

NOTICE TO EMPLOYERS

The sample Drug and Alcohol Policy attached hereto is being provided by LUBA Workers' Comp as a courtesy. It is recommended and advised that all employers consult their human resource professionals and/or employment counsel prior to enacting and utilizing any Drug and Alcohol Policy. While LUBA Workers' Comp believes the sample Drug and Alcohol Policy satisfies the requirements of the workers' compensation laws of Arkansas and the Occupational Health and Safety Administration, all employers should consult with their human resource professionals and/or employment counsel.

Additionally, while the sample Drug and Alcohol Policy is being provided as a courtesy, it is the Employer's responsibility to ensure that the application and administration of the Drug and Alcohol Policy complies with various state and federal regulations including, but not limited to, Occupational Safety and Health Administration. Employers are hereby advised that any post accident/injury drug and/or alcohol testing or screening may only be performed on a case by case basis and only if the employee's drug or alcohol use is likely to have contributed to the accident, injury or illness or if there is a reasonable possibility drugs or alcohol may have been a contributing factor. Mandatory testing on all accidents, injuries or illnesses is prohibited. Drug and Alcohol testing or screening cannot be used to deter or discourage the reporting of workplace accidents, injuries or illnesses.

DRUG AND ALCOHOL POLICY
(WORKERS' COMPENSATION PURPOSES ONLY)

Pursuant to ACA § 11-9-102(4)(B)(a), _____, employer, hereby establishes the following duly written and promulgated Drug and Alcohol Policy for workers compensation purposes only effective _____, 20____.

I. PURPOSE

- A. To establish and maintain a duly written and promulgated drug and alcohol policy which includes reasonable procedures for employees to report workplace accidents, injuries, and illnesses;
- B. To establish and maintain a safe and healthy working environment for all employees;
- C. To reduce the workplace accidents, injuries, and illnesses;
- D. To avoid deterring or discouraging the reporting of workplace accidents, injuries, or illnesses.

II. ACA § 11-9-102(4)(B)(iv) provides that a compensable injury does not include:

(a) injury where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders.

(b) The presence of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of the alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

(c) Every employee is deemed by his performance of services to have impliedly consented to reasonable and responsible testing by properly trained medical or law enforcement personnel for the presence of any of the aforementioned substances in the employee's body.

(d) An employee shall not be entitled to compensation unless it is proved by a preponderance of the evidence that the alcohol, illegal drugs, or prescription drugs utilized in contravention of the physician's orders did not substantially occasion the injury or accident. [*Emphasis added*]

III. DRUG AND ALCOHOL TESTING POLICY

Pursuant to the stated purpose above and in accordance with the Arkansas Workers' Compensation Act, any employee involved in a workplace accident, injury or illness **may** be required to submit to post-accident drug and/or alcohol testing or screening. Post-accident drug and/or alcohol testing or screening is **not** mandatory and will **not** be required after all reported accidents, injuries or illnesses. However, such post-accident drug and/or alcohol testing and screening **may** be required if there is an objectively reasonable basis for doing so. The presence of drugs or alcohol in an employee's body **may** result in the denial of workers' compensation benefits unless the employee can establish that the injury was not substantially occasioned by the

presence of aforementioned substances. This policy herein is not intended to discriminate or retaliate against employees who report workplace accidents, injuries or illnesses.

IV. CONSENT

I, _____, have carefully and thoroughly reviewed and read the above and foregoing Drug and Alcohol Policy and I understand my rights and obligations contained in the Drug and Alcohol Policy and hereby consent to same. I understand that if I am involved a workplace accident, injury or illness, I **must** report that injury and that I **may** be tested for drugs and/or alcohol and that a positive test for prohibited drugs or alcohol **may** result in the denial of workers' compensation benefits associated with that injury.

Witness

Employee

Date

Date