



Building Code (Fitness for Work/Alcohol and Other Drugs in the Workplace) Amendment Instrument 2015

Fair Work (Building Industry) Act 2012

I, ERIC ABETZ, Minister for Employment, make the attached amendments to the *Building Code 2013* under subsection 27(1) of the *Fair Work (Building Industry) Act 2012*.

Dated: 16 September 2015

ERIC ABETZ
Minister for Employment

1 Name

This instrument may be cited as the *Building Code (Fitness for Work/Alcohol and Other Drugs in the Workplace) Amendment Instrument 2015*.

2 Commencement

This instrument commences on the day after the end of the period of 28 days beginning on the day this instrument is registered.

3 Authority

This instrument is made under subsection 27(1) of the *Fair Work (Building Industry) Act 2012*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1— Building Code 2013

(section 4)

[1] At the end of paragraph 20(1)(d)

Omit “circumstances.”, substitute “circumstances; and”

[2] At the end of subsection 20(1)

Add:

- (e) shows the way in which drug and alcohol issues in the workplace will be managed to help ensure that no person attending the site to perform building work does so under the influence of alcohol or other drugs.

[3] At the end of subparagraph 20(2)(b)(ii)

Omit “site-specific.”, substitute “site-specific; and”

[4] At the end of subsection 20(2)

Add:

- (c) not pass the implementation and cost of drug and alcohol testing to its subcontractors.

[5] At the end of section 20

Add:

- (4) The management plan for WHS&R for building work of a type described in Schedule 2 must include a fitness for work policy to manage alcohol and other drugs in the workplace that applies to all persons engaged to perform building work on a project and addresses the issues set out in Schedule 3.

[6] At the end of the instrument

Add:

Schedule 2 Building work requiring a fitness for work policy to manage alcohol or other drugs in the workplace

(subsection 20(4))

- 1 Building work that is described in items 1 to 8 of Schedule 1 for which:

- (a) the value of the Commonwealth’s contribution to the project that includes the building work is at least \$5,000,000 and represents at least 50% of the total construction project value; or
- (b) the Commonwealth’s contribution to the project that includes the building work is at least \$10,000,000 (irrespective of its proportion of the total construction project value).

Schedule 3 Fitness for Work/Alcohol and other drugs in the workplace

(subsection 20(4))

The fitness for work policy referred to in subsection 20(4) must address:

- 1 how those on site (including employees of the principal contractor, subcontractors and their employees and others) will be required to comply with the relevant fitness for work policy (i.e. through contract or some other enforceable means).
- 2 the use of an objective medical testing method/s to detect the presence of drugs or alcohol in a worker's system and outline the detection method/s to be used on the project.
- 3 the requirement that all of the following substances are tested for:
 - (a) Alcohol;
 - (b) Opiates;
 - (c) THC;
 - (d) Cocaine;
 - (e) Benzodiazepines;
 - (f) Amphetamine; and
 - (g) Methamphetamine.
- 4 that a person who returns a positive result for any of the substances listed above will be deemed not to be fit for work (in respect of each substance listed above, subject to testing detectable levels, there is a zero level tolerance).
- 5 how a person who returns a positive result will be prevented from performing work until they can prove they are fit to return to work, and other processes that will apply in the event of a positive result or deemed positive result (i.e. a failure to submit to a test).
- 6 the requirement that, as a minimum, frequent and periodic testing (at least once per month) of the workforce (both construction workers and site office workers) will be as follows:
 - (a) where there are less than 30 workers on site – at least 10% of the workforce;
 - (b) where there are 30 to 100 workers on site – a minimum of 5 workers per month; and
 - (c) where there are greater than 100 workers on site – a minimum of 10 workers per month.
- 7 procedures for the selection of personnel to be tested (including staged selection across a worksite or random selection for testing if the entire workforce is not to be tested in a testing round).
- 8 procedures for the targeted testing of higher-risk activities, voluntary testing and for-cause testing.

- 9 how workers who attend for work affected by drugs or alcohol will be counselled and assisted, apart from any disciplinary process that might apply.
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Notes

1. This Instrument amends F2013L00130, as amended by F2013L02196.
2. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.