



Rep. Jay Hoffman

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10000HB4324ham002

LRB100 16834 JLS 39175 a

1 AMENDMENT TO HOUSE BILL 4324

2 AMENDMENT NO. _____. Amend House Bill 4324 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Wage Payment and Collection Act is
5 amended by changing Sections 11 and 14 and by adding Section
6 11.3 as follows:

7 (820 ILCS 115/11) (from Ch. 48, par. 39m-11)

8 Sec. 11. It shall be the duty of the Department of Labor to
9 inquire diligently for any violations of this Act, and to
10 institute the actions for penalties herein provided, and to
11 enforce generally the provisions of this Act.

12 An employee may file a complaint with the Department
13 alleging violations of the Act by submitting a signed,
14 completed wage claim application on the form provided by the
15 Department and by submitting copies of all supporting
16 documentation. Complaints shall be filed within one year after

1 the wages, final compensation, or wage supplements were due.

2 Applications shall be reviewed by the Department to
3 determine whether there is cause for investigation.

4 The Department shall have the following powers:

5 (a) To investigate and attempt equitably to adjust
6 controversies between employees and employers in respect
7 of wage claims arising under this Act and to that end the
8 Department through the Director of Labor or any other
9 person in the Department of Labor designated by him or her,
10 shall have the power to administer oaths, subpoena and
11 examine witnesses, to issue subpoenas duces tecum
12 requiring the production of such books, papers, records and
13 documents as may be evidence of any matter under inquiry
14 and to examine and inspect the same as may relate to the
15 question in dispute. Service of such subpoenas shall be
16 made by any sheriff or any person. Any court in this State,
17 upon the application of the Department may compel
18 attendance of witnesses, the production of books and
19 papers, and the giving of testimony before the Department
20 by attachment for contempt or in any other way as the
21 production of evidence may be compelled before such court.

22 (b) To take assignments of wage claims in the name of
23 the Director of Labor and his or her successors in office
24 and prosecute actions for the collection of wages for
25 persons financially unable to prosecute such claims when in
26 the judgment of the Department such claims are valid and

1 enforceable in the courts. No court costs or any fees for
2 necessary process and proceedings shall be payable in
3 advance by the Department for prosecuting such actions. In
4 the event there is a judgment rendered against the
5 defendant, the court shall assess as part of such judgment
6 the costs of such proceeding. Upon collection of such
7 judgments the Department shall pay from the proceeds of
8 such judgment such costs to such person who is by law
9 entitled to same. The Department may join in a single
10 proceeding any number of wage claims against the same
11 employer but the court shall have discretionary power to
12 order a severance or separate trial for hearings.

13 (c) To make complaint in any court of competent
14 jurisdiction of violations of this Act.

15 (d) In addition to the aforementioned powers, subject
16 to appropriation, the Department shall ~~may~~ establish an
17 administrative procedure to adjudicate claims and to issue
18 final and binding administrative decisions on such claims
19 subject to the Administrative Review Law within 30 days of
20 the claim. Any claim brought under this Section shall be
21 adjudicated within 30 days after it is filed unless
22 otherwise agreed by the parties. To establish such a
23 procedure, the Director of Labor or her or his authorized
24 representative may promulgate rules and regulations. The
25 adoption, amendment or rescission of rules and regulations
26 for such a procedure shall be in conformity with the

1 requirements of the Illinois Administrative Procedure Act.

2 Nothing herein shall be construed to prevent any employee
3 from making complaint or prosecuting his or her own claim for
4 wages. Any employee aggrieved by a violation of this Act or any
5 rule adopted under this Act may file suit in circuit court of
6 Illinois, in the county where the alleged violation occurred or
7 where any employee who is party to the action resides, without
8 regard to exhaustion of any alternative administrative
9 remedies provided in this Act. Actions may be brought by one or
10 more employees for and on behalf of themselves and other
11 employees similarly situated.

12 Nothing herein shall be construed to limit the authority of
13 the State's attorney of any county to prosecute actions for
14 violation of this Act or to enforce the provisions thereof
15 independently and without specific direction of the Department
16 of Labor.

17 (Source: P.A. 98-527, eff. 1-1-14.)

18 (820 ILCS 115/11.3 new)

19 Sec. 11.3. Wage claim escrow. If, pursuant to Section 11,
20 the Department of Labor determines there is cause for
21 investigation, the Department shall request that no more than
22 10% of the disputed wage claim be submitted by the employer to
23 the Department and placed in an escrow account administered by
24 the Department. Upon receiving the moneys, the Department shall
25 provide written verification of the escrow amount received to

1 both the employer and the claimant.

2 These moneys shall be held in escrow until the Department
3 adjudicates the claim, but no longer than 45 days. If, upon the
4 final and binding administrative decision or by the default of
5 an employer for failing to respond to the complaint, the
6 Department finds the employer is guilty of wage theft, the
7 Department shall release the moneys to the claimant, and the
8 employer shall be liable for the remainder of the claim as
9 adjudicated by the Department. If, upon the final and binding
10 administrative decision, the Department finds the employer is
11 not guilty of wage theft, the Department shall release the
12 moneys to the employer.

13 The Department shall adopt rules for the administration of
14 this Section.

15 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

16 Sec. 14. (a) Any employee not timely paid wages, final
17 compensation, or wage supplements by his or her employer as
18 required by this Act shall be entitled to recover through a
19 claim filed with the Department of Labor or in a civil action,
20 but not both, the amount of any such underpayments and damages
21 of 2% of the amount of any such underpayments for each month
22 following the date of payment during which such underpayments
23 remain unpaid. In a civil action, such employee shall also
24 recover costs and all reasonable attorney's fees.

25 (a-5) In addition to the remedies provided in subsections

1 (a), (b), and (c) of this Section, any employer or any agent of
2 an employer, who, being able to pay wages, final compensation,
3 or wage supplements and being under a duty to pay, wilfully
4 refuses to pay as provided in this Act, or falsely denies the
5 amount or validity thereof or that the same is due, with intent
6 to secure for himself or other person any underpayment of such
7 indebtedness or with intent to annoy, harass, oppress, hinder,
8 delay or defraud the person to whom such indebtedness is due,
9 upon conviction, is guilty of:

10 (1) for unpaid wages, final compensation or wage
11 supplements in the amount of \$5,000 or less, a Class B
12 misdemeanor; or

13 (2) for unpaid wages, final compensation or wage
14 supplements in the amount of more than \$5,000, a Class A
15 misdemeanor.

16 Each day during which any violation of this Act continues
17 shall constitute a separate and distinct offense.

18 Any employer or any agent of an employer who violates this
19 Section of the Act a subsequent time within 2 years of a prior
20 criminal conviction under this Section is guilty, upon
21 conviction, of a Class 4 felony.

22 (b) Any employer who has been demanded or ordered by the
23 Department or ordered by the court to pay wages, final
24 compensation, or wage supplements due an employee shall be
25 required to pay a non-waivable administrative fee to the
26 Department of Labor in the amount of \$500 ~~\$250~~ if the amount

1 ordered by the Department as wages owed is \$3,000 or less;
2 \$1,000 ~~\$500~~ if the amount ordered by the Department as wages
3 owed is more than \$3,000, but less than \$10,000; and \$2,000
4 ~~\$1,000~~ if the amount ordered by the Department as wages owed is
5 \$10,000 or more. Any employer who has been so demanded or
6 ordered by the Department or ordered by a court to pay such
7 wages, final compensation, or wage supplements and who fails to
8 seek timely review of such a demand or order as provided for
9 under this Act and who fails to comply within 15 calendar days
10 after such demand or within 35 days of an administrative or
11 court order is entered may be subject to a judgment lien placed
12 on the employer's real estate pursuant to Section 12-101 of the
13 Code of Civil Procedure, may be subject to a citation or
14 supplementary proceeding to discover assets pursuant to
15 Section 2-1402 of the Code of Civil Procedure, and shall also
16 be liable to pay a penalty to the Department of Labor of 20% of
17 the amount found owing and a penalty to the employee of 1% per
18 calendar day of the amount found owing for each day of delay in
19 paying such wages to the employee. All moneys recovered as fees
20 and civil penalties under this Act, except those owing to the
21 affected employee, shall be deposited into the Wage Theft
22 Enforcement Fund, a special fund which is hereby created in the
23 State treasury. Moneys in the Fund may be used only for
24 enforcement of this Act.

25 (b-5) Penalties and fees under this Section may be assessed
26 by the Department and recovered in a civil action brought by

1 the Department in any circuit court or in any administrative
2 adjudicative proceeding under this Act. In any such civil
3 action or administrative adjudicative proceeding under this
4 Act, the Department shall be represented by the Attorney
5 General.

6 (c) Any employer, or any agent of an employer, who
7 discharges or in any other manner discriminates against any
8 employee because that employee has made a complaint to his
9 employer, to the Director of Labor or his authorized
10 representative, in a public hearing, or to a community
11 organization that he or she has not been paid in accordance
12 with the provisions of this Act, or because that employee has
13 caused to be instituted any proceeding under or related to this
14 Act, or because that employee has testified or is about to
15 testify in an investigation or proceeding under this Act, is
16 guilty, upon conviction, of a Class C misdemeanor. An employee
17 who has been unlawfully retaliated against shall be entitled to
18 recover through a claim filed with the Department of Labor or
19 in a civil action, but not both, all legal and equitable relief
20 as may be appropriate. In a civil action, such employee shall
21 also recover costs and all reasonable attorney's fees.

22 (Source: P.A. 98-527, eff. 1-1-14.)".