

2005 Assembly Bill 736

Date of enactment: **March 22, 2006**

Date of publication\*: **April 5, 2006**

# 2005 WISCONSIN ACT 181

AN ACT *to create* 103.503 of the statutes; **relating to:** substance abuse by employees who are required to be paid the prevailing wage rate for work performed on projects of public works, other than state highway projects.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 103.503 of the statutes is created to read:  
**103.503 Substance abuse prevention on public works projects.** (1) **DEFINITIONS.** In this section:

(a) "Accident" means an incident caused, contributed to, or otherwise involving an employee that resulted or could have resulted in death, personal injury, or property damage and that occurred while the employee was performing the work described in s. 66.0903 (4) or 103.49 (2m) on a project.

(b) "Alcohol" has the meaning given in s. 340.01 (1q).

(c) "Contracting agency" means a local governmental unit, as defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has contracted for the performance of work on a project.

(d) "Drug" means any controlled substance, as defined in s. 961.01 (4), or controlled substance analog, as defined in s. 961.01 (4m), for which testing is required by an employer under its substance abuse prevention program under this section.

(e) "Employee" means a laborer, worker, mechanic, or truck driver who performs the work described in s. 66.0903 (4) or 103.49 (2m) on a project.

(f) "Employer" means a contractor, subcontractor, or agent of a contractor or subcontractor that performs work on a project.

(g) "Project" mean a project of public works that is subject to s. 66.0903 or 103.49.

(2) **SUBSTANCE ABUSE PROHIBITED.** No employee may use, possess, attempt to possess, distribute, deliver, or be under the influence of a drug, or use or be under the influence of alcohol, while performing the work described in s. 66.0903 (4) or 103.49 (2m) on a project. An employee is considered to be under the influence of alcohol for purposes of this subsection if he or she has an alcohol concentration that is equal to or greater than the amount specified in s. 885.235 (1g) (d).

(3) **SUBSTANCE ABUSE PREVENTION PROGRAMS REQUIRED.** (a) Before an employer may commence work on a project, the employer shall have in place a written program for the prevention of substance abuse among its employees. At a minimum, the program shall include all of the following:

1. A prohibition against the actions or conditions specified in sub. (2).

2. A requirement that employees performing the work described in s. 66.0903 (4) or 103.49 (2m) on a project submit to random, reasonable suspicion, and post-accident drug and alcohol testing and to drug and alcohol

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\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

testing before commencing work on a project, except that testing of an employee before commencing work on a project is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the project.

3. A procedure for notifying an employee who violates sub. (2), who tests positive for the presence of a drug in his or her system, or who refuses to submit to drug or alcohol testing as required under the program that the employee may not perform work on a project until he or she meets the conditions specified in sub. (4) (b) 1. and 2.

(b) Each employer shall be responsible for the cost of developing, implementing, and enforcing its substance abuse prevention program, including the cost of drug and alcohol testing of its employees under the program. The contracting agency is not responsible for that cost, for the cost of any medical review of a test result, or for any rehabilitation provided to an employee.

(4) **EMPLOYEE ACCESS TO PROJECT.** (a) No employer may permit an employee who violates sub. (2), who tests positive for the presence of a drug in his or her system, or who refuses to submit to drug or alcohol testing as required under the employer's substance abuse prevention program under sub. (3) to perform work on a project until he or she meets the conditions specified in par. (b) 1. and 2. An employer shall immediately remove an employee from work on a project if any of the following occurs:

1. The employee violates sub. (2), tests positive for the presence of a drug in his or her system, or refuses to submit to drug or alcohol testing as required under the employer's substance abuse prevention program.

2. An officer or employee of the contracting agency has a reasonable suspicion that the employee is in violation of sub. (2) and requests the employer to immediately remove the employee from work on the project.

(b) An employee who is barred or removed from work on a project under par. (a) may commence or return to work on the project upon his or her employer providing to the contracting agency documentation showing all of the following:

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

2. That the employee has been approved to commence or return to work on the project in accordance with the employer's substance abuse prevention program.

(c) Testing for the presence of drugs or alcohol in an employee's system and the handling of test specimens shall be conducted in accordance with guidelines for laboratory testing procedures and chain-of-custody procedures established by the substance abuse and mental health services administration of the federal department of health and human services.

(5) **LOCAL ORDINANCES; STRICT CONFORMITY REQUIRED.** A local governmental unit, as defined in s. 66.0903 (1) (d), may enact an ordinance regulating the conduct regulated under this section only if the ordinance strictly conforms to this section.

**SECTION 2. Initial applicability.**

(1) This act first applies to a contract to perform work on a project, as defined in section 103.503 (1) (g) of the statutes, as created by this act, for which bids are opened on the effective date of this subsection or, if bids are not solicited for the contract, to a contract to perform such work entered into on the effective date of this subsection, except that this This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

**SECTION 3. Effective date.**

(1) This act takes effect on the first day of the 13th month beginning after publication.

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