

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 Employee Classification Act is amended by  
5 changing Sections 5, 25, 30, and 40 and by adding Section 63 as  
6 follows:

7 (820 ILCS 185/5)

8 Sec. 5. Definitions. As used in this Act:

9 "Construction" means any constructing, altering,  
10 reconstructing, repairing, rehabilitating, refinishing,  
11 refurbishing, remodeling, remediating, renovating, custom  
12 fabricating, maintenance, landscaping, improving, wrecking,  
13 painting, decorating, demolishing, and adding to or  
14 subtracting from any building, structure, highway, roadway,  
15 street, bridge, alley, sewer, ditch, sewage disposal plant,  
16 water works, parking facility, railroad, excavation or other  
17 structure, project, development, real property or improvement,  
18 or to do any part thereof, whether or not the performance of  
19 the work herein described involves the addition to, or  
20 fabrication into, any structure, project, development, real  
21 property or improvement herein described of any material or  
22 article of merchandise. Construction shall also include moving  
23 construction related materials on the job site to or from the

1 job site.

2 "Contractor" means any individual, sole proprietor,  
3 partnership, firm, corporation, limited liability company,  
4 association or other legal entity permitted by law to do  
5 business within the State of Illinois who engages in  
6 construction as defined in this Act.

7 "Contractor" includes a general contractor and a  
8 subcontractor.

9 "Department" means the Department of Labor.

10 "Director" means the Director of the Department of Labor.

11 "Employer" means any contractor that employs individuals  
12 deemed employees under Section 10 of this Act; however,  
13 "employer" does not include (i) the State of Illinois or its  
14 officers, agencies, or political subdivisions or (ii) the  
15 federal government.

16 "Entity" means any contractor for which an individual is  
17 performing services and is not classified as an employee under  
18 Section 10 of this Act; however, "entity" does not include (i)  
19 the State of Illinois or its officers, agencies, or political  
20 subdivisions or (ii) the federal government.

21 "Interested party" means a person with an interest in  
22 compliance with this Act.

23 "Performing services" means the performance of any  
24 constructing, altering, reconstructing, repairing,  
25 rehabilitating, refinishing, refurbishing, remodeling,  
26 remediating, renovating, custom fabricating, maintenance,

1 landscaping, improving, wrecking, painting, decorating,  
2 demolishing, and adding to or subtracting from any building,  
3 structure, highway, roadway, street, bridge, alley, sewer,  
4 ditch, sewage disposal plant, water works, parking facility,  
5 railroad, excavation or other structure, project, development,  
6 real property or improvement, or to do any part thereof,  
7 whether or not the performance of the work herein described  
8 involves the addition to, or fabrication into, any structure,  
9 project, development, real property or improvement herein  
10 described of any material or article of merchandise.  
11 Construction shall also include moving construction related  
12 materials on the job site to or from the job site.

13 (Source: P.A. 95-26, eff. 1-1-08.)

14 (820 ILCS 185/25)

15 Sec. 25. Enforcement.

16 (a) Any interested party may file a complaint with the  
17 Department against an entity or employer covered under this Act  
18 if there is a reasonable belief that the entity or employer is  
19 in violation of this Act. It shall be the duty of the  
20 Department to enforce the provisions of this Act. The  
21 Department shall have the power to conduct investigations in  
22 connection with the administration and enforcement of this Act  
23 and any investigator with the Department shall be authorized to  
24 visit and inspect, at all reasonable times, any places covered  
25 by this Act and shall be authorized to inspect, at all

1 reasonable times, documents related to the determination of  
2 whether an individual is an employee under Section 10 of this  
3 Act. The Director of Labor or his or her representative may  
4 compel, by subpoena, the attendance and testimony of witnesses  
5 and the production of books, payrolls, records, papers, and  
6 other evidence in any investigation and may administer oaths to  
7 witnesses. Within 120 days of the filing of a complaint, the  
8 Department shall notify the employer in writing of the filing  
9 of a complaint and provide the employer the location and  
10 approximate date of the project or projects, affected  
11 contractors, and the nature of the allegations being  
12 investigated.

13 (b) Whenever the Department believes upon investigation  
14 that there has been a violation of any of the provisions of  
15 this Act or any rules or regulations promulgated under this  
16 Act, the Department may: (i) issue and cause to be served on  
17 any party an order to cease and desist from further violation  
18 of the Act, (ii) take affirmative or other action as deemed  
19 reasonable to eliminate the effect of the violation, (iii)  
20 collect the amount of any wages, salary, employment benefits,  
21 or other compensation denied or lost to the individual, and  
22 (iv) assess any civil penalty allowed by this Act. ~~The civil~~  
23 ~~penalties assessed by the Department as well as any other~~  
24 ~~relief requested by the Department shall be recoverable in an~~  
25 ~~action brought in the name of the people of the State of~~  
26 ~~Illinois by the Attorney General.~~

1       (c) If, upon investigation, the Department finds cause to  
2 believe that Section 20 or Section 55 of this Act has been  
3 violated, the Department shall notify the employer, in writing,  
4 of its finding and any proposed relief due and penalties  
5 assessed and that the matter will be referred to an  
6 Administrative Law Judge to schedule a formal hearing in  
7 accordance with the Illinois Administrative Procedure Act.

8       (d) The employer has 28 calendar days from the date of the  
9 Department's findings to answer the allegations contained in  
10 the Department's findings. If an employer fails to answer all  
11 allegations contained in the Department's findings, any  
12 unanswered allegations or findings shall be deemed admitted to  
13 be true and shall be found true in the final decision issued by  
14 the Administrative Law Judge. If, within 30 calendar days of  
15 the final decision issued by the Administrative Law Judge, the  
16 employer files a motion to vacate the Administrative Law  
17 Judge's final decision and demonstrates good cause for failing  
18 to answer the Department's allegations, and the Administrative  
19 Law Judge grants the motion, the employer shall be afforded an  
20 opportunity to answer and the matter shall proceed as if an  
21 original answer to the Department's findings had been filed.

22       (e) A final decision of an Administrative Law Judge issued  
23 pursuant to this Section is subject to the provisions of the  
24 Administrative Review Law and shall be enforceable in an action  
25 brought in the name of the people of the State of Illinois by  
26 the Attorney General.

1 (Source: P.A. 95-26, eff. 1-1-08.)

2 (820 ILCS 185/30)

3 Sec. 30. Attorney General; State's Attorneys. Criminal  
4 violations of this Act shall be prosecuted by the Attorney  
5 General or the appropriate State's Attorney. The Department  
6 shall refer matters to the Attorney General and the appropriate  
7 State's Attorney upon determining that a criminal violation may  
8 have occurred. ~~In all other proceedings the Department shall be  
9 represented by the Attorney General's Office.~~

10 (Source: P.A. 95-26, eff. 1-1-08.)

11 (820 ILCS 185/40)

12 Sec. 40. Penalties.

13 (a) An employer or entity that violates any of the  
14 provisions of this Act or any rule adopted under this Act shall  
15 be subject to a civil penalty not to exceed \$1,000 ~~\$1,500~~ for  
16 each violation found in the first audit by the Department.  
17 Following a first audit, an employer or entity shall be subject  
18 to a civil penalty not to exceed \$2,000 ~~\$2,500~~ for each repeat  
19 violation found by the Department within a 5 year period. For  
20 purposes of this Section, each violation of this Act for each  
21 person and for each day the violation continues shall  
22 constitute a separate and distinct violation. In determining  
23 the amount of a penalty, the Director shall consider the  
24 appropriateness of the penalty to the employer or entity

1 charged, upon the determination of the gravity of the  
2 violations.

3 (b) The amount of the penalty, when finally determined, may  
4 be recovered in any administrative proceeding or a civil action  
5 filed in any circuit court by the Director of Labor, or a  
6 person aggrieved by a violation of this Act or any rule adopted  
7 under this Act.

8 (1) The Department shall distribute to all affected  
9 employees 10% of the civil penalty recovered as a result of  
10 any administrative proceeding or civil action brought by  
11 the Department. The remaining 90% of the amount recovered  
12 shall be submitted to the Director of Labor.

13 (2) In any civil action brought by an interested party  
14 pursuant to this Section, the circuit court shall award the  
15 interested party 10% of the amount recovered. In such case,  
16 the remaining amount recovered shall be submitted to the  
17 Director of Labor.

18 (c) Any uncollected amount shall be subject to the  
19 provisions of the Illinois State Collection Act of 1986.

20 (Source: P.A. 95-26, eff. 1-1-08.)

21 (820 ILCS 185/63 new)

22 Sec. 63. Individual liability. In addition to an individual  
23 who is an employer pursuant to Section 5 of this Act, any  
24 officer of a corporation or agent of a corporation who  
25 knowingly permits such employer to violate the provisions of

1 this Act may be held individually liable for all violations and  
2 penalties assessed under this Act. This Section shall not apply  
3 to an individual who is an officer or agent of a corporation  
4 which on the project under investigation satisfies the  
5 responsible bidder requirements set forth in the Illinois  
6 Procurement Code.