



**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

**2005 Assembly Bill 736**

**Assembly Substitute  
Amendment 1**

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**CURRENT LAW**

Generally, under current law, laborers, workers, mechanics, and truck drivers employed on a public works project for the state or a local government must be paid the prevailing wage if the estimated cost of completion of a single-trade project is \$41,000 or more or if the estimated cost of a multiple-trade project is \$200,000 or more. The prevailing wage rate, generally, is the rate paid for a majority of the hours worked in the employee's trade or occupation in the county in which the project is located.

**2005 ASSEMBLY BILL 736**

2005 Assembly Bill 736 imposes various drug and alcohol testing requirements on contractors, subcontractors and workers working, or seeking to perform work, on a public works project.

**ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Substitute Amendment 1 prohibits an employee to 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 work on a public works project (other than a state highway project).

Under Assembly Substitute Amendment 1, before an employer may begin working on a covered public works project, the employer must have in place a written program for the prevention of substance abuse among its employees. The program must include, at a minimum, all of the following elements:

1. A prohibition on the use of drugs and alcohol while performing on a public works project.
2. A requirement that employees performing work on a public works project submit to random, reasonable suspicion, and post-accident drug and alcohol testing. Employees must also submit to drug

and alcohol testing before commencing work on a project, except that such testing 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 violating the drug and alcohol prohibition, who tests positive for the presence of a drug in his or her system, or who refuses to submit to testing as required by the employer's program that the employee may not perform work on a public works project until he or she provides documentation that he or she has tested negative for the presence of drugs in his or her system and is not under the influence of alcohol and has been approved to return to work in accordance with the employer's substance abuse prevention program.

Under Assembly Substitute Amendment 1, each employer is 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. The public agency letting the public works project is not responsible for those costs.

Assembly Substitute Amendment 1 prohibits an employer from permitting an employee who uses drugs or alcohol on a project, 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 to work on a project until he or she provides documentation that he or she has tested negative for the presence of drugs in his or her system and is not under the influence of alcohol and has been approved to return to work in accordance with the employer's substance abuse prevention program. An employer must immediately remove an employee from work on a project if the employee uses drugs or alcohol on a project, tests positive for drugs or alcohol, or refuses to submit to drug and alcohol testing as required, or if an officer or employee of the contracting agency has a reasonable suspicion that the employee is using drugs or alcohol on the project and requests the employer to immediately remove the employee.

Under Assembly Substitute Amendment 1, 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.

Assembly Substitute Amendment 1 provides that a local governmental unit may enact an ordinance regulating the conduct regulated by Assembly Substitute Amendment 1 only if the ordinance strictly conforms to the provisions of Assembly Substitute Amendment 1.

The provisions of Assembly Substitute Amendment 1 take effect on the first day of the 13<sup>th</sup> month beginning after publication of Assembly Substitute Amendment 1 as an act.

### **Legislative History**

Assembly Substitute Amendment 1 was offered by Representatives Stone and Nass on January 11, 2006. It was recommended for adoption by the Assembly Committee on Labor on January 18, 2006 unanimously, and the bill was recommended for passage, as amended, on the same date on a unanimous vote.

RJC:ksm