

SB1589



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1589

Introduced 2/15/2019, by Sen. Jil Tracy

SYNOPSIS AS INTRODUCED:

820 ILCS 265/15

Amends the Substance Abuse Prevention on Public Works Projects Act. Provides that oral fluid tests and hair tests may be administered to test for drug use. Effective immediately.

LRB101 09584 JLS 54682 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Substance Abuse Prevention on Public Works
5 Projects Act is amended by changing Section 15 as follows:

6 (820 ILCS 265/15)

7 Sec. 15. Substance abuse prevention programs required.

8 (1) Before an employer commences work on a public works
9 project, the employer shall have in place a written program
10 which meets or exceeds the program requirements in this
11 Act, to be filed with the public body engaged in the
12 construction of the public works and made available to the
13 general public, for the prevention of substance abuse among
14 its employees. The testing must be performed by a
15 laboratory that is certified for Federal Workplace Drug
16 Testing Programs by the Substance Abuse and Mental Health
17 Service Administration of the U.S. Department of Health and
18 Human Services. At a minimum, the program shall include all
19 of the following:

20 (A) A minimum requirement of (1) a 9 panel urine
21 drug test plus a test for alcohol, (2) an oral fluid
22 test, or (3) a hair test. Testing an employee's blood
23 may only be used for post-accident testing, however,

1 blood testing is not mandatory for the employer where a
2 urine test is sufficient.

3 (B) A prohibition against the actions or
4 conditions specified in Section 10.

5 (C) A requirement that employees performing the
6 work on a public works project submit to pre-hire,
7 random, reasonable suspicion, and post-accident drug
8 and alcohol testing. Testing of an employee before
9 commencing work on a public works project is not
10 required if the employee has been participating in a
11 random testing program during the 90 days preceding the
12 date on which the employee commenced work on the public
13 works project.

14 (D) A procedure for notifying an employee who
15 violates Section 10, who tests positive for the
16 presence of a drug in his or her system, or who refuses
17 to submit to drug or alcohol testing as required under
18 the program that the employee may not perform work on a
19 public works project until the employee meets the
20 conditions specified in subdivisions (2) (A) and (2) (B)
21 of Section 20.

22 (2) Reasonable suspicion testing. An employee whose
23 supervisor has reasonable suspicion to believe the
24 employee is under the influence of alcohol or a drug is
25 subject to discipline up to and including suspension, and
26 be required to undergo an alcohol or drug test. "Reasonable

1 suspicion" means a belief, based on behavioral
2 observations or other evidence, sufficient to lead a
3 prudent or reasonable person to suspect an employee is
4 under the influence and exhibits slurred speech, erratic
5 behavior, decreased motor skills, or other such traits.
6 Circumstances, both physical and psychological, shall be
7 given consideration. Whenever possible before an employee
8 is required to submit to testing based on reasonable
9 suspicion, the employee shall be observed by more than one
10 supervisory or managerial employee. It is encouraged that
11 observation of an employee should be performed by a
12 supervisory or managerial employee who has successfully
13 completed a certified training program to recognize drug
14 and alcohol abuse. The employer who is requiring an
15 employee to be tested based upon reasonable suspicion shall
16 provide transportation for the employee to the testing
17 facility and may send a representative to accompany the
18 employee to the testing facility. Under no circumstances
19 may an employee thought to be under the influence of
20 alcohol or a drug be allowed to operate a vehicle or other
21 equipment for any purpose. The employee shall be removed
22 from the job site and placed on inactive status pending the
23 employer's receipt of notice of the test results. The
24 employee shall have the right to request a representative
25 or designee to be present at the time he or she is directed
26 to provide a specimen for testing based upon reasonable

1 suspicion. If the test result is positive for drugs or
2 alcohol, the employee shall be subject to termination. The
3 employer shall pay all costs related to this testing. If
4 the test result is negative, the employee shall be placed
5 on active status and shall be put back to work by the
6 employer. The employee shall be paid for all lost time to
7 include all time needed to complete the drug or alcohol
8 test and any and all overtime according to the employee's
9 contract.

10 (3) An employer is responsible for the cost of
11 developing, implementing, and enforcing its substance
12 abuse prevention program, including the cost of drug and
13 alcohol testing of its employees under the program, except
14 when these costs are covered under provisions in a
15 collective bargaining agreement. The testing must be
16 performed by a laboratory that is certified for Federal
17 Workplace Drug Testing Programs by the Substance Abuse and
18 Mental Health Service Administration of the U.S.
19 Department of Health and Human Services. The contracting
20 agency is not responsible for that cost, for the cost of
21 any medical review of a test result, or for any
22 rehabilitation provided to an employee.

23 (Source: P.A. 95-635, eff. 1-1-08.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.