug testing has delayed the implementation of the new rule until November. This will give OSHA time to develop resource materials to educate and explain to employers how the new rule will impact them. OSHA is also expected to release directives that may offer clarification. In the meantime, however, the rule is already being challenged in a lawsuit brought by the National Association of Manufacturers and other organizations.

As we await guidance from issued directives, educational resources and the outcome of the lawsuit, it is prudent for employers who don't have federal or state post-accident compliance requirements to meet, confirm the status of their drug testing policies following an accident. Such policies should be narrowly tailored to tie post-accident drug testing to situations in which an employee likely caused or contributed to the accident. Furthermore, post-accident testing needs to be operationally designed and implemented in a way not considered retaliatory, punitive or discouraging for workplace illness or injury reporting. It is also prudent to consider testing methodology that affirms recent illegal drug use (such as oral fluids testing).

Working Partners® is working closely with its law firm Littler, Mendelson, P.C., the largest employment law firm in the world, as the dust settles and directives from OSHA are received and interpreted. If you have questions in the meantime, be sure to call our offices at 614-337-8200.

A modified version of this article first appeared in "Working Partners® Consortium DFSP News".

Working Partners® is a consulting and training firm offering full-service drug-free workplace consultation and support services. With more than 1,700 clients annually and over 26 years' experience, Working Partners® is the single most knowledgeable resource for comprehensive DFWP products/services and has the longest running drug-free workplace consortium in the Midwest. For more information, visit the Working Partners website: [Working Partners](#).