

**CHAPTER 169 WORKERS' HEALTH AND SAFETY--DRUG-FREE WORKPLACE
PROGRAM**

28 TAC §§169.1 and 169.2

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of 28 Texas Administrative Code §§169.1 and 169.2, concerning the Drug Free Workplace Program. This repeal is adopted without changes to the proposal as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4625) and will not be republished.

2. REASONED JUSTIFICATION. Under the Drug Free Workplace Program in §169.1, employers who had 15 or more employees and who maintained workers' compensation insurance coverage were required to adopt a policy for the elimination of drug abuse. Employers were required to provide their employees with a copy of the policy and provide a copy to the Division's predecessor, the Texas Workers' Compensation Commission, upon request.

The employer's policy was required to contain a statement that the policy included alcoholic beverages, inhalants and illegal drugs, a statement of the consequences of violation, a description of available treatment programs and a description of drug testing programs that the employer had in force.

The repeal of §§169.1 and 169.2 is necessary because the statutory authority for the rules, Labor Code Chapter 411, Subchapter G, was repealed by House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

The Division continues to provide other safety services such as safety training and educational materials, United States Department of Labor Occupational Safety and Health Administration (OSHA) compliance consultations, Resource Center Library, Safety Violations Hotline, data collection and analysis, and inspections of workers' compensation insurance carriers' loss control activities, pursuant to Labor Code Chapter 411.

3. HOW THE SECTIONS WILL FUNCTION. The adoption of the repeal will result in removing outdated and inapplicable state requirements. Resources for improving and maintaining safe work conditions are and will continue to be provided through the Division through federally and state funded workplace safety programs.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter stated that they support the proposed repeal.

Response: The Division appreciates the support.

5. NAMES OF THOSE COMMENTS FOR AND AGAINST THE PROPOSAL.

For without changes: Insurance Council of Texas

Against: None

6. STATUTORY AUTHORITY. The repeal is adopted pursuant to Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of Workers'

Compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

No other code, statute or article is affected by this rule or action.

7. TEXT.

§169.1. Notification of Drug Abuse Policy

§169.2. Required Elements of Drug Abuse Policy

8. CERTIFICATION. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on October 1, 2009.

Dirk Johnson
General Counsel
Texas Department of Insurance
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the repeal of §169.1, concerning Notification of Drug Abuse Policy and §169.2, concerning Required Elements of Drug Abuse Policy, is adopted.

AND IT IS SO ORDERED.

ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSTION

TITLE 28. INSURANCE
Part 2. Texas Department of Insurance,
Division of Workers' Compensation
Chapter 169. Workers' Health and Safety – Drug Free Workplace Program

Adopted sections
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ATTEST:

Dirk Johnson
General Counsel

COMMISSIONERS ORDER NO. _____