

SPECIAL Report



NATIONAL ROOFING CONTRACTORS ASSOCIATION

THE DRUG-FREE WORKPLACE ACT OF 1988 ** An Overview **

The Drug-Free Workplace Act of 1988 was signed into law by former President Reagan, effective March 18, 1988. This law affects all businesses that enter into federal contracts of \$25,000 or more. Failure to comply with the law could result in the suspension or cancellation of the contract. Also, the company may be unable to obtain further government contracts for up to five years.

The requirements differ for individuals and contractors. An example of an individual in this context would be a consultant. Individuals are only required to certify that they will not unlawfully manufacture, distribute, use, or possess any controlled substance while performing the work covered by the contract. Prime contractors, however, must comply with the following seven requirements:

1. Establish a drug-free awareness program to inform employees about the dangers of drug abuse on the job and about the company's substance abuse policy.
2. Establish a substance abuse policy that prohibits the manufacture, distribution, use, and possession of controlled substances in the workplace and specifies the penalties for violation of the rule. Employees must be notified of the policy and the penalties.
3. Provide a copy of the substance abuse policy to every employee performing work under the federal contract.
4. Inform all employees performing work under the federal contract that, as a condition of their employment, they must abide by the substance abuse policy and that they must notify the company within five days if they are convicted of any crimi-

nal drug law violation occurring in the workplace.

5. Notify the contracting federal agency within ten days of any employee convicted of a workplace criminal drug law violation.
6. Discipline any individual convicted of a workplace criminal drug law violation or require that individual to satisfactorily complete an approved drug abuse assistance or rehabilitation program.
7. Make a good faith effort to ensure continuing compliance with the other six requirements.

A DRUG-FREE AWARENESS PROGRAM

The drug-free awareness program must inform employees about:

1. The dangers of using drugs in the workplace
2. The content of the contractor's substance abuse policy
3. The penalties for violating the substance abuse policy
4. The availability of any drug rehabilitation, counseling or employee assistance program the contractor provides.

A contractor is only required to implement a drug-free awareness program as described above. Contractors do not have to test employees for drug use. In addition, there is no requirement that a contractor maintain any type of rehabilitation or employee assistance program.

CONDUCT THAT MUST BE REPORTED TO THE FEDERAL AGENCY

A contractor must report any "conviction," which includes a guilty plea or plea of nolo contendere or the imposition of sentence for violation of any federal or state criminal drug law, provided that the violation occurs in the workplace. Convictions for violations that occur outside of the workplace do not have to be reported. In addition, drug abuse or other violations of the contractor's substance abuse policy that do not result in a conviction need not be reported.

Contractors are given a great amount of latitude in deciding what action to take against an employee who is convicted of a workplace criminal drug law violation. The contractor may impose "appropriate" discipline up to and including discharge. What is "appropriate" is left to the contractor's discretion. Alternatively, the contractor could require the convicted employee to "participate satisfactorily" in a drug abuse assistance or rehabilitation program that has been approved by a federal, state or local law enforcement agency. The act does not require that convicted employees be allowed to participate in a rehabilitation program. Also, the contractor does not have to pay for any rehabilitation programs attended by his employees. However, the omnibus drug legislation of which the act is a part does appear to favor rehabilitation and call for the establishment of a federal program to help employers implement drug assistance programs.

PENALTIES FOR NONCOMPLIANCE

The act is enforced by sanctions, including refusal to award a pending contract and/or future contracts for up to five years, or suspension of payments un-

der a contract. Once a contract or grant is awarded, the contracting agency can impose sanctions if:

1. The contractor made a false certification;
2. The contractor does not comply with the requirements of the certification by, for example, failing to publish a substance abuse policy or failing to implement a drug-free awareness program;
3. A sufficient number of the contractor's employees are convicted of workplace criminal drug violations to indicate the contractor is not making a "good faith effort" to provide a drug-free workplace.

CONCLUSION

The Drug-Free Workplace Act imposes limited requirements on individuals and entities who wish to apply for federal contracts or grants. Any employer wishing to bid for a federal contract must design and implement a substance abuse policy and a drug-free awareness program. Employers that already have a drug-free awareness program and substance abuse policy in place only need to report workplace criminal drug convictions to the contracting agency. No government agency may accept a bid unless the prospective contractor has these programs in place.

This act applies only to the workplace. It does not address alcohol use on the job or drug use outside of the workplace, and it doesn't apply to employees reporting to work under the influence.

The Interim Guidelines implementing regulations under the Drug-Free Workplace Act are published in 54 Federal Register No. 19, pp. 4946-971 (January 31, 1989).

DRUG-FREE WORKPLACE POLICY STATEMENT

The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the company's workplace and during work hours.

As a condition of employment, employees will abide by the terms of this statement. Employees are required to notify the company of any criminal drug statute conviction for a violation occurring in the workplace or during work hours no later than five days after such conviction.

The following actions may be taken against employees for violations of this policy:

1. Appropriate personnel action, up to and including termination.
2. Required participation in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency.

I have read and understand this policy.

employee signature

date