



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3395

Introduced 2/17/2023, by Rep. Lilian Jiménez

SYNOPSIS AS INTRODUCED:

820 ILCS 105/3
820 ILCS 105/4a

from Ch. 48, par. 1003
from Ch. 48, par. 1004a

Amends the Minimum Wage Law. Provides that the definition of "employee" includes specified workers employed in agriculture. In provisions requiring the payment of overtime, removes the exclusion of employers of agricultural labor with respect to agricultural employment.

LRB103 26342 SPS 52703 b

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 Minimum Wage Law is amended by changing
5 Sections 3 and 4a as follows:

6 (820 ILCS 105/3) (from Ch. 48, par. 1003)

7 Sec. 3. As used in this Act:

8 (a) "Director" means the Director of the Department of
9 Labor, and "Department" means the Department of Labor.

10 (b) "Wages" means compensation due to an employee by
11 reason of his employment, including allowances determined by
12 the Director in accordance with the provisions of this Act for
13 gratuities and, when furnished by the employer, for meals and
14 lodging actually used by the employee.

15 (c) "Employer" includes any individual, partnership,
16 association, corporation, limited liability company, business
17 trust, governmental or quasi-governmental body, or any person
18 or group of persons acting directly or indirectly in the
19 interest of an employer in relation to an employee, for which
20 one or more persons are gainfully employed on some day within a
21 calendar year. An employer is subject to this Act in a calendar
22 year on and after the first day in such calendar year in which
23 he employs one or more persons, and for the following calendar

1 year.

2 (d) "Employee" includes any individual permitted to work
3 by an employer in an occupation, and includes the following:
4 (i) notwithstanding subdivision (1) of this subsection (d),
5 one or more domestic workers as defined in Section 10 of the
6 Domestic Workers' Bill of Rights Act; and (ii) any individual
7 employed in agriculture, except as provided in paragraph (2).
8 "Employee" ~~but~~ does not include any individual permitted to
9 work:

10 (1) For an employer employing fewer than 4 employees
11 exclusive of the employer's parent, spouse or child or
12 other members of his immediate family.

13 (2) As an employee employed in agriculture or
14 aquaculture (A) ~~if such employee is employed by an~~
15 ~~employer who did not, during any calendar quarter during~~
16 ~~the preceding calendar year, use more than 500 man days of~~
17 ~~agricultural or aquacultural labor, (B) if such employee~~
18 is the parent, spouse or child, or other member of the
19 employer's immediate family, (B) ~~(C)~~ if such employee (i)
20 is employed as a hand harvest laborer and is paid on a
21 piece rate basis in an operation which has been, and is
22 customarily and generally recognized as having been, paid
23 on a piece rate basis in the region of employment, (ii)
24 commutes daily from his permanent residence to the farm on
25 which he is so employed, and (iii) has been employed in
26 agriculture less than 13 weeks during the preceding

1 calendar year, (C) ~~(D)~~ if such employee (other than an
2 employee described in clause (B) ~~(C)~~ of this
3 subparagraph): (i) is 16 years of age or under and is
4 employed as a hand harvest laborer, is paid on a piece rate
5 basis in an operation which has been, and is customarily
6 and generally recognized as having been, paid on a piece
7 rate basis in the region of employment, (ii) is employed
8 on the same farm as his parent or person standing in the
9 place of his parent, and (iii) is paid at the same piece
10 rate as employees over 16 are paid on the same farm.

11 (3) (Blank).

12 (4) As an outside salesman.

13 (5) As a member of a religious corporation or
14 organization.

15 (6) At an accredited Illinois college or university
16 employed by the college or university at which he is a
17 student who is covered under the provisions of the Fair
18 Labor Standards Act of 1938, as heretofore or hereafter
19 amended.

20 (7) For a motor carrier and with respect to whom the
21 U.S. Secretary of Transportation has the power to
22 establish qualifications and maximum hours of service
23 under the provisions of Title 49 U.S.C. or the State of
24 Illinois under Section 18b-105 (Title 92 of the Illinois
25 Administrative Code, Part 395 - Hours of Service of
26 Drivers) of the Illinois Vehicle Code.

1 (8) As an employee employed as a player who is 28 years
2 old or younger, a manager, a coach, or an athletic trainer
3 by a minor league professional baseball team not
4 affiliated with a major league baseball club, if (A) the
5 minor league professional baseball team does not operate
6 for more than 7 months in any calendar year or (B) during
7 the preceding calendar year, the minor league professional
8 baseball team's average receipts for any 6-month period of
9 the year were not more than 33 1/3% of its average receipts
10 for the other 6 months of the year.

11 The above exclusions from the term "employee" may be
12 further defined by regulations of the Director.

13 (e) "Occupation" means an industry, trade, business or
14 class of work in which employees are gainfully employed.

15 (f) "Gratuities" means voluntary monetary contributions to
16 an employee from a guest, patron or customer in connection
17 with services rendered.

18 (g) "Outside salesman" means an employee regularly engaged
19 in making sales or obtaining orders or contracts for services
20 where a major portion of such duties are performed away from
21 his employer's place of business.

22 (h) "Day camp" means a seasonal recreation program in
23 operation for no more than 16 weeks intermittently throughout
24 the calendar year, accommodating for profit or under
25 philanthropic or charitable auspices, 5 or more children under
26 18 years of age, not including overnight programs. The term

1 "day camp" does not include a "day care agency", "child care
2 facility" or "foster family home" as licensed by the Illinois
3 Department of Children and Family Services.

4 (Source: P.A. 99-758, eff. 1-1-17; 100-192, eff. 8-18-17.)

5 (820 ILCS 105/4a) (from Ch. 48, par. 1004a)

6 Sec. 4a. (1) Except as otherwise provided in this Section,
7 no employer shall employ any of his employees for a workweek of
8 more than 40 hours unless such employee receives compensation
9 for his employment in excess of the hours above specified at a
10 rate not less than 1 1/2 times the regular rate at which he is
11 employed.

12 (2) The provisions of subsection (1) of this Section are
13 not applicable to:

14 A. Any salesman or mechanic primarily engaged in
15 selling or servicing automobiles, trucks or farm
16 implements, if he is employed by a nonmanufacturing
17 establishment primarily engaged in the business of selling
18 such vehicles or implements to ultimate purchasers.

19 B. Any salesman primarily engaged in selling trailers,
20 boats, or aircraft, if he is employed by a
21 nonmanufacturing establishment primarily engaged in the
22 business of selling trailers, boats, or aircraft to
23 ultimate purchasers.

24 C. (Blank). ~~Any employer of agricultural labor, with~~
25 ~~respect to such agricultural employment.~~

1 D. Any employee of a governmental body excluded from
2 the definition of "employee" under paragraph (e)(2)(C) of
3 Section 3 of the Federal Fair Labor Standards Act of 1938.

4 E. Any employee employed in a bona fide executive,
5 administrative or professional capacity, including any
6 radio or television announcer, news editor, or chief
7 engineer, as defined by or covered by the Federal Fair
8 Labor Standards Act of 1938 and the rules adopted under
9 that Act, as both exist on March 30, 2003, but compensated
10 at the amount of salary specified in subsections (a) and
11 (b) of Section 541.600 of Title 29 of the Code of Federal
12 Regulations as proposed in the Federal Register on March
13 31, 2003 or a greater amount of salary as may be adopted by
14 the United States Department of Labor. For bona fide
15 executive, administrative, and professional employees of
16 not-for-profit corporations, the Director may, by
17 regulation, adopt a weekly wage rate standard lower than
18 that provided for executive, administrative, and
19 professional employees covered under the Fair Labor
20 Standards Act of 1938, as now or hereafter amended.

21 F. Any commissioned employee as described in paragraph
22 (i) of Section 7 of the Federal Fair Labor Standards Act of
23 1938 and rules and regulations promulgated thereunder, as
24 now or hereafter amended.

25 G. Any employment of an employee in the stead of
26 another employee of the same employer pursuant to a

1 worktime exchange agreement between employees.

2 H. Any employee of a not-for-profit educational or
3 residential child care institution who (a) on a daily
4 basis is directly involved in educating or caring for
5 children who (1) are orphans, foster children, abused,
6 neglected or abandoned children, or are otherwise homeless
7 children and (2) reside in residential facilities of the
8 institution and (b) is compensated at an annual rate of
9 not less than \$13,000 or, if the employee resides in such
10 facilities and receives without cost board and lodging
11 from such institution, not less than \$10,000.

12 I. Any employee employed as a crew member of any
13 uninspected towing vessel, as defined by Section 2101(40)
14 of Title 46 of the United States Code, operating in any
15 navigable waters in or along the boundaries of the State
16 of Illinois.

17 J. Any employee who is a member of a bargaining unit
18 recognized by the Illinois Labor Relations Board and whose
19 union has contractually agreed to an alternate shift
20 schedule as allowed by subsection (b) of Section 7 of the
21 Fair Labor Standards Act of 1938.

22 (3) Any employer may employ any employee for a period or
23 periods of not more than 10 hours in the aggregate in any
24 workweek in excess of the maximum hours specified in
25 subsection (1) of this Section without paying the compensation
26 for overtime employment prescribed in subsection (1) if during

1 that period or periods the employee is receiving remedial
2 education that:

3 (a) is provided to employees who lack a high school
4 diploma or educational attainment at the eighth grade
5 level;

6 (b) is designed to provide reading and other basic
7 skills at an eighth grade level or below; and

8 (c) does not include job specific training.

9 (4) A governmental body is not in violation of subsection
10 (1) if the governmental body provides compensatory time
11 pursuant to paragraph (o) of Section 7 of the Federal Fair
12 Labor Standards Act of 1938, as now or hereafter amended, or is
13 engaged in fire protection or law enforcement activities and
14 meets the requirements of paragraph (k) of Section 7 or
15 paragraph (b)(20) of Section 13 of the Federal Fair Labor
16 Standards Act of 1938, as now or hereafter amended.

17 (Source: P.A. 99-17, eff. 1-1-16.)