



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1855

Introduced 2/23/2007, by Rep. Dave Winters

SYNOPSIS AS INTRODUCED:

820 ILCS 130/5.5 new

Amends the Prevailing Wage Act. Provides that an employee may not use, possess, attempt to possess, distribute, deliver, or be under the influence of cannabis or a controlled substance, or use or be under the influence of alcohol, while performing work on a project covered by the Act. Requires an employer to have a substance abuse prevention program in place with specified elements. Provides for discipline of employees upon reasonable suspicion that the employee is in the possession of or under the influence of alcohol or drugs. Contains provisions regarding: drug and alcohol testing; presence of employees on job sites; employees commencing or returning to work under specified circumstances; rehabilitation programs; applicability; and other matters. Effective January 1, 2008.

LRB095 09720 WGH 31800 b

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 Prevailing Wage Act is amended by adding
5 Section 5.5 as follows:

6 (820 ILCS 130/5.5 new)

7 Sec. 5.5. Substance abuse prevention on public works
8 projects.

9 (a) Definitions. As used in this Section:

10 "Accident" means an incident caused, contributed to, or
11 otherwise involving an employee that resulted or could have
12 resulted in death, personal injury, or property damage and that
13 occurred while the employee was performing work on a project
14 subject to this Act.

15 "Alcohol" means any substance containing any form of
16 alcohol including, but not limited to, ethanol, methanol,
17 propanol, and isopropanol.

18 "Alcohol concentration" means: (1) the number of grams of
19 alcohol per 210 liters of breath: or (2) the number of grams of
20 alcohol per 100 milliliters of blood.

21 "Drug" means a controlled substance as defined in the
22 Illinois Controlled Substances Act or cannabis as defined in
23 the Cannabis Control Act for which testing is required by an

1 employer under its substance abuse prevention program under
2 this Act. The term "drug" includes prescribed medications not
3 used in accordance with a valid prescription.

4 "Employee" means a laborer, mechanic, or other worker
5 employed in any public works by anyone under a contract for
6 public works.

7 "Employer" means a contractor or subcontractor performing
8 a public works project subject to this Act.

9 (b) Substance abuse prohibited. No employee may use,
10 possess, attempt to possess, distribute, deliver, or be under
11 the influence of a drug, or use or be under the influence of
12 alcohol, while performing the work described in this Act. An
13 employee is considered to be under the influence of alcohol for
14 purposes of this Section if the alcohol concentration in his or
15 her blood or breath at the time alleged as shown by analysis of
16 the employee's blood or breath is at or above 0.02.

17 (c) Substance abuse prevention programs required.

18 (1) Before an employer commences work on a project, the
19 employer shall have in place a written program which meets
20 or exceeds the program requirements in this Section, to be
21 filed with the public body engaged in the construction of
22 the public works and made available to the general public,
23 for the prevention of substance abuse among its employees.
24 The testing must be performed by a laboratory that is
25 certified for Federal Workplace Drug Testing Programs by
26 the Substance Abuse and Mental Health Service

1 Administration of the U.S. Department of Health and Human
2 Services. At a minimum, the program shall include all of
3 the following:

4 (A) A minimum requirement of a 9 panel urine drug
5 test plus a test for alcohol. Testing an employee's
6 blood may only be used for post-accident testing,
7 however, blood testing is not mandatory for the
8 employer where a urine test is sufficient.

9 (B) A prohibition against the actions or
10 conditions specified in subsection (b).

11 (C) A requirement that employees performing the
12 work described in this Act on a project submit to
13 pre-hire, random, reasonable suspicion, and
14 post-accident drug and alcohol testing. Testing of an
15 employee before commencing work on a project is not
16 required if the employee has been participating in a
17 random testing program during the 90 days preceding the
18 date on which the employee commenced work on the
19 project.

20 (D) A procedure for notifying an employee who
21 violates subsection (b), who tests positive for the
22 presence of a drug in his or her system, or who refuses
23 to submit to drug or alcohol testing as required under
24 the program that the employee may not perform work on a
25 project until the employee meets the conditions
26 specified in subdivisions (d) (2) (A) and (d) (2) (B).

1 (2) Reasonable suspicion testing. An employee whose
2 supervisor has reasonable suspicion to believe the
3 employee is in the possession of or under the influence of
4 alcohol or drug is subject to discipline up to and
5 including suspension, and be required to undergo an alcohol
6 or drug test. "Reasonable suspicion" means a belief, based
7 on behavioral observations or other evidence, sufficient
8 to lead a prudent or reasonable person to suspect an
9 employee is under the influence and exhibits slurred
10 speech, inappropriate behavior, decreased motor skills, or
11 other such traits. Circumstances, both physical and
12 psychological, shall be given consideration. Whenever
13 possible before an employee is required to submit to
14 testing based on reasonable suspicion, the employee shall
15 be observed by more than one supervisory or managerial
16 employee. It is encouraged that observation of an employee
17 should be performed by a supervisory or managerial employee
18 who has successfully completed a certified training
19 program to recognize drug and alcohol abuse. The employer
20 who is requiring an employee to be tested based upon
21 reasonable suspicion shall provide transportation for the
22 employee to the testing facility and may send a
23 representative to accompany the employee to the testing
24 facility. Under no circumstances may an employee thought to
25 be under the influence of alcohol or a drug be allowed to
26 operate a vehicle or other equipment for any purpose. The

1 employee shall be removed from the job site and placed on
2 inactive status pending the employer's receipt of notice of
3 the test results. The employee shall have the right to
4 request a representative or designee to be present at the
5 time he or she is directed to provide a specimen for
6 testing based upon reasonable suspicion. If the test result
7 is positive for drugs or alcohol, the employee shall be
8 subject to termination. The employer shall pay all costs
9 related to this testing. If the test result is negative,
10 the employee shall be placed on active status and shall be
11 put back to work by the employer. The employee shall be
12 paid for all lost time to include all time needed to
13 complete the drug or alcohol test and any and all overtime
14 according to the employee's contract.

15 (3) An employer is responsible for the cost of
16 developing, implementing, and enforcing its substance
17 abuse prevention program, including the cost of drug and
18 alcohol testing of its employees under the program. The
19 testing must be performed by a laboratory that is certified
20 for Federal Workplace Drug Testing Programs by the
21 Substance Abuse and Mental Health Service Administration
22 of the U.S. Department of Health and Human Services. The
23 contracting agency is not responsible for that cost, for
24 the cost of any medical review of a test result, or for any
25 rehabilitation provided to an employee.

26 (d) Employee access to project.

1 (1) An employer may not permit an employee who violates
2 subsection (b), who tests positive for the presence of a
3 drug in his or her system, or who refuses to submit to drug
4 or alcohol testing as required under the employer's
5 substance abuse prevention program under subsection (c) to
6 perform work on a project until the employee meets the
7 conditions specified in subdivisions (d)(2)(A) and
8 (d)(2)(B). An employer shall immediately remove an
9 employee from work on a project if any of the following
10 occurs:

11 (A) The employee violates subsection (b), tests
12 positive for the presence of a drug in his or her
13 system, or refuses to submit to drug or alcohol testing
14 as required under the employer's substance abuse
15 prevention program.

16 (B) An officer or employee of the contracting
17 agency, preferably one trained to recognize drug and
18 alcohol abuse, has a reasonable suspicion that the
19 employee is in violation of subsection (b) and requests
20 the employer to immediately remove the employee from
21 work on the project for reasonable suspicion testing.

22 (2) An employee who is barred or removed from work on a
23 project under subdivision (d)(1) may commence or return to
24 work on the project upon his or her employer providing to
25 the contracting agency documentation showing all of the
26 following:

1 (A) That the employee has tested negative for the
2 presence of drugs in his or her system and is not under
3 the influence of alcohol as described in subsection
4 (b).

5 (B) That the employee has been approved to commence
6 or return to work on the project in accordance with the
7 employer's substance abuse prevention program.

8 (C) Testing for the presence of drugs or alcohol in
9 an employee's system and the handling of test specimens
10 was conducted in accordance with guidelines for
11 laboratory testing procedures and chain-of-custody
12 procedures established by the Substance Abuse and
13 Mental Health Service Administration of the U.S.
14 Department of Health and Human Services.

15 (3) Upon successfully completing a rehabilitation
16 program, an employee shall be reinstated to his or her
17 former employment status if work for which he or she is
18 qualified exists.

19 (e) Applicability. This Section applies to a contract to
20 perform work on a public works project for which bids are
21 opened on or after January 1, 2008, or, if bids are not
22 solicited for the contract, to a contract to perform such work
23 entered into on or after January 1, 2008. The provisions of
24 this Section apply only to the extent there is no collective
25 bargaining agreement in effect dealing with the subject matter
26 of this Section.

1 Section 99. Effective date. This Act takes effect January
2 1, 2008.