



Rep. Marcus C. Evans, Jr.

**Filed: 3/2/2023**

10300HB3227ham001

LRB103 30108 SPS 58019 a

1 AMENDMENT TO HOUSE BILL 3227

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3227 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Minimum Wage Law is amended by changing  
5 Section 12 as follows:

6 (820 ILCS 105/12) (from Ch. 48, par. 1012)

7 Sec. 12. (a) If any employee is paid by his or her employer  
8 less than the wage to which he or she is entitled under the  
9 provisions of this Act, the employee may recover in a civil  
10 action treble the amount of any such underpayments together  
11 with costs and such reasonable attorney's fees as may be  
12 allowed by the Court, and damages of 5% of the amount of any  
13 such underpayments for each month following the date of  
14 payment during which such underpayments remain unpaid. Any  
15 agreement between the employee and the employer to work for  
16 less than such wage is no defense to such action. At the

1 request of the employee or on motion of the Director of Labor,  
2 the Department of Labor may make an assignment of such wage  
3 claim in trust for the assigning employee and may bring any  
4 legal action necessary to collect such claim, and the employer  
5 shall be required to pay the costs incurred in collecting such  
6 claim. Every such action shall be brought within 3 years from  
7 the date of the underpayment. Such employer shall be liable to  
8 the Department of Labor for a penalty in an amount of up to 20%  
9 of the total employer's underpayment where the employer's  
10 conduct is proven by a preponderance of the evidence to be  
11 willful, repeated, or with reckless disregard of this Act or  
12 any rule adopted under this Act. Such employer shall be liable  
13 to the Department for an additional penalty of \$1,500. All  
14 administrative penalties ordered under this Act shall be paid  
15 by certified check, money order, or an electronic payment  
16 system designated by the Department for such purposes and  
17 shall be made 7 payable to the Department's Wage Theft  
18 Enforcement Fund. Such employer shall be additionally liable  
19 to the employee for damages in the amount of 5% of the amount  
20 of any such underpayments for each month following the date of  
21 payment during which such underpayments remain unpaid. These  
22 penalties and damages may be recovered in a civil action  
23 brought by the Director of Labor in any circuit court. In any  
24 such action, the Director of Labor shall be represented by the  
25 Attorney General.

26 If an employee collects damages of 5% of the amount of

1 underpayments as a result of an action brought by the Director  
2 of Labor, the employee may not also collect those damages in a  
3 private action brought by the employee for the same violation.  
4 If an employee collects damages of 5% of the amount of  
5 underpayments in a private action brought by the employee, the  
6 employee may not also collect those damages as a result of an  
7 action brought by the Director of Labor for the same  
8 violation.

9 (b) If an employee has not collected damages under  
10 subsection (a) for the same violation, the Director is  
11 authorized to supervise the payment of the unpaid minimum  
12 wages and the unpaid overtime compensation owing to any  
13 employee or employees under Sections 4 and 4a of this Act and  
14 may bring any legal action necessary to recover the amount of  
15 the unpaid minimum wages and unpaid overtime compensation and  
16 an equal additional amount as damages, and the employer shall  
17 be required to pay the costs incurred in collecting such  
18 claim. Such employer shall be additionally liable to the  
19 Department of Labor for up to 20% of the total employer's  
20 underpayment where the employer's conduct is proven by a  
21 preponderance of the evidence to be willful, repeated, or with  
22 reckless disregard of this Act or any rule adopted under this  
23 Act. Such employer shall be liable to the Department of Labor  
24 for an additional penalty of \$1,500, payable to the  
25 Department's Wage Theft Enforcement Fund. The action shall be  
26 brought within 5 years from the date of the failure to pay the

1 wages or compensation. Any sums thus recovered by the Director  
2 on behalf of an employee pursuant to this subsection shall be  
3 deposited into the Department of Labor Special State Trust  
4 Fund, from which the Department shall disburse the sums owed  
5 to the employee or employees. The Department shall conduct a  
6 good faith search to find all employees for whom it has  
7 recovered unpaid minimum wages or unpaid overtime  
8 compensation. All disbursements authorized under this Section  
9 shall be made by certified check, money order, or an  
10 electronic payment system designated by the Department ~~paid to~~  
11 ~~the employee or employees affected. Any sums which, more than~~  
12 ~~one year after being thus recovered, the Director is unable to~~  
13 ~~pay to an employee shall be deposited into the General Revenue~~  
14 ~~Fund.~~

15 (c) The Department shall hold any moneys due to employees  
16 that it is unable to locate in the Department of Labor Special  
17 State Trust Fund for no less than 3 years after the moneys were  
18 collected.

19 Beginning November 1, 2023, or as soon as is practical,  
20 and each November 1 thereafter, the Department shall report  
21 any moneys due to employees who cannot be located and that have  
22 been held by the Department in the Department of Labor Special  
23 State Trust Fund for 3 or more years and moneys due to  
24 employees who are deceased to the State Treasurer as required  
25 by the Revised Uniform Unclaimed Property Act. The Department  
26 shall not be required to provide the notice required under

1 Section 15-501 of the Revised Uniform Unclaimed Property Act.

2 Beginning July 1, 2023, or as soon as is practical, and  
3 each July 1 thereafter, the Department shall direct the State  
4 Comptroller and State Treasurer to transfer from the  
5 Department of Labor Special State Trust Fund the balance of  
6 the moneys due to employees who cannot be located and that have  
7 been held by the Department in the Department of Labor Special  
8 State Trust Fund for 3 or more years and moneys due to  
9 employees who are deceased as follows: (i) 15% to the Wage  
10 Theft Enforcement Fund and (ii) 85% to the Unclaimed Property  
11 Trust Fund.

12 The Department may use moneys in the Wage Theft  
13 Enforcement Fund for the purposes described in Section 14 of  
14 the Illinois Wage Payment and Collection Act.

15 (d) The Department may adopt rules to implement and  
16 administer this Section.

17 (Source: P.A. 101-1, eff. 2-19-19.)

18 Section 10. The Illinois Wage Payment and Collection Act  
19 is amended by changing Sections 11.5 and 14 as follows:

20 (820 ILCS 115/11.5)

21 Sec. 11.5. Departmental wage recovery; remittance to  
22 aggrieved employee.

23 (a) Upon the recovery of unpaid wages, wage supplements,  
24 or final compensation from an employer that has violated this

1 ~~Act, the Department shall conduct a good faith search to find~~  
2 ~~the aggrieved employee. If, after conducting a good faith~~  
3 ~~search for the aggrieved employee, the Department is unable to~~  
4 ~~find the aggrieved employee,~~ the Department shall deposit the  
5 amount recovered into the Department of Labor Special State  
6 Trust Fund, from which the Department shall disburse the sums  
7 owed to the employee or employees. The Department shall  
8 conduct a good faith search to find all employees for whom it  
9 has recovered unpaid wages, wage supplements, or final  
10 compensation. All disbursements authorized under this Section  
11 shall be made by certified check, money order, or an  
12 electronic payment system designated by the Department.

13 (a-5) The Department shall hold any moneys due to  
14 employees that it is unable to locate in the Department of  
15 Labor Special State Trust Fund for no less than 3 years after  
16 the moneys were collected.

17 Beginning November 1, 2023, or as soon as is practical,  
18 and each November 1 thereafter, the Department shall report  
19 any moneys due to employees who cannot be located and that have  
20 been held by the Department in the Department of Labor Special  
21 State Trust Fund for 3 or more years and moneys due to  
22 employees who are deceased to the State Treasurer as required  
23 by the Revised Uniform Unclaimed Property Act. The Department  
24 shall not be required to provide the notice required under  
25 Section 15-501 of the Revised Uniform Unclaimed Property Act.

26 Beginning July 1, 2023, or as soon as is practical, and

1 each July 1 thereafter, the Department shall direct the State  
2 Comptroller and State Treasurer to transfer from the  
3 Department of Labor Special State Trust Fund the balance of  
4 the moneys due to employees who cannot be located and that have  
5 been held by the Department in the Department of Labor Special  
6 State Trust Fund for 3 or more years and moneys due to  
7 employees who are deceased as follows: (i) 15% to the Wage  
8 Theft Enforcement Fund and (ii) 85% to the Unclaimed Property  
9 Trust Fund.

10 The Department may use moneys in the Wage Theft  
11 Enforcement Fund for the purposes described in Section 14 of  
12 the Illinois Wage Payment and Collection Act.

13 (b) An aggrieved employee may make a request to the  
14 Department in order to recover unpaid wages, wage supplements,  
15 or final compensation that has been deposited into the  
16 Department of Labor Special State Trust Fund. The Department  
17 shall not require the employee to present a Social Security  
18 number or proof of United States citizenship. For the purpose  
19 of paying claims under this Section from the Department of  
20 Labor Special State Trust Fund to aggrieved employees, the  
21 Comptroller shall assign a vendor payment number to the  
22 Department. When an aggrieved employee makes a valid request  
23 for payment to the Department, the Department shall use the  
24 vendor payment number to process payment on behalf of the  
25 aggrieved employee.

26 (c) The Department shall adopt rules for the

1 administration of this Section.

2 (Source: P.A. 99-762, eff. 1-1-17.)

3 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

4 Sec. 14. (a) Any employee not timely paid wages, final  
5 compensation, or wage supplements by his or her employer as  
6 required by this Act shall be entitled to recover through a  
7 claim filed with the Department of Labor or in a civil action,  
8 but not both, the amount of any such underpayments and damages  
9 of 5% of the amount of any such underpayments for each month  
10 following the date of payment during which such underpayments  
11 remain unpaid. In a civil action, such employee shall also  
12 recover costs and all reasonable attorney's fees.

13 (a-5) In addition to the remedies provided in subsections  
14 (a), (b), and (c) of this Section, any employer or any agent of  
15 an employer, who, being able to pay wages, final compensation,  
16 or wage supplements and being under a duty to pay, wilfully  
17 refuses to pay as provided in this Act, or falsely denies the  
18 amount or validity thereof or that the same is due, with intent  
19 to secure for himself or other person any underpayment of such  
20 indebtedness or with intent to annoy, harass, oppress, hinder,  
21 delay or defraud the person to whom such indebtedness is due,  
22 upon conviction, is guilty of:

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



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

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

6           Any employer or any agent of an employer who violates this  
7           Section of the Act a subsequent time within 2 years of a prior  
8           criminal conviction under this Section is guilty, upon  
9           conviction, of a Class 4 felony.

10          (b) Any employer who has been demanded or ordered by the  
11          Department or ordered by the court to pay wages, final  
12          compensation, or wage supplements due an employee shall be  
13          required to pay a non-waivable administrative fee to the  
14          Department of Labor in the amount of \$250 if the amount ordered  
15          by the Department as wages owed is \$3,000 or less; \$500 if the  
16          amount ordered by the Department as wages owed is more than  
17          \$3,000, but less than \$10,000; and \$1,000 if the amount  
18          ordered by the Department as wages owed is \$10,000 or more. Any  
19          employer who has been so demanded or ordered by the Department  
20          or ordered by a court to pay such wages, final compensation, or  
21          wage supplements and who fails to seek timely review of such a  
22          demand or order as provided for under this Act and who fails to  
23          comply within 15 calendar days after such demand or within 35  
24          days of an administrative or court order is entered shall also  
25          be liable to pay a penalty to the Department of Labor of 20% of  
26          the amount found owing and a penalty to the employee of 1% per

1 calendar day of the amount found owing for each day of delay in  
2 paying such wages to the employee. All moneys recovered as  
3 fees and civil penalties under this Act, except those owing to  
4 the affected employee, shall be deposited into the Wage Theft  
5 Enforcement Fund, a special fund which is hereby created in  
6 the State treasury. Moneys in the Fund may be used ~~only~~ for  
7 enforcement of this Act and for outreach and educational  
8 activities of the Department related to the recovery of unpaid  
9 or underpaid compensation and the disbursement of moneys to  
10 affected parties.

11 (b-5) Penalties and fees under this Section may be  
12 assessed by the Department and recovered in a civil action  
13 brought by the Department in any circuit court or in any  
14 administrative adjudicative proceeding under this Act. In any  
15 such civil action or administrative adjudicative proceeding  
16 under this Act, the Department shall be represented by the  
17 Attorney General.

18 (c) Any employer, or any agent of an employer, who  
19 discharges or in any other manner discriminates against any  
20 employee because that employee has made a complaint to his or  
21 her employer, to the Director of Labor or his or her authorized  
22 representative, in a public hearing, or to a community  
23 organization that he or she has not been paid in accordance  
24 with the provisions of this Act, or because that employee has  
25 caused to be instituted any proceeding under or related to  
26 this Act, or because that employee has testified or is about to

1 testify in an investigation or proceeding under this Act, is  
2 guilty, upon conviction, of a Class C misdemeanor. An employee  
3 who has been unlawfully retaliated against shall be entitled  
4 to recover through a claim filed with the Department of Labor  
5 or in a civil action, but not both, all legal and equitable  
6 relief as may be appropriate. In a civil action, such employee  
7 shall also recover costs and all reasonable attorney's fees.

8 (Source: P.A. 102-50, eff. 7-9-21.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law."