



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Assembly Bill 192

**Assembly Amendments
13 and 14**

Memo published: May 14, 2015

Contact: Margit S. Kelley, Senior Staff Attorney (266-9280)

2015 Assembly Bill 192 relates to requiring certain unemployment insurance claimants to submit to drug tests, and eligibility for unemployment insurance benefits following a drug test.

2015 ASSEMBLY BILL 192

Assembly Bill 192 requires the Department of Workforce Development (DWD) to establish a drug testing program for persons applying for regular unemployment insurance benefits, who work in certain occupations.

The occupations include:

- Those identified by the U.S. Department of Labor, by rule, in which employers regularly conduct drug testing.
- Those identified by DWD, by rule, as determined after conducting a survey of employers, in which more than 50% of employers conduct drug testing as a condition of obtaining or continuing employment.
- Those identified by DWD, by rule, in which the occupation regularly involves work with or around children, regularly requires the operation of a motorized vehicle, is in the field of construction, requires the operation of heavy machinery, or regularly involves the carrying of a firearm.

Under the bill, DWD must develop a screening process for when a person from one of the identified occupations applies for regular benefits, to determine whether there is a reasonable suspicion that the person has engaged in the unlawful use of controlled substances. If the results of a screening indicate that there is such a reasonable suspicion, DWD must require the person to submit to a test for the use of a controlled substance.

The bill provides for three potential outcomes when a person is required to submit to a drug test:

- If a person **declines** to submit to a test for use of a controlled substance, the person is ineligible for benefits for 52 weeks, or until the person's next eligible benefit year, whichever is later.
- If a person submits to a test and the test results are **negative** for use of a controlled substance (or the results are positive, but the person presents satisfactory evidence of a valid prescription for the controlled substance), the person remains eligible for benefits and is not required to submit to further testing during the benefit year.
- If a person submits to a test and the test results are **positive** for use of a controlled substance (without presenting satisfactory evidence of a valid prescription for the controlled substance), the person is ineligible for benefits for 52 weeks, or until the person's next eligible benefit year, whichever is later, unless the person enrolls in a substance abuse treatment program and participates in a job skills assessment.

The bill specifies that DWD must provide the treatment program and job skills assessment, and that DWD must set the parameters for a person's compliance with those programs, by rule.

Lastly, the bill specifies that a potential employer may, if it chooses, submit to DWD the results of a drug test conducted during preemployment screening, or notify DWD that a person declined to take the test. The bill provides that if such preemployment testing is declined or failed, there is a presumption that the person has failed to accept suitable work when offered. The presumption may be rebutted in a manner to be specified by rule. Under the bill, a person who declines or fails a preemployment drug test is to be treated in the same manner as described above for eligibility determinations and treatment options.

ASSEMBLY AMENDMENT 13

Assembly Amendment 13 specifies that if the parameters for compliance with a substance abuse treatment program set by DWD, by rule, require additional testing during treatment, the rules must allow a person to have at least one positive test that does not affect a determination of the person's compliance with the treatment program.

ASSEMBLY AMENDMENT 14

Assembly Amendment 14 removes the requirement for DWD to conduct a survey of employers, and instead requires DWD to identify occupations, by rule, for which preemployment, random, or reasonable suspicion drug testing is regularly required as a condition of obtaining or continuing employment. The other two categories for determining occupations that are subject to the bill's screening and testing requirements are unaffected by the amendment and remain in place.

BILL HISTORY

On May 6, 2015, the Assembly Committee on Public Benefit Reform recommended adoption of Assembly Amendment 13 on a vote of Ayes, 13; Noes, 0, and recommended adoption of Assembly Amendment 14 on a vote of Ayes, 9; Noes, 4. The committee recommended passage of the bill, as amended, on a vote of Ayes, 8; Noes, 6.

On May 13, 2015, the Assembly adopted both amendments by voice votes, and passed the bill, as amended, on a vote of Ayes, 63; Noes, 32.

MSK:ksm:jal